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Tuesday
November 30, 1999

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 7, 1999 at 9:00 am.

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

RESERVATIONS: 202–523–4538

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 64, No. 229
Tuesday, November 30, 1999

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 15 and 15d

RIN 0503–AA15

Nondiscrimination in USDA Conducted Programs and Activities

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA or the Department) is revising its regulations governing nondiscrimination in programs and activities conducted by the Department. On November 10, 1998, the Department published a proposal to do so in the **Federal Register** (63 FR 62962). The revision: Removes the current regulation on this subject found at 7 CFR part 15, subpart B, and places it in a new part 15d; clarifies that the regulation applies to all Department-conducted programs and activities, not just to direct assistance programs; adds familial status, marital status, sexual orientation, and public assistance status to the protected classes contained in the regulation; adds a provision on retaliation; adds a provision on Department agencies' compliance efforts; reflects that the Director of the Office of Civil Rights has been delegated the authority to make final determinations as to whether prohibited discrimination occurred and the corrective action required to resolve program complaints; removes the appendix to the regulation that lists the Department programs subject to these provisions; and makes other clarifications to the regulation.

DATES: *Effective:* November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Delores H. Ruffin, Office of Civil Rights, (202) 720–5212; or Ron Walkow, Attorney-Advisor, Office of the General Counsel, (202) 720–6056. If a copy of this final rule in an alternate format, e.g., braille, is necessary, contact (202) 720–0353 (voice or TDD).

SUPPLEMENTARY INFORMATION: Subpart B currently contains the Department's civil rights regulations for programs and activities conducted by the Department. As noted in the Department's proposed rule, the rule is in need of revision. The Department's proposal to revise the rule was published November 10, 1998, and a 30-day comment period followed. The Department now is prepared to amend the rule as provided with one modification discussed below.

The only comment the Department received was from a USDA employee group that applauded the Department's intention to add sexual orientation as a protected class in the Department's non-discrimination policy in its conduct programs and activities.

Apart from any comments received, the Department has decided on its own to make one minor modification to the rule. As discussed in the preliminary material to the proposed rule, the Department seeks to prohibit discrimination against individuals in any USDA credit program because all or part of their income is derived from any public assistance program since this prohibition is contained in the Equal Credit Opportunity Act, 15 U.S.C. 1691(a)(3), (63 FR 62963). However, the Department merely added the term ''public assistance status'' to the proposed rule rather than using the full phrase and referencing the applicability to credit programs. In retrospect, this shorthand phrase is somewhat confusing; therefore, the Department will use the full phrase in the final rule.

This final rule has been determined to be ''non-significant'' for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget. USDA certifies that this final rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). USDA also certifies that this final rule would not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

List of Subjects in 7 CFR Parts 15 and 15d

Nondiscrimination.

Accordingly, the Department of Agriculture hereby amends Title 7 of the Code of Federal Regulations, Subtitle A, as follows:

PART 15—[AMENDED]

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

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

§§ 15.50–15.52 (Subpart B) and the Appendix to Subpart B [Removed]

2. Part 15, subpart B (§§ 15.50–15.52) and the appendix to Subpart B is removed; and

3. A new part 15d is added as follows:

PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

Authority: 5 U.S.C. 301.

§ 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

§ 15d.2 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture shall, on the ground of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, or disability, or because all of part of an individual's income is derived from any public assistance program, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the United States Department of Agriculture.

(b) No person shall be subjected to reprisal for opposing any practice prohibited by this part or for filing a complaint or participating in any other manner in a proceeding under this part.

§ 15d.3 Compliance.

The Director of the Office of Civil Rights shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

§ 15d.4 Complaints.

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination. No particular form of complaint is required. The written complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the Director of the Office of Civil Rights or his or her designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of the Office of Civil Rights, United States Department of Agriculture, Washington, D.C. 20250, who will investigate the complaints. The Director of the Office of Civil Rights will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complainants. The complaint will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.

Dated: November 16, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–30951 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–5]

RIN 0579–AB00

Importation From Europe of Rhododendron Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants established in growing media to allow the importation of rhododendron from Europe under conditions designed to prevent the introduction of dangerous plant pests. This action will relieve restrictions on the importation of rhododendron plants from Europe while continuing to protect against introduction of plant pests.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Section 319.37–8, paragraph (a) of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

On September 7, 1993, we published in the **Federal Register** (58 FR 47074–47084, Docket No. 89–154–1) a proposed rule to amend the regulations to allow the importation of five genera of plants established in growing media. That proposal is referred to below as ''the proposed rule.'' We accepted comments on the proposed rule for a period of 90 days, ending December 6, 1993.

In a final rule published in the **Federal Register** on January 13, 1995, and effective on February 13, 1995 (60 FR 3067–3078, Docket No. 89–154–2), the Animal and Plant Health Inspection Service (APHIS) finalized provisions for the importation of *Alstroemeria, Ananas, Anthurium,* and *Nidularium* species. The final rule postponed action on *Rhododendron* species established in growing media to allow consultation regarding the action with the U.S. Fish and Wildlife Service, in accordance with the Endangered Species Act.

On April 30, 1998, we published in the **Federal Register** (63 FR 23683–23685, Docket No. 89–154–3) a notice reopening and extending the comment period on the proposal to allow the importation of *Rhododendron* species established in growing media. The notice also announced that, as a result of formal consultation with the Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act, APHIS intended to limit the proposed action to *Rhododendron* species imported from Europe only. The limitation to Europe was made because there is little importation of rhododendron from places outside Europe, and limited data on pests of rhododendron outside Europe. We believe the data available on rhododendron pest distribution outside Europe, and pest interceptions on rhododendron commodities from outside Europe, is insufficient to support a conclusion of negligible risk for importation of rhododendron from all countries at this time.

Comments were required to be received on or before June 1, 1998. We received two requests from trade organizations to extend the period during which comments would be accepted. In response, on June 1, 1998, we published in the **Federal Register** (63 FR 29675–29676, Docket No. 89–154–4) a notice extending the comment period until July 30, 1998.

During this reopened comment period of April 30 through July 30, 1998, we received 11 comments on the rhododendron proposal. Additionally, we received approximately 60 comments from domestic nurseries and nursery associations, importers, State governments, and environmental interest groups during the original 1993 comment period on the proposed rule that specifically addressed importation of rhododendron. The issues addressed by all of these comments are discussed below.

Comment: APHIS identified rhododendron pests of concern for this rule using reports from the scientific literature and reports of pest interceptions associated with rhododendron at ports under the

premise that these sources would reveal all pests of concern. This premise is fallacious because the lack of citations in the scientific literature may merely reflect scientists not choosing to address pests that attack rhododendron, and a lack of interception reports may reflect the small amount of trade in rhododendron in growing media. This approach misses potential pest problems.

Response: The purpose of the literature search and review of interception reports was to identify all known pests of concern and to collate information about these pests that would also allow us to make informed assumptions concerning potential unknown pests of concern. Pest risk analysis is a combination of the processes of pest risk assessment (determining whether a pest is harmful and evaluating its introduction potential) and pest risk management (the decision-making process of reducing the risk of introduction of a quarantine pest). It is standard scientific procedure in conducting a pest risk assessment to review the available scientific literature and interception records, conduct surveys, and communicate with foreign and domestic scientists and government officials. The process of pest risk assessment is a well-established procedure within APHIS. Some of the earliest pest risk assessments were done over 75 years ago and have proved their utility over time, because program requirements based on them have successfully excluded or controlled the quarantine pests that were the targets of the assessments.

When conducting a pest risk assessment, the relative richness or paucity of information on particular pests is a factor in the analysis. If in-depth pest data is lacking and there is reason to believe pests of concern are not well characterized, the assessment employs conservative assumptions that maximize the potential hazard presented by the uncharacterized pests.

Scientists choose to study particular pests for a variety of reasons, but economic factors clearly direct much scientific research toward pests of economic importance. Pests of rhododendron and other major ornamental plants are clearly of economic importance, and a great deal of research has in fact been directed toward these pests.

Interception records vary with the commodity, source, volume, host susceptibility, and other factors. Rhododendron have been imported from Europe in varying amounts for over 50 years, both as cargo and in passenger baggage. Most of the pest interceptions have been made in passenger baggage, presumably in plants taken from the wild. It is true that there are few records of interception of pests associated with commercial importation of rhododendron because our regulations have previously prohibited importation of rhododendron in soil or growing media, and there is limited commercial incentive to import bare-rooted plants. We believe it is unproductive for commenters to support limiting rhododendron imports to bare-rooted plants only, and then to argue that to justify importing the plants in growing media we would need years of interception records for this (prohibited) trade in rhododendron in growing media. When considering changes to the regulations, we cannot collect data about activities we have prohibited (except for occasional data about shipments smuggled in violation of the regulations).

Overall, we believe there is sufficient pest information about which pests occur in Europe and in the United States to analyze the pest risk and reach a sound biological decision on how to handle the rhododendron in growing media.

Comment: APHIS wrongly evaluated pests based on their known damage potential. Many pests now causing harm in the United States were innocuous in their place of origin and only caused significant harm when introduced into an area free of their natural enemies.

Response: One of the elements of pest risk assessment is an evaluation of the potential damage that may be caused by a pest using a set of criteria. While some introduced pests have found a favorable niche in the United States, others have never become serious pests. The establishment of a pest is determined by many factors, such as climate, survival, finding a suitable host, etc., which are considered in a pest risk assessment. The absence of natural enemies may play an important role in the establishment of a pest, especially for insects. APHIS is well aware of this natural phenomenon and has considered it in conducting its pest risk assessments. The basis of a good quarantine system is to prevent the introduction of the pests before they reach our shores.

Comment: The short-spored rhododendron rust caused by *Chrysomyxa ledi* var. *rhododendri* should be considered a pest of quarantine significance, as it causes serious defoliation and its spores are spread by wind. Presence of this disease would not be revealed by the proposal's greenhouse growing requirements, and the Kahn report (a report of the APHIS committee of researchers who prepared worksheets on pests and evaluations of pest risk prior to this rulemaking) notes that ''if the host/rust interaction were in the incubation period at the time of inspection, the infection would not be detected.''

Response: APHIS considers *Chrysomyxa ledi* var. *rhododendri* a quarantine pest because it can cause economic losses to both *Rhododendron* and *Picea* species. When it is detected on intercepted plant material, the plant material is seized and destroyed. Concerning its epidemiology and other characteristics, the fungus may cause defoliation and the spores are indeed spread by wind, like most rusts. For infection to occur the disease pathway must lead to the vicinity of a target host. The conditions and safeguards in the proposed rule are sufficient to preclude establishment of the disease in the United States. While there are growth periods when signs of the pathogen are not obvious in the host plant, there are signs of infection visible to close scrutiny. That is the reason for the lengthy observed growing periods required by the proposed rule for both mother stock and progeny: to provide an opportunity to detect incipient infection that might not be obvious during a one-time inspection. Besides the regular surveillance of the plants during the long growing period, the detailed inspection at a U.S. quarantine inspection station at the first port of entry provides additional safety.

Comment: The proposal cites APHIS' experience in importing plants in media without introducing pests as one basis for the proposal and suggests there have been no problems with plants currently allowed to be imported in media in 20 years. This is not true. Pest movement on plant material used in greenhouse production was the likely cause for spread of a serpentine leafminer (*Liriomyza trifoili* (Burgess)), a pea leafminer (*L. huidobrensis* (Blanchard)), the beet armyworm (*Spodoptera exigua* (Hubner)), the western flower thrips (*Frankliniella occidentalis* (Pergrande)), and the sweetpotato whitefly (*Bemisia tabaci* (Gennadius)). Also, in comments on an earlier rule, Dr. Ken Horst identified several cases where U.S. growers had to destroy material imported in media due to disease. Also, simply pointing to the successes of the current program does not justify extending it.

Response: The experience of growing certain plants in growing media, as cited by APHIS, forms the basis of a model for a systems approach that uses modern and advanced horticultural practices to

prevent the introduction and spread of plant pests. The commenter correctly identifies pest movement on plant material used in greenhouse production as the likely cause for the spread of the enumerated pests, and we do not doubt that those and other pests have spread from unregulated greenhouse cultivation where infested plants were grown. The growing of plant material under controlled conditions such as those in the regulations will prevent or greatly reduce the spread and movement of plant pests. The pests cited by the commenter did not originate from greenhouse cultivation under the system described in the proposal. Greenhouse production in accordance with the proposed regulations would have prevented the dissemination of such pests.

APHIS is not aware of the details of the specific cases where U.S. growers had to destroy material imported in media due to disease as reported by Dr. Ken Horst, because the entry of these pests apparently was not reported to APHIS or State quarantine officials at the time of their discovery. When a quarantine pest is discovered, it should be reported immediately to APHIS or State quarantine officials so its eradication can be confirmed and the pathway of entry studied. Since APHIS did not have the opportunity to investigate these cases at the time, APHIS cannot comment on the incidents cited by the commenter.

Comment: The current state of the science of risk analysis still acknowledges major areas of uncertainty when it comes to assessing the actual impacts of new pest introductions; the full extent of the damage they may cause cannot be accurately estimated. This uncertainty makes it unwise to adopt the proposed action for rhododendron.

Response: Pest risk analysis is the best tool currently available to evaluate and manage pest risk. It is being standardized, refined, and promoted globally. Uncertainties are acknowledged in the risk analysis process, and for this reason APHIS uses great care in arriving at its decisions and involves the best and most competent risk analysts available to the agency among its staff and outside resources. While all the information about pest damage caused to rhododendron may not be fully known, there is sufficient and reliable information to evaluate importing rhododendron under the conditions we proposed. Should pest risk change at any time, APHIS is prepared to change any or all aspects of the program, including denying approval of greenhouses, shutting them down, or making any other changes necessary to the program to safeguard the United States against invading pests.

Comment: Increasingly, APHIS quarantine decisions appear to be driven by trade policy (attempting to expand and liberalize opportunities for international trade under the World Trade Organization agreement) rather than the primary APHIS mandate of pest prevention based on science. We believe, consistent with the Office of Technology Assessment report, ''Agriculture, Trade, and the Environment: Achieving Complimentary Policies,'' that APHIS should not try to achieve an unrealistic zero risk standard, but should seek to target controls to protect those agricultural systems that are at greatest risk from harmful nonindigenous species. We further believe that nursery crops represent an ''at greatest risk'' category with regard to pests associated with foreign rhododendron in media.

Response: APHIS' first and primary responsibility is to protect U.S. agriculture from foreign quarantine pests. The United States is a signatory to World Trade Organization (WTO) agreements and is bound to comply with certain WTO policies guiding national activities to protect plant health, and it expects that other countries do the same. The United States strongly supports and sponsors initiatives to achieve global standardization in plant quarantine activities. APHIS is applying these standards in complying with the agreements, which is in the interest of U.S. agriculture. Nursery stock has been, and continues to be, an area of great concern to APHIS. We attempt to employ the most effective, practical, and cost-effective strategies to prevent the introduction of plant pests, including exclusion of the host plant when necessary. We do not and cannot employ a ''zero risk standard.'' It is not possible to eliminate all risk. We reduce risk to a negligible level. Our regulations establish controls and prioritize agency resources to maximize protection to those agricultural systems that are at greatest risk.

Comment: The proposed visual inspection of stock in participating European greenhouses would be largely ineffective because many pests are not readily found by inspection at some life stages.

Response: In this rule APHIS requires a lengthy pre-importation detention period or holding period in the greenhouses in foreign countries. This should give plant inspectors time for inspection and evaluation of plants and facilities to determine whether the rhododendron plant material meets entry requirements. By the same token, this long detention period allows more time for the development of pests so that they may be visible to the inspector. If the inspector determines that methods other than a visual inspection are necessary to determine the presence of a pest, then suspect material may be investigated, detained, treated, tested, etc. Additionally, all shipments of rhododendron will be directed to an APHIS Plant Inspection Station at a port of entry for inspection and final release.

Comment: The proposed pesticide dip offers no detail on active ingredient, rate, or efficacy against pests. Also, in some cases, pesticide treatments may mask, but not eliminate, pest presence.

Response: APHIS does not normally include informational details of a pesticide such as active ingredients, dose rate, or efficacy against pests in a rule because, in many cases, to do so would be to repeat a large volume of scientific and testing data that was used in the process of approving the pesticide for use against targeted pests. The approval process for pesticides is a separate function of other Federal agencies and agencies of foreign governments. APHIS' discussion of a pesticide is usually limited to discussing that a pesticide is in fact approved for use against a target pest in a given commodity and that use of the pesticide meets operational needs of APHIS and the affected industry. The exporter is required to use only pesticides prescribed by the plant protection service of the exporting country and must inform the inspector prior to their use. The recommended dip with a pesticide is a precautionary treatment and just one more additional safeguard, so while the masking of pest presence by pesticide use may occasionally be a problem, other components of the systems approach of the regulations compensate for this possible effect. It is APHIS policy that, should the pesticide make inspection difficult or hinder inspection in any way, the shipment or consignment may be denied. Such pesticide dips are not unique to the rhododendron import rule; they are also recommended and are effectively used in the United States on other imported and domestic plant and plant products.

Comment: Inspection at the port of entry under the best conditions is still not adequate to detect many pests. Further, the reality is that APHIS inspects many cargoes at a rate of less than one-half of one percent, and allows unsound inspection practices such as ''tailgate'' inspections and allowing brokers to select the samples to be

inspected. Because the proposal partly relies on inspection to mitigate the risks, these inadequacies mean the proposal will not achieve its claimed level of risk reduction.

Response: Inspection at ports of entry is an internationally accepted strategy in plant quarantine. It is rarely ever used alone, and in addition to visual examination by an inspector, may include any number of techniques to arrive at a decision. In this rule, inspection at the port of entry is not the only, or even primary, protection. Additional safeguards include growing site inspection, monitoring, surveillance, certification, and specific growing conditions in the country of origin to reduce the risk of the introduction of pests to a negligible level. Port of entry inspection of bare-rooted rhododendron has been used successfully for many years. Now that the regulations allow importation of the plants in growing media, we are retaining port of entry inspection but are also requiring additional safeguards.

The rate or percentages employed by APHIS in the inspection of cargoes varies depending on the pest risk, origin of the commodity, and other factors connected with the type of shipment. An inspection of 100 percent of the commodity may be ordered when the conditions warrant. The many thousands of interceptions made by the United States and other countries are evidence that inspection has considerable merit for some pests, but the volume of interceptions is likewise a sign that inspection alone is not enough and that a systems approach that addresses growing conditions in the country of origin is needed to keep dangerous pests that are not visible to inspectors from arriving at U.S. ports. This rule establishes such a systems approach.

Comment: APHIS bases part of its argument on the lack of pest problems associated with imports of bare-rooted rhododendron in recent years. However, this trade amounts to only a few thousand dollars a year, compared to an expectation of importing many times that volume of plants in media under the proposed rule. The minuscule amount of bare-root imports provides no basis for assessing risk.

Response: APHIS makes a logical comparison between the importation of bare-rooted rhododendron and its importation in approved growing media. If pest problems are not associated with bare-rooted plants, which are grown in the open field and exposed to the environment, one might conclude that the risk is even less when the plants are grown under a system of controlled conditions in a greenhouse—barring the possibility that there are pests associated with the media but not the plant. The proposal included strict media standards to preclude the presence of pests associated with the media. Furthermore, the importation of plants in growing media as proposed should eliminate the occasional pest problems that were associated with importing bare-rooted plants, by providing an even safer and economically more attractive method to import rhododendron. Consider that at one time ferns were imported bare-rooted, and there were many pest problems both for the importers and for APHIS. Producing them in growing media under controlled conditions resolved the problems to the satisfaction of both the importers and APHIS. The system for importing ferns in growing media has worked for a large volume of plants imported over an extended period of time. In view of this and the more limited data from importing small volumes of bare-rooted rhododendron over many years, it is reasonable to believe the rule's requirements for importing rhododendron will work.

Comment: The Endangered Species Act consultation did not assess the risk to listed species other than *Rhododendron* in the family Ericaceae, such as five *Arctostaphylos* species that occur in California and may be vulnerable to pests introduced by rhododendron.

Response: Pest risk assessment for plants is generally done at the genera level, and for this rule it was done for the entire genus *Rhododendron*. Based on pest and host data collected in the early stages of assessment, projects may be expanded to include other plant genera. If data showed *Arctostaphylos* to be a host of any of the pests associated with *Rhododendron*, the genus would have been seriously considered in the analysis. We have not received any specific pest or host data in comments and are not aware of any that indicates it is necessary to perform an assessment for the entire family Ericaceae. The Fish and Wildlife Service was a great help in evaluating any effects pests of rhododendron would have on endangered species. Consultation with the Fish and Wildlife Service was a valid and legally mandated approach to reaching an understanding of these matters.

Comment: The pest risk potential associated with imported rhododendron will remain largely unknown and uncharacterized until APHIS performs additional pest risk analyses, particularly focused on horticultural and environmental impacts, to determine the possible impact on all hosts, both native and agricultural.

Response: Pest risk analysis follows specific guidelines in order that the assessments may be as uniform and consistent as possible. When circumstances warrant, there may be a reevaluation of the pest risk. It would appear from the investigation, reviews, and evaluations already conducted for rhododendron that an additional pest risk assessment at this time is not necessary, particularly in the absence of new data or pertinent information on pest risk. The importation of rhododendron in growing media under the prescribed conditions is limited to imports from Europe. The cultivation practices used for rhododendron in Europe, and the environmental effects of the horticulture and pest issues associated with it, are fairly well known and were considered in analyzing pest risk. No number of additional pest risk assessments could ever give us the precise effect of all possible introduction scenarios on all U.S. hosts, both native and agricultural.

Comment: The proposed 0.2 mm screen size for greenhouses will not adequately prevent the entry of airborne pests or pathogens without additional requirements for door openings, air filtration systems, etc. The Zandvoort paper, ''Wind Dispersal of *Puccinia horiana* of Chrysanthemum,'' clearly illustrates how rust spores can easily enter and exit greenhouses via ventilation windows, for example.

Response: The proposed 0.2 mm screen size for greenhouses is intended for those vents where outside air is necessary. The 0.2 mm screen size is considered very small. It is so small that many believe it to be a hindrance to adequate air circulation. It is a much smaller opening than has been approved for other genera now permitted to be grown in media. The very small screen size and the additional safeguards for greenhouses growing plants in media are believed to be more than satisfactory.

Regarding door openings, § 319.37–8(e)(2)(ii) of the regulations requires that greenhouses be equipped with automatic closing doors to reduce pest entry into the greenhouses. This requirement was intended to limit the entry of both insects and wind-borne spores through entryways. Based on this comment, we have reexamined options for greater quarantine security at entryways, and have concluded that it is advisable to require a double-door system for all greenhouses growing articles in accordance with § 319.37–8(e). We also have discovered that, for some years, the inspectors employed by

plant protection services in Europe who inspect and approve greenhouses and mother stock in accordance with the regulations have been enforcing a double-door requirement. Therefore, requiring double doors would improve greenhouse security without adding any expense for greenhouses already growing articles in accordance with the regulations. Since this final rule only addresses requirements for rhododendron, at this time we are amending the greenhouse door provision only for greenhouses growing rhododendron articles, but we intend to initiate rulemaking to require double doors for all greenhouses growing articles in accordance with § 319.37–8(e). This final rule requires that for *Rhododendron* species only, the plants must be grown solely in a greenhouse equipped with automatic closing double doors of an airlock type, so that whenever one of the doors in an entryway is open the other is closed. This automatic double door requirement will create an additional barrier in the entryway.

APHIS only requires air filtration systems and other extreme forms of containment for high risk quarantine facilities that are used to maintain high risk material and dangerous pests. These must be constructed in the manner described by the commenter to prevent the escape of dangerous pests. We do not believe such a high level of security is appropriate for greenhouses growing plants from healthy stock where the plants are under surveillance for pests and disease over a considerable period, as required for rhododendron. Should serious pests or diseases be discovered in a greenhouse operating under this rule, additional containment requirements will be imposed as needed. Should the pest risk for growing rhododendron at any location or site be elevated for any reason, the greenhouses for growing them will not be approved.

The Zandvoort paper, ''Wind Dispersal of *Puccinia horiana* of Chrysanthemum,'' is not contested. *Puccinia horiana* is a fast moving rust and has largely been distributed with planting material around the globe. This distribution, however, resulted from international trade in chrysanthemums under conditions far less stringent than those required for importing rhododendron into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, and are adding the requirement of automatic closing double doors in greenhouses. We are also making minor, nonsubstantive word changes.

Executive Order 12866 and the Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We have prepared a final regulatory flexibility analysis and cost-benefit analysis for the rule, which are summarized below.

This final rule allows *Rhododendron* spp. to be imported from Europe in growing media if the plants are grown in secure greenhouses and meet other conditions to exclude plant pests and diseases. This action was originally proposed on September 7, 1993 (58 FR 47074–47084, Docket No. 89–154–1) as part of a proposal to allow importation from all countries of five genera of plants in growing media. Based on comments, action on *Rhododendron* spp. was deferred while an Endangered Species Act consultation was performed between APHIS and the U.S. Fish and Wildlife Service (FWS). Importation of the other four genera (*Alstroemeria*, *Ananas*, *Anthurium*, and *Nidularium*) has been allowed since the effective date of the final rule published on January 13, 1995 (60 FR 3067–3078, Docket No. 89–154–2). APHIS recently concluded its consultation with the FWS and determined that there were no endangered species concerns that would preclude importing potted *Rhododendron* spp. from Europe.

Comments on the initial regulatory flexibility analysis indicated that there is little existing economic data on import trade in plants in growing media and that neither risks nor economic effects can be projected on the basis of the small amount of data available for this trade. This fact is acknowledged in the risk assessments prepared for this action and in the economic analysis below, which explain our analytical basis for projecting risks and economic effects. No changes to the proposed requirements were made based on these comments.

Alleviating unnecessary quarantine restrictions often can be equated to elimination of trade barriers. Removal of trade barriers has two broad economic objectives. First, freer trade between countries results in lower consumer prices and increases the variety and quality of goods and services available in the local economy. Second, freer trade encourages a nation's resources to be invested in areas of comparative advantage. This enhances the economic well-being of all countries.

U.S. consumers are direct beneficiaries of government policies that promote freer trade. Domestic consumers benefit by having access to higher quality goods and services at lower prices. Freer trade increases consumer purchasing power by lowering prices and eliminating the deadweight loss associated with quarantine restrictions and other trade barriers.

Relaxation of trade barriers also results in changes in producer revenue. The amount of total producer income can increase or decrease depending on the elasticity of demand. When U.S. trade restrictions are lifted, a portion of industry profit will be transferred from domestic to foreign producers. Additionally, any increase in the amount of total producer income will go to foreign producers.

The economic effects on producers and consumers of potted *Rhododendron* spp. can be analyzed by comparing potential changes in consumer and producer surpluses. Producer surplus is measured by estimating the changes in profit (economic rent) based on potential fluctuations in product prices and quantities. Consumer surplus is the change in aggregate purchasing power and consumer utility when the price and quantity of goods change. An increase (decrease) in supply will decrease (increase) prices and translate into an increase (decrease) in consumer purchasing power (consumer surplus). The net effect on society of regulatory changes is the sum of the estimated changes in consumer and producer surpluses.

This analysis focuses on the U.S. wholesale plant market. Therefore, domestic consumers of potted *Rhododendron* spp. include retail firms, landscape brokers, contractors, dealers, and other retail or garden centers.

Initially, APHIS does not expect this rule to have an economic effect on the domestic potted plant market because phytosanitary restrictions will preclude any increased availability of imported *Rhododendron* spp. in the domestic market. European producers will be required to meet stringent phytosanitary standards before plants can be shipped to the United States. To date, no European facilities have received APHIS approval to export *Rhododendron* spp. in growing media to the United States. European producers would likely be required to upgrade existing greenhouses or construct new production units before receiving permission to ship products to the United States. Time will be required for European producers to upgrade and adjust their production practices to meet

the new requirements. Therefore, APHIS anticipates an 8- to 10-month delay between publication of the final rule and the appearance of potted European-origin *Rhododendron* spp. in the domestic marketplace.

The total value of the domestic nursery and floriculture crop (nursery stock, plants, roots, bulbs, seeds, and other plant products) industry is estimated to be about $6.1 billion. This represents about 3.7 percent of the value of domestic agriculture.[1] Annual U.S. floriculture crop sales total about $3.5 billion. Therefore, floriculture crop sales account for about 57.4 percent of total cash receipts for the U.S. nursery and floriculture industry.[2] The estimated value of annual potted *Rhododendron* spp. production in the United States totals about $48.3 million annually (Table 1). This accounts for about 1.4 percent of the annual sales volume for domestic floriculture producers.

TABLE 1.—ESTIMATED U.S. PRODUCTION OF RHODODENDRON SPP.

Genera	No. of wholesale nurseries	No. of plants sold	Estimated value of annual sales
Rhododendron spp.[3]	493	14,225,000	$48,334,000

Source: Floriculture Crops Summary (1998).

Imports of *Rhododendron* spp. in media would increase the supply and establish a new market equilibrium. A larger quantity of plants would be available at a lower price. Consumer and producer surpluses would be affected by the supply shift. The consumer surplus would be expanded and the producer surplus would increase.

In summary, this rule will allow U.S. consumers to purchase more potted *Rhododendron* spp. at lower prices. This increases U.S. consumer welfare and decreases U.S. producer surplus. Therefore, this rule will result in a net welfare gain to U.S. society.

We developed low- and high-impact scenarios to estimate the potential change in net U.S. welfare. This study assumes that prices will drop by 10 and 30 percent in the low- and high-impact scenarios, respectively (see page 7 of the full economic impact analysis).

Analysis indicates that this rule will increase net welfare for U.S. society by between $0.339 and $0.484 million when prices are assumed to drop by 10 percent (Table 2). A 10 percent price reduction increases domestic consumer welfare by between $4.933 and $5.078 million. However, U.S. producers of *Rhododendron* spp. will incur welfare losses totaling about $4.595 million (Table 2).

When prices are reduced by 30 percent, net welfare is increased by between $3.047 and $4.353 million (Table 2). Consumer welfare would be increased by between $15.380 and $16.686 million, and producer welfare would be decreased by about $12.333 million (Table 2).

TABLE 2.—ESTIMATED WELFARE EFFECTS ASSUMING UNITARY SUPPLY ELASTICITIES AND PRICE DECREASES OF 10 AND 30 PERCENT

Estimated percentage price decrease	$E_d = -0.4$			$E_d = -0.6$			$E_d = -1.0$		
	U.S. producer loss	U.S. consumer gain	Net welfare impact	U.S. producer loss	U.S. consumer gain	Net welfare impact	U.S. producer loss	U.S. consumer gain	Net welfare impact
$E_s = 1.0$	Million Dollars			Million Dollars			Million Dollars		
Scenario 1: 10 Percent	−4.595	4.933	0.339	−4.595	4.982	0.387	−4.595	5.078	0.484
Scenario 2: 30 Percent	−12.333	15.380	3.047	−12.333	15.815	3.482	−12.333	16.686	4.353

The Regulatory Flexibility Act requires that APHIS specifically consider the economic effect of rules on ''small'' business entities. The Small Business Administration (SBA) has set forth size criteria by Standard Industrial Classification (SIC), which was used as a guide in determining which economic entities meet the definition of a ''small'' business. This final rule will have a minor economic effect on small business entities.

The SBA does not maintain specific size standards for domestic entities that produce potted *Rhododendron* spp. Therefore, this analysis uses the size standards established for Retail Nurseries, Lawn and Garden Supply Stores (SIC code 5261). The SBA's definition of a ''small'' entity included in the Retail Nurseries, Lawn and Garden Supply Stores classification is one that collects less than $3.5 million in annual receipts.

Rhododendron spp. are grown by about 493 domestic producers (Table 1). Nurseries that collect less than $3.5 million in annual receipts are considered ''small'' for the purposes of this analysis. APHIS estimates that all of these nurseries are ''small'' according to the above criteria.[4] These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. Therefore, we anticipate that the rule will not have a significant economic effect on small producers.

The SBA definition of a ''small'' business engaged in the import/export business is one that employs no more than 100 employees. The number of

[1] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Agriculture*; October 1994.

[2] USDA, National Agricultural Statistics Service, *1997 Floriculture Crops Summary*; April 1988.

[3] We used 1997 production data for finished florist azaleas as a proxy measure for total *Rhododendron* spp. production in this analysis. We did not include nursery azaleas and rhododendron production in this analysis due to data limitations associated with the 1987 Census of Horticultural Specialties.

[4] Note that the definition of a ''small'' nursery has changed since publication of the final rule for importation of *Alstroemeria*, *Ananas*, *Anthurium*, and *Nidularium*. At that time a ''small'' nursery was defined as having annual sales of $1 million or less.

firms that may qualify as a ''small'' business under this definition cannot be determined. Small importers will likely benefit from the rule. The rule will enable some ''small'' importers to enhance their income through imports of *Rhododendron* spp. in growing media.

Small retailers will benefit from importation of *Rhododendron* spp. in growing media. The rule will enhance the availability and quality of potted plants in the U.S. market. Plant retailers will benefit from lower wholesale prices and will likely pass any savings on to their customers. This would increase annual sales volume and revenue.

Summary

This rule will allow importation from Europe of *Rhododendron* spp. in growing media. The regulations will require that imported *Rhododendron* spp. originate from secure greenhouses and meet other conditions to exclude plant pests and diseases.

During 1997, about 14.2 million potted *Rhododendron* spp. valued at $48.3 million were produced in the United States.[5] We developed low- and high-impact scenarios to estimate potential changes in net U.S. welfare. This study assumes that prices will drop by 10 and 30 percent in the low- and high-impact scenarios, respectively.

This rule will increase net welfare for U.S. society by between $0.339 and $0.484 million if prices drop by 10 percent. The rule will increase the welfare of domestic consumers of *Rhododendron* spp. by between $4.933 and $5.078 million if prices drop by 10 percent. However, U.S. producers of *Rhododendron* spp. will incur welfare losses totaling about $4.595 million.

If prices are reduced by 30 percent, net welfare will increase by between $3.047 and $4.353 million, consumer welfare will increase by between $15.380 and $16.686 million, and producer welfare will decrease by about 12.333 million.

Rhododendron spp. are grown by about 493 domestic producers. Nurseries that collect less than $3.5 million in annual receipts are considered ''small'' for the purposes of this analysis. APHIS estimates that all of these nurseries are ''small'' according to the above criteria. These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. Therefore, we anticipate that the rule will not have a significant economic effect on small producers.

[5] Production data for finished florist azaleas was used as a proxy measure for all domestic *Rhododendron* spp. production. Nursery azaleas and rhododendron production were not included in this analysis due to data limitations associated with the 1987 Census of Horticultural Specialties.

Executive Order 12988

This final rule has been reviewed under under Executive Order 12988, Civil Justice Reform. This rule allows the importation from Europe of *Rhododendron* established in growing media. State and local laws and regulations regarding articles imported under this rule will be preempted while the articles are in foreign commerce. Some nursery stock is imported for immediate distribution and sale to the consuming public and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of *Rhododendron* from Europe will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). All information collection requirements associated with this rulemaking have been previously approved by OMB and assigned control number 0579–0049.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80 and 371.2(c).

2. Section 319.37–8 is amended as follows:

a. In paragraph (e) introductory text, by adding the phrase ''Rhododendron from Europe,'' immediately before the phrase ''and *Saintpaulia.*''

b. In paragraph (e)(2)(ii), the second sentence, by adding the phrase ''(0.2 mm for greenhouses growing *Rhododendron* spp.)'' immediately after the phrase ''0.6 mm''.

c. In paragraph (e)(2)(vii), by removing the word ''and,'' immediately after the word ''pests;''.

d. In paragraph (e)(2)(viii), by removing the period at the end of the paragraph and adding a semicolon in its place.

e. By adding new paragraphs (e)(2)(ix) and (e)(2)(x) to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) * * *

(2) * * *

(ix) For *Rhododendron* species only, the plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the plant protection service of the exporting country and found free of evidence of diseases caused by the following pathogens: *Chrysomyxa ledi* var. *rhododendri, Erysiphe cruciferarum, Erysiphe rhododendri, Exobasidium vaccinnum* and *vaccinum* var. *japonicum,* and *Phomopsis theae;* and

(x) For *Rhododendron* species only, the plants must be grown solely in a greenhouse equipped with automatic closing double doors of an airlock type, so that whenever one of the doors in an entryway is open the other is closed, and the plants must be introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that:

(A) Have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly; and

(B) Have been grown for at least the previous 6 months in a greenhouse that meets the requirements of § 319.37–8(e)(2)(ii).

Done in Washington, DC, this 19th day of November 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–30994 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF49

1999 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (the Secretary) with respect to the 1999 crop of flue-cured tobacco (types 11–14). In accordance with the Agricultural Adjustment Act of 1938, as amended, (the 1938 Act), the Secretary determined the 1999 marketing quota for flue-cured tobacco to be 666.2 million pounds. In accordance with the Agricultural Act of 1949, as amended, (the 1949 Act), the Secretary determined the 1999 price support level to be 163.2 cents per pound.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, telephone 202–720–5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by 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 Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Commodity Credit Corporation (CCC) nor Farm Service Agency (FSA) are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate 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 the UMRA.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary. Further, this rule affirms existing determinations which are time-sensitive. For these reasons, it was determined that to delay the implementation of the rule would be impracticable, unnecessary, and counter to the public interest and that the rule would be made effective as of the date the underlying determinations were made.

Proclamation

On December 15, 1998, the Secretary announced the national marketing quota and the price support level for the 1999 crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule affirms.

Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1999 crop of flue-cured tobacco by December 1, 1998. Five such manufacturers were required to submit such a statement for the 1999 crop and the total of their intended purchases for the 1999 crop is 327.0 million pounds. The 3-year average of exports is 355.2 million pounds.

The national marketing quota for the 1998 crop year was 807.6 million pounds published at (63 FR 55937) October 20, 1998. Thus, in accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level for use in determining the 1999 marketing quota for flue-cured tobacco is 121.1 million pounds.

Due to short crops in 1995 and 1996, all pre-1997 loan stocks held by the Flue-Cured Tobacco Cooperative Stabilization Corporation have been sold. In addition, cigarette

manufacturers agreed to purchase 103.8 million pounds of the 1997 loan inventory. Loans made on the 1998 crop total 82.4 million pounds. Based on these figures, it was determined that the adjustment to maintain loan stocks at the reserve supply level should be a decrease of 35.4 million pounds.

The total of the three marketing quota components for the 1999 Marketing Year (MY) is 646.8 million pounds. In addition, the discretionary authority to increase the three-component total by 3 percent was used due to the adverse impact on small farmers of the large reduction (still 18 percent) in the 1999 marketing quota. Accordingly, the national marketing quota for the MY beginning July 1, 1999, for flue-cured tobacco was set at 666.2 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or insure the useability of the tobacco and increase the net return per pound to the producers. Since average yields have not changed significantly in recent years, the national average yield goal for the 1999 MY will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1999 crop of flue-cured tobacco is determined to be 319,061.30 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1999 crop of flue-cured tobacco of 900 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 1999 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 0.820, which is the result of dividing the 1999 national allotment (319,061.30 acres) minus the national reserve (900 acres) by the total of allotments established for flue-cured tobacco farms in 1998 (387,987.69 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 1999 crop of flue-cured tobacco is determined to be 0.9264, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,254 pounds).

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1999 crop of flue-cured tobacco, the level of support must be determined, in particular, in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1999 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 1998 crop of flue-cured tobacco was supported, plus or minus, respectively;

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MYs immediately preceding the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than;

(II) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MYs immediately preceding the MY prior to the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of certain prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year for which the determination is made.

The difference between the two 5-year averages (*i.e.*, the difference between (A) (I) and (A) (II)) is 1.9 cents per pound. The change in the cost index from January 1, 1998, to December 31, 1998, is −2.8 cents per pound. Applying these components to the price support formula (1.9 cent per pound, two-thirds weight; −2.8 cents per pound, one-third weight) results in a weighted total of +0.4 cent per pound. As indicated, section 106 of the 1949 Act provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. However, because the formula increase is very small, this discretion was not used for 1999. Accordingly, the 1999 crop of flue-cured tobacco will be supported at 163.2 cents per pound, 0.4 cent higher than the 1998 crop.

List of Subjects

7 CFR Part 723

Acreage allotments, marketing quotas, penalties, reporting and recordkeeping requirements, cigarettes.

7 CFR Part 1464

Loan programs-tobacco, price support programs-tobacco, reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.111 is amended by adding paragraph (g) to read as follows:

§ 723.111 Flue-cured (types 11–14) tobacco.

* * * * *

(g) The 1999 crop national marketing quota is 666.2 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2, 15 U.S.C. 714b, 714c.

4. Section 1464.12 is amended by adding paragraph (g) to read as follows:

§ 1464.12 Flue-cured (types 11–14) tobacco.

* * * * *

(g) The 1999 crop national price support level is 163.2 cents per pound.

Signed at Washington, DC, on November 24, 1999.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–31082 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE156, Special Condition 23–100–SC]

Special Conditions; Piper Cheyenne PA–31T2; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Carpenter Avionics, Inc., 624–B Fitzhugh Blvd., Smyrna Airport, Smyrna, Tennessee 37167, for a Supplemental Type Certificate for the Piper Cheyenne PA–31T2 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is November 18, 1999. Comments must be received on or before December 30, 1999.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE156, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE156. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123, or Les Taylor, Aerospace Engineer, at the same address, telephone (816) 329–4134.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE156.'' The postcard will be date stamped and returned to the commenter.

Background

On June 25, 1999, Carpenter Avionics Inc., 624–B Fitzhugh Blvd., Smyrna Airport, Smyrna, Tennessee 37167, made an application to the FAA for a new Supplemental Type Certificate for the Piper Cheyenne PA–31T2 airplane. The Cheyenne is currently approved under TC No. A8EA. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Carpenter Avionics, Inc. must show that the Piper Cheyenne PA–31T2 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Cheyenne PA–31T2: CAR 3 effective May 15, 1956, through Amendment 3–8, effective December 18, 1962; FAR 23.205, 23.1545, 23.1563 and 23.1583, as amended by Amendment 23–3, effective November 11, 1965; and FAR 23.1557(c) as amended by Amendment 23–7, effective September 14, 1969; and the Eastern Region Engineering and Manufacturing Branch letter of December 6, 1965, addressing the showing of equivalent safety with regard to CAR 3.682, 3.771 and 3.772. Special Conditions No. 23–3–EA–1, Docket No. 9245, including Amendment No. 1 and AEA–210 letter of November 11, 1971, as amended by AEA–210 letter of February 1, 1978, referring to Amendment 23–14 and FAR 23.991 as amended by Amendment 23–7, effective September 14, 1969. Noise Certification—FAR 36 up to Amendment 10, as applicable. Fuel Venting Emissions—SFAR 27 up to Amendment 3, as applicable, and § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

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

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

Novel or Unusual Design Features

Carpenter Avionics Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of

advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

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

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Piper Cheyenne PA–31T2 airplane. Should Carpenter Avionics Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Piper Cheyenne PA–31T2 airplane modified by Carpenter Avionics Inc. to add an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system

that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

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

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate.

[FR Doc. 99–31040 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE145; Special Conditions No. 23–096A–SC]

Special Conditions: Raytheon Model 390 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions; request for comments.

SUMMARY: This document amends special conditions issued to the Raytheon Aircraft Company for the Raytheon Model 390 airplane and requests comments on the revised portion of the amended special conditions. The Small Airplane Directorate issued final special conditions for this airplane on July 9, 1999, and published them on July 23, 1999 (64 FR 39899). The special conditions contained a requirement for operating limitations for weight and loading distribution already covered by an exemption issued to Raytheon Aircraft Company on December 12, 1996 (Exemption No. 6558, Docket No. 132CE). Accordingly, the portion of the special conditions that covers the operating limitations has been amended to remove the additional requirement. Only the revised sections are contained in this document.

Additionally, the special condition for turning flight and accelerated turning stalls has been amended to include a power-at-idle condition. This condition is included to make these special conditions consistent with previously approved special conditions for a similar airplane.

DATES: The effective date of these special conditions is November 15, 1999. Comments must be received on or before December 30, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE145, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE145. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329–4125.

SUPPLEMENTARY INFORMATION: The FAA has determined that the substance of these special conditions has been subject to the public comment process and those comments were resolved. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE145.'' The postcard will be date stamped and returned to the commenter.

Background

On August 1, 1995, Raytheon Aircraft Company (then Beech Aircraft Corporation), 9707 East Central, Wichita, Kansas 67201, applied for a type certificate for their new Raytheon Model 390 Airplane. The Raytheon Model 390 has a composite fuselage, a metal wing with 22.8 degrees of leading-edge sweepback, and a combination composite/metal empennage in a T-tail configuration with trimmable horizontal tail with 27.3 degrees of leading-edge sweepback. The airplane will accommodate six passengers and a crew of two. The Model 390 will have a V_{MO}/M_{MO} of 320 knots/m.83, and has two turbofan engines mounted on the aft fuselage above and behind the wing.

Raytheon plans to incorporate certain novel and unusual design features into the Model 390 airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane.

The final special conditions issued for this airplane on July 9, 1999, which were published on July 23, 1999 (64 FR 39899), contained a requirement covered by an exemption issued to Raytheon Aircraft Company on December 12, 1996 (Exemption No. 6558, Docket No. 132CE). The Small Airplane Directorate has amended SC23.1583 in the special conditions to remove the weight and loading distribution paragraph in the operating limitations portion of the special condition and to add idle thrust stalls to be consistent with past policy. The amended version of the operating limitations and the idle thrust stalls special conditions are published below.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Raytheon Aircraft Company must show that the Raytheon Model 390 meets the applicable provisions of 14 CFR part 23, effective February 1, 1965, as amended by Amendments 23–1 through 23–52, effective July 25, 1996; 14 CFR part 36, effective December 1, 1969, through the amendment effective on the date of type certification; 14 CFR part 34; exemptions, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Raytheon Model 390 because of a novel or unusual design feature,

special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Model 390 will incorporate the following novel or unusual design features: These features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane. These amended special conditions only address the operating limitations and the addition of idle thrust stalls. The remaining features are addressed in the original special conditions published on July 23, 1999 (64 FR 39899)

Discussion of Previous Comments

A notice of proposed special conditions No. 23–98–01–SC for the Raytheon Aircraft Company Model 390 airplanes was published on November 2, 1998 (63 FR 58660). Comments on the notice were discussed in the final version published on July 23, 1999 (64 FR 39899).

Applicability

As discussed above, these amended special conditions are applicable to the Raytheon Model 390 Airplane. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period and those comments were resolved. It is unlikely that further public comment on the original special conditions would result in a significant change from the substance contained herein. For that reason, and since a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions upon issuance. However, the FAA is requesting comments to the revisions in the amended special conditions to allow interested persons to submit such written data, views, or arguments as they may desire.

List of Subjects in 14 CFR Part 23

The authority citation for these special conditions is as follows: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following amended special conditions are issued as part of the type certification basis for Raytheon Aircraft Company Model 390 airplane.

SC23.203 Turning flight and accelerated turning stalls

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown with:

(1) Flight idle thrust and the thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps, landing gear, and deceleration devices in any likely combination of positions.

(3) Trim at 1.4V_{S1} or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

SC23.1583 Operating limitations

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed, V_{MO}/M_{MO}, and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed, V_O, and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angles of attack near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension, V_{FE}, for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, V_{LO}.

(6) The landing gear extended speed, V_{LE} if greater than V_{LO}, and a statement that this is the maximum speed at which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments, required by § 23.1549 through § 23.1553.

(c) Maneuvers. A statement that acrobatic maneuvers, including spins, are not authorized.

(d) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers must be furnished.

(e) Flightcrew. The number and functions of the minimum flightcrew must be furnished.

(f) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) and the meteorological conditions in which the airplane may or may not be used must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(g) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition SC23.67(a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions SC23.67(d) and SC23.77 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at

which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions SC23.55 and SC23.59 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 and these special conditions is shown.

(h) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(i) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

(j) Ambient temperatures. Where appropriate, maximum and minimum ambient air temperatures for operation.

(k) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(l) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone.

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(m) Systems. Any limitation on the use of airplane systems and equipment.

(n) Smoking. Any restriction on smoking in the airplane.

Issued in Kansas City, Missouri, on November 15, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31041 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM156, Special Conditions No. 25–151–SC]

Special Conditions: McDonnell Douglas Corporation (MDC) Model MD–17 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the McDonnell Douglas Corporation Model MD–17 airplane. This airplane incorporates novel and unusual design features, including the use of power-augmented-lift from externally blown flaps, for which the applicable airworthiness standards for transport category airplanes do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, Project Officer, FAA Transport Airplane Directorate, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1187; facsimile (425) 227–1149; Email: gerald.lakin@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1996, McDonnell Douglas Corporation, 2401 E. Wardlow Rd., Long Beach, CA 90807–5309, a wholly owned subsidiary of The Boeing Company, submitted an application for type certification of a commercial version of the Model C–17 military airplane, designated as the MDC Model MD–17. The MD–17 is a long range, transport category airplane powered by four Pratt & Whitney F–117–PW–100 engines, which are a military version of the PW2040 engines used on other civil transport category airplane types. The airplane will be offered in a cargo configuration only and is designed for carriage of outsized cargo into short runways.

The MD–17 airplane will be certified as a part 25 transport category airplane and, as such, pilots and flight instructors who operate it will have a standard airplane multiengine rating.

Type Certification Basis

Under the provisions of § 21.17, McDonnell Douglas must show that the MD–17 complies with the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–87. In addition, the certification basis includes part 36, as amended at the time of certification; part 34, as amended at the time of certification; any subsequent amendments to part 25 that are required for operation under part 121; and these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the MD–17 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the MD–17 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

MD–17 Design Features

The MD–17 has novel and unusual design features to support the operation of a large transport category sized airplane at airports with very short runways. The MD–17 has externally blown flaps (EBF), which are fixed-vane double slotted flaps that deflect directly into the engine exhaust stream. The MD–17 integrated EBF design includes positioning the engines to provide engine exhaust blowing on the flaps, and flap slots sized to provide engine exhaust flow over both the upper and lower flap and vane surfaces. The resulting flap/exhaust stream interaction provides power-augmented-lift relative to conventional transport category airplane designs. The total lift produced by the EBF is made up of three components: (1) conventional aerodynamic lift produced by the wing and flap; (2) lift due to thrust deflection (the vertical component of the thrust force); and (3) the powered circulation lift (the additional aerodynamic lift resulting from the interaction of the engine exhaust stream on the wing flaps).

To distinguish the new and novel power-augmented-lift design feature of the MD–17 from conventional transport category airplanes, the following definition has been established: Power-augmented-lift means a heavier-than-air airplane capable of operation in regimes of short field takeoff and short field landing, and low speed flight. The airplane depends upon the propulsion system for a significant portion of lift and control during these flight regimes, but relies primarily on conventional wing lift when in the en route configuration.

The MD–17 features Direct Lift Control (DLC), which uses spoilers to provide rapid control of the flight path

angle in the down direction for large flight path adjustments without throttle movement. DLC is actuated via push button switches placed on both sides of the thrust levers. Another feature of the MD–17 design that differs from conventional transport category airplanes is that the spoilers are biased to a non-flush position when the flaps are extended. When in this configuration, separate from the DLC function, the spoilers are electronically linked to the thrust levers to provide airplane response equivalent to instantaneous engine response to thrust lever movement.

The MD–17 Primary Flight Control System (PFCS) provides three-axis control and envelope protection using conventional cockpit controls and control surfaces, and a full authority fly-by-wire Electronic Flight Control System (EFCS) with single-strand mechanical backup. The PFCS provides stability and command augmentation to improve basic airplane characteristics and also integrates the trim and high lift controls.

Pitch and roll control inputs are made through a one-handed center stick controller centrally mounted to the floor in front of each pilot station. In addition to four electronic displays, the cockpit display system incorporates pilot and co-pilot full-time head up displays that can be used as primary flight displays.

The MD–17 will utilize electrical and electronic systems that perform critical functions. Examples of these systems include the electronic displays and electronic engine controls.

As the type design of the MD–17 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards, special conditions are considered necessary in the following areas:

Power-Augmented-Lift

1. Stall Speeds and Minimum Operating Speeds

The primary purpose of the EBF design feature on the MD–17 is to reduce the takeoff and landing speeds, and hence the required takeoff and landing distances. The benefits provided by this novel design feature are not adequately addressed by the current part 25 stall speed and minimum operating speeds requirements. A special condition is needed to fully address the benefits of the MD–17 design features on stall speeds and minimum operating speeds, and to provide appropriate safety standards to ensure equivalent safety with current part 25 requirements.

The part 25 minimum allowable operating speeds are derived from power-off (i.e., zero thrust or power) stall speeds (V_S), except in those instances where the operating speeds are limited by some other constraint. Appropriate multiplying factors are applied to these power-off stall speeds to provide adequate safety in the one-engine-inoperative power-on condition. The beneficial effects of power-on available lift due to both circulation effects and thrust inclination were well known at the time the airworthiness requirements were developed. Evidence for this point is provided by the requirements associated with the minimum takeoff safety speed, V_{2MIN}, in § 25.107(b). For airplanes without ''significant'' power-augmented-lift effects in the one-engine-inoperative condition, V_{2MIN} must not be less than 1.20 V_S, or 1.13 V_S if the 1-g stall speed is used. However, for airplanes that realize a significant reduction in stall speed in the one-engine-inoperative power-on condition, the multiplying factor is reduced to 1.15. According to the explanatory information associated with this requirement that is provided in Civil Aeronautics Manual 4b, ''The difference in the required factors * * * provides approximately the same margin over the actual stalling speed under the power conditions which are obtained after the loss of an engine. * * *''

The MD–17 power-augmented-lift design, however, achieves significantly more lift from power than would be taken into account by the part 25 requirements. At the conditions applicable to the determination of the takeoff safety speed, V_2, the MD–17 achieves a 15 percent reduction in power-on stall speed. The four percent reduction in V_2 speed permitted by § 25.107(b)(2) for ''turbojet powered airplanes with provisions for obtaining a significant reduction in the one-engine-inoperative power-on stalling speed'' would therefore not provide ''approximately the same margin over the actual stalling speed'' as conventional transport category airplanes in the one-engine-inoperative power-on condition. A further reduction in V_2 speed could be made while maintaining the same margin over the one-engine-inoperative power-on stall speed.

At approach thrust, the MD–17 achieves over a 50 percent increase in lift due to power-augmented-lift effects. In the maximum landing flap configuration, the thrust used for a stable approach results in a stall speed reduction of approximately 20 percent relative to the zero thrust stall speed. There are no provisions in part 25, however, for allowing the landing approach speed to be reduced to account for the beneficial effects of power-augmented-lift on stall speeds. For a conventional transport category airplane, thrust or power may vary considerably during the landing approach, including reductions to idle thrust or power. During the landing flare for a conventional transport category airplane, thrust is typically reduced to idle.

The MD–17 power-augmented-lift design, however, requires a significant thrust level to be maintained during the approach to remain on the desired approach flight path. Unlike conventional transport category airplanes, only minor thrust modulation may be necessary during the approach to maintain or recover the desired flight path. The MD–17 design features and operational procedures will discourage use of thrust reductions to make flight path adjustments during approach. Adjustments in speed are obtained through changes in airplane pitch attitude during approach. In addition, the MD–17 is designed to provide very stable controllability characteristics to allow very slow approach speeds using a backside control technique, which is explained later in this preamble. With the backside control technique, airplane pitch attitude is used to control airspeed and thrust is used to control flight path angle.

As stated earlier, the MD–17 incorporates a DLC feature, which uses the spoilers to provide rapid control of the flight path angle in the down direction for large flight path adjustments without throttle movement. DLC is actuated via push button switches placed on both sides of the thrust levers. Separate from the DLC function, the spoilers are biased to a non-flush position in the flaps extended configurations. In this configuration, the spoilers are electronically linked to the thrust levers to provide an airplane response equivalent to instantaneous engine response to thrust lever movement. This feature provides a high level of control feedback and further minimizes the need for thrust adjustments. Because of the unique characteristics of the MD–17 power-augmented-lift design, thrust reduction is not used to reduce the rate of descent at touchdown. Instead, a slight thrust increase and a throttle-coupled reduction in spoiler deflection may sometimes be used to accomplish this task when desired.

To establish a level of safety equivalent to that established in the regulations, the MD–17 minimum

operating speeds should provide approximately the same margin over the stall speed as conventional transport category airplanes under the power conditions that are obtained after the loss of an engine. In a power-augmented-lift airplane like the MD–17, significant increases in lift capability can be achieved not only by increasing angle of attack, but also by increasing thrust. During the takeoff phase of flight, there is no capability to add lift due to power because operation is already based on the use of the maximum thrust available. For approach and landing, however, the lift reserve due to thrust is much greater than that available on conventional transport category airplanes. A rapid lift increase due to increasing thrust is achievable on the MD–17 because it uses not only a higher approach power setting than conventional transport category airplanes, but also spoiler modulation to compensate for engine spool-up time. The higher approach power setting is necessary to compensate for the high induced drag from the power-augmented-lift effects, and to compensate for the relatively high profile drag of the approach and landing configurations, which include spoilers that are biased in the up direction. Advancing the thrust levers modulates the spoilers such that engine spool-up time is compensated for and a rapid increase in lift is achieved.

In addition, the MD–17 design incorporates a feature in which the deployed spoilers will be retracted should the airplane exceed a predetermined angle-of-attack that is less than the stall angle-of-attack. The stall speeds are defined assuming that the spoilers are flush to the wing at the point of stall. McDonnell Douglas must demonstrate to the FAA that the probability of the failure of any system that could change the calculated stall speeds by one-half knot or more is improbable.

Because there is no regulatory requirement to determine one-engine-inoperative power-on stall speeds, there is only limited data available to the FAA for assessing the margins attained under these conditions by the current fleet of conventional transport category airplanes. Based on the limited data that are available, and on the precedent established by Civil Air Regulations part 4b and part 25 for powered-lift credit, on average, conventional transport category airplanes without provisions for obtaining significant lift from power obtain approximately a 4–5 percent reduction in stall speed in the one-engine-inoperative power-on condition. This 4–5 percent reduction in stall speed applies to both the takeoff configuration at takeoff power and the landing configuration at the power for a 3-degree glideslope.

To retain equivalent safety, the MD–17 minimum operating speed in the takeoff configuration, V_2, should retain the additional 4–5 percent safety margin in the one-engine-inoperative power-on stall speed currently obtained on conventional transport category airplanes. To use one-engine-inoperative power-on stall speeds to determine V_{2MIN} for the MD–17, the multiplying factor used to derive V_{2MIN} from power-off stall speeds for conventional transport category airplanes should therefore be increased by not less than 4 percent (i.e., V_{2MIN} must be 1.18 times the power-on 1-g stall speed, rather than 1.13 times the power-off 1-g stall speed). In determining the thrust effects on stall speeds for V_{2MIN} determination, the thrust or power on the operating engines should be no greater than the minimum power that may exist at any point in the takeoff flight path. This means that the takeoff (or derated takeoff) power or thrust for the minimum engine would normally be determined at a height of 1500 feet above the runway surface at the appropriate takeoff power setting for the conditions existing at the time of takeoff. However, if the effect of altitude on takeoff thrust or power up to 1500 feet above the runway surface has a negligible impact on power-on stall speed used for V_{2MIN} determination, thrust or power at the runway height may be used. McDonnell Douglas has provided the FAA with data which show, for the MD–17 power-augmented-lift design, that the effect of altitude on takeoff thrust up to 1500 feet above the runway surface has a negligible (less than 0.5 knots) impact on MD–17 power-on stall speeds used for V_{2MIN} determination.

As noted above, the MD–17 incorporates several design features and operating characteristics that result in significant fundamental differences from the way conventional transport category airplanes are flown in the approach and landing phase of flight. During approach to landing, the MD–17's power-augmented-lift allows it to fly at speeds that are less than the speed at which total airplane drag is a minimum. Therefore, the MD–17 will be operating on the ''backside'' of the drag (or power) curve, which means that drag increases as speed is reduced and drag is reduced as speed increases. This variation of drag with speed is in the opposite sense to that normally encountered on conventional transport category airplanes operating at higher approach speeds.

A significant consequence of operating on the backside of the drag curve is that MD–17 pilots will use a different technique for controlling airspeed and flight path than is used on conventional transport category airplanes. In the MD–17, the thrust levers (including the DLC switches) are the primary means for controlling flight path for approach and landing. Thrust is increased to reduce descent angle. To increase descent angle, the MD–17 pilot will use small reductions in thrust to make small down flight path adjustments, and will use the DLC thumb switch on the thrust lever to make large down flight path corrections. In effect, the MD–17 pilot uses the throttles in a similar manner to the way a helicopter pilot uses the collective pitch lever. In contrast, the pilot of a conventional transport category airplane primarily uses the pitch control device for flight path control. For airspeed control, the MD–17 pilot uses pitch, while the pilot of a conventional transport category airplane primarily uses thrust.

Another significant characteristic of the power-augmented-lift MD–17 design is that, while operating on the backside of the drag curve, there is not much cross-coupling between pitch and thrust controls. This means that changes in thrust result primarily in changes to the flight path with very little effect on airspeed. Similarly, changes in pitch affect primarily airspeed with little change to the flight path. In combination with a full-authority three-axis fly-by-wire stability and control augmentation system, this characteristic ensures accurate airspeed control during manipulation of the thrust levers to control the flight path descent angle. On a conventional transport category airplane, manipulation of the pitch control to change the flight path will result in unwanted airspeed excursions. For example, a one-degree change in flight path takes four seconds in a conventional transport category airplane and is accompanied by a seven-knot speed change, while the same change in flight path for a powered-lift airplane takes one second and does not result in a speed change.

Analysis of C–17 flight test and piloted simulator data support a conclusion that airspeed can be controlled to a much higher degree of precision during an approach with this airplane than with a conventional transport category airplane. The analysis shows that the standard deviation in speed due to maneuvering varied from 1 to 1.3 knots, while the speed

excursions due to horizontal gusts ranged from 1.6 to 5.3 knots for light to severe turbulence levels. (The 5.3 knot deviation corresponded with severe turbulence, including a 30-knot crosswind and 33-knot headwind at a height of 50 feet above the runway.) The standard deviation for the flight test approaches for reported crosswinds of 13 to 31 knots, including both steep and normal path approaches, was about 3.5 knots.

The unique MD–17 design features and operating characteristics discussed above support a reevaluation of the minimum operating speed for the approach and landing phase of flight. These design features and operating characteristics provide the capability for rapid increases in lift from thrust in the approach and landing configurations. Unlike conventional transport category airplanes, there is no need to reduce thrust to idle at any point in the approach or landing (until after touchdown) for controlling either the flight path or rate of sink at touchdown. Also, airspeed can be controlled very accurately even when flight path changes are being made. Since large thrust decreases will not be necessary nor will thrust be reduced to idle during the approach, and rapid lift increases are available through the use of the thrust levers, the FAA considers the use of one-engine-inoperative power-on stall speeds in determining the reference landing speed, V_{REF}, for the MD–17 to provide equivalent safety to conventional transport category airplanes. In addition, due to the capability for more accurate airspeed control during the approach, the FAA considers it appropriate to reduce the multiplying factor applied to the reference stall speed in determining V_{REF}. For the MD–17, V_{REF} may not be less than 1.20 times the one-engine-inoperative power-on stall speed.

However, until more operational experience is gained with power-augmented-lift airplanes, the FAA will not allow an applicant to establish operating speeds for transport category airplanes lower than the power-off stall speed. To provide some margin between the operating speeds and the power-off stall speed, the MD–17's minimum operating speeds must provide at least a 3 percent speed margin above the power-off stall speed.

In addition to the speed margin obtained by applying factors to the one-engine-inoperative power-on stall speeds, other constraints on the minimum operating speeds must be considered due to the unique characteristics of power-augmented-lift airplanes. For conventional transport category airplanes, providing an airspeed margin between the operating speed and the stall speed provides an adequate angle-of-attack margin to stall. For a power-augmented-lift airplane like the MD–17, however, separate airspeed, angle-of-attack, and thrust margins must be considered. Maneuvering capability may also be more of a concern on a power-augmented-lift airplane because of the difference in thrust effects for a maneuver at a constant airspeed compared to a slowdown maneuver.

Thrust Margin

On the MD–17, variations in thrust at a constant airspeed result in variations in the stall speed margin. While this characteristic provides the capability to increase lift (and hence stall speed margin) simply by increasing thrust, there is also a potential for reductions in stall speed margin following a thrust reduction. On a conventional transport category airplane, where thrust is used primarily to control airspeed, thrust reductions to idle can and do occur. On the MD–17, thrust is used to control flight path rather than airspeed. The DLC feature removes the need for large thrust reductions, and loss of stall margin due to transient thrust reductions can be recovered quickly. Additionally, because V_{REF} is based on the one-engine-inoperative power-on stall speed, additional margin is present in the normal all-engines-operating condition. For the MD–17, the V_{REF} would result in a speed approximately 1.27 times the power-on stall speed with all-engines-operating at the thrust required to maintain the reference approach flight path angle. At maximum thrust, the V_{REF} would be 1.30 times greater than the resulting power-on stall speed.

Another type of thrust variation would be a steady-state thrust reduction that may, for example, be caused by a steady or increasing tailwind, or a decreasing headwind. In this type of situation, attempting to maintain a steady approach path with respect to the ground would result in a steeper descent path angle, which would most likely be attained by a lower thrust setting rather than through use of the DLC. For an approach at the limiting tailwind condition, the steeper approach flight path angle relative to the air mass reduces the MD–17 airspeed margin to stall by less than one knot for normal and steep approaches.

Based on the information presented above, an additional airspeed margin to allow for thrust variation is not considered necessary. The thrust or power on the operating engines used in the stall speed determination for V_{REF} should be the power or thrust used to maintain the steady-state reference flight path angle at V_{REF}. For the MD–17, the reference flight path angle is defined as -3 degrees for a normal approach, and the shallower of -5 degrees or the flight path angle associated with a descent rate of 1000 feet per minute for a steep approach.

Maneuvering Capability

During a banked turn, a portion of the lift generated by the wings provides a force to help turn the airplane. To remain at the same altitude, the airplane must produce additional lift. Therefore, banking the airplane (at a constant speed and altitude) reduces the stall margin, which is the difference between the lift required for the maneuver and the maximum lift capability of the wing. As the bank angle increases, the stall margin is reduced proportionately. Ignoring Mach effects, this bank angle effect on the stall margin can be determined analytically for conventional airplanes, and the multiplying factors applied to the stall speed to determine the minimum operating speeds are intended to ensure that an adequate stall margin is maintained.

For the MD–17, however, the effect of power-augmented-lift on stall speeds differs between a slowdown maneuver (i.e., a wings level deceleration) and a banked turning maneuver at a constant airspeed. The speed reduction during a slowdown maneuver results in a larger contribution of lift from thrust than is provided in a constant speed maneuver. Therefore, for a power-augmented-lift airplane like the MD–17, the stall C_L would be lower in a constant speed turning maneuver than in a slowdown maneuver. To ensure an equivalent level of safety, the MD–17 minimum operating speeds should provide a maneuver margin equivalent to conventional transport category airplanes.

The existing part 25 regulations do not prescribe specific maneuvering margin requirements. However, as part of the proposed 1-g stall amendment to part 25, maneuvering margin requirements are proposed in Notice 95–17 (61 FR 1260, January 18, 1996). These proposed maneuvering margin requirements represent the minimum maneuvering margin to stall warning (or other characteristic that might interfere with normal maneuvering) expected for the current fleet of transport category airplanes. To provide equivalent maneuvering capability within the operational flight envelope, the MD–17 must comply with maneuvering margin requirements equivalent to those

proposed in Notice 95–17, except that the thrust used for the maneuvering capability at V_{REF} may be adjusted as necessary during the maneuver to maintain the reference approach flight path angle. This change is considered appropriate for the backside control technique that will be used on the MD–17, where thrust, rather than pitch, is used as the primary parameter to control flight path.

Angle-of-Attack Margin

Another characteristic of power-augmented-lift airplanes like the MD–17 is that the stall angle-of-attack during a slowdown maneuver can be higher than the stall angle-of-attack achieved at higher speeds. Again, this characteristic results from the variation of the effect of power on lift as speed varies. At higher airspeeds, the contribution of power-augmented-lift can be less than at lower airspeeds. From an operational standpoint, this characteristic can be critical during the approach to landing phase of flight, where a sharp-edged vertical gust could induce a large change in the angle-of-attack at approach speed. For a conventional transport category airplane, where the angle-of-attack margin is generally directly related to airspeed, vertical gust margins are assured by the speed multiples applied to stall speeds when determining the minimum allowable operating speeds. For power-augmented-lift airplanes, this may not be true; therefore, the vertical gust margin must be evaluated independently.

For conventional transport category airplanes, it has been determined that approximately 20 knots of vertical gust margin is provided at the minimum landing approach speed. (Reference: Report No. FAA–RD–76–100, ''Progress Toward Development of Civil Airworthiness Criteria for Powered-Lift Aircraft,'' May 1976, a copy of which is included in the official docket for these special conditions.) To provide equivalent safety, a vertical gust margin of 20 knots will be included as a constraint on V_{REF} for the MD–17 with all engines operating. To ensure safety in the event of an engine failure, the vertical gust margin in the one-engine-inoperative condition must also be considered. Considering the short time period for operation in this failure condition, the FAA has concluded that a vertical gust margin of 15 knots will be required.

Special Condition 1 for MD–17 stall speeds and minimum operating speeds takes into account power-augmented-lift effects for configurations with flaps extended. Additionally, the FAA has determined that the MD–17 stall speeds will be based on 1-g stall criteria consistent with those proposed in Notice 95–17.

Systems

2. Head Up Display (HUD) Used as Primary Flight Display (PFD)

The MD–17 flight deck is equipped with two monochrome head up displays (HUD), one at each pilot station. They are centrally located in front of each pilot, above the glareshield at the pilot's eye level, and between the pilot and the forward window. The MD–17 dual HUD functions as the Primary Flight Display (PFD) for all regimes of normal and abnormal operation and performs the functions of certain primary flight instruments required for transport category airplanes by § 25.1303. The information is electronically projected on a transparent surface with monochrome strokes. It may be used as the only visible display, without any alternative flight instrument indications displayed at the pilot station.

Until recently, HUD certification did not require a special condition because conventional, certified primary flight instruments were also provided at each pilot station and were always visible. The MD–17 dual-HUD installation has the novel and unique feature of being used when it is the only visible display of primary flight information, which is not fully addressed by the current regulations. Therefore, special conditions are adopted for the MD–17 dual HUD installation in the following areas.

Arrangement and Visibility

Section 25.1321(b) states that the ''flight instruments required by § 25.1303 must be grouped on the instrument panel. . . .'' Section 25.1303 does not adequately address the MD–17 HUD's novel and unique location for a primary flight display, which is above the instrument panel and in the field of view of the forward window.

As described above, the HUD is not in the same visual field as the instrument displays on the instrument panel. The electronically displayed information is projected on a transparent surface and focused at a distance (i.e., optical infinity). Unlike instrument scanning between displays on the instrument panel, when scanning between the HUD and the instrument panel the pilot's eyes must substantially change viewing angle (about 15 degrees), light adaptation, and focus (from infinity to 2 feet). Furthermore, information displayed on the instrument panel cannot as easily be viewed in the pilot's peripheral vision while simultaneously viewing the HUD, when compared to viewing the suite of conventional flight instruments.

Therefore, in addition to compliance with § 25.1321(b), the special condition requires that the HUD provide all information necessary for rapid pilot evaluation of the airplane's flight state and position, during all phases of flight, for manual control of the airplane, and for pilot monitoring of the performance of the automatic flight control system. The HUD must provide equivalent situational awareness of critical information that is normally displayed near but not on the conventional PFD.

Pilot Compartment View and HUD Optical Characteristics

Section 25.1321(a) requires that ''[e]ach flight, navigation, and powerplant instrument for use by any pilot must be plainly visible to him from his station with the minimum practicable deviation from his normal position and line of vision when he is looking forward along the flight path.'' When the pilot is viewing conventional flight instruments, the variations of pilot seating positions are not significant in the pilot's ability to view the flight instruments. However, the optical characteristics of HUD's require that the pilot's eyes be located within a very small volume to view all of the required information, which is not adequately addressed by § 25.1321(a). There is much less tolerance for changes in eye position and viewing angles when viewing the HUD. Hence, the special condition ensures that primary flight information remains visible to the pilot without inadvertent lapses. In addition to compliance with § 25.1321(a), the special condition ensures that the HUD information is fully visible from the cockpit design eye position, at which the required angular dimensions of the external field of view, visibility of other cockpit instruments, and access to cockpit controls are simultaneously realized. Furthermore, the special condition ensures that pilot viewing of the HUD does not unduly restrict pilot head movement, cause unacceptable fatigue or discomfort, or interfere with other required pilot duties.

Also, unlike conventional flight displays, the HUD displays certain flight information symbols conformally (i.e., graphically with angular position and movement corresponding to the external view and in the same angular scale). Mispositioning of conformal symbolic information can be more hazardous than mispositioning the same information on conventional displays. There is no specific rule that addresses the use of

conformal symbolic information as primary flight information. Therefore, the special condition does not permit the display of electronic or optical misalignment of conformal symbology that would be hazardously misleading.

Compatibility With Other Cockpit Displays

The existing regulations did not anticipate and do not address the display limitations of a monochrome HUD. The HUD electronically displays information with monochrome strokes, while on conventional displays color is used to highlight and distinguish different types of information. On color displays, the warning and caution indications follow the same color scheme, red and amber, respectively, as described in § 25.1322 for warning, caution, and advisory lights. This use of red and amber is consistent across the cockpit and serves to give unmistakable meaning to the indications. A monochrome HUD must have an equivalent means to unmistakably highlight and distinguish the same information.

The monochrome HUD must also have certain display design features to make other essential flight information conspicuous, distinct, and meaningful to compensate for the lack of multiple colors. For example, the conventional primary attitude indication distinguishes angles on the pitch scale above the horizon (sky) and angles below the horizon (earth) with different colors, such as blue and brown, respectively. To perform its intended function as the primary attitude indicator, and to ensure satisfactory pilot recognition of unusual attitudes, the HUD must provide clear visual distinction between positive and negative pitch angles by means other than color.

In summary, the display format of the HUD can differ from the format of other cockpit displays of the same information due to differences in their capabilities and limitations. These differences must be regulated to ensure that one format is not so unlike the other that the pilot can misinterpret the information hazardously, or that excessive time and attention is required for the pilot to interpret the information. During critical high workload or emergency conditions, the pilot may need to quickly make a transition from the HUD to other flight instruments to continue safe flight. The existing rules do not adequately address the compatibility of different display formats. This special condition is required to avoid potentially hazardous workload and pilot confusion due to display incompatibility.

To address the above identified inadequacies in current regulations as related to the acceptability of the HUD as the primary source of flight information, Special Condition 2 is adopted as an appropriate set of requirements.

Additional Recommendations or Supporting Data

In addition to the special condition for the HUD system, there are other regulations and advisory material that, although adequate, warrant special attention due to the unique features of the MD–17 HUD installation. The following discussion of applicable regulations is provided for information in the context of this special condition.

Regulations

• Section 25.771(e): ''Vibration and noise characteristics of cockpit equipment may not interfere with safe operation of the airplane.'' Attention should be paid to the visual effects resulting from vibration of the cockpit and the optical components of the HUD, including vibration associated with engine imbalance resulting from fan blade failure.

• Section 25.773(a)(1): ''Each pilot compartment must arranged to give the pilots a sufficiently extensive, clear, and undistorted view, to enable them to safely perform any maneuvers within the operating limitations of the airplane, including taxiing, takeoff, approach, and landing.'' Special attention should be paid to this requirement because of the unique location of the HUD combiner, between the pilot's eyes and the forward windshield, compared to conventional displays. The potential of each combiner structure to obstruct the outside view of both pilots (on-side and off-side) should be considered.

• Section 25.773(a)(2): ''Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew (established under § 25.1523). This must be shown in day and night flight tests under non-precipitation conditions.'' Special attention should be paid to this requirement because the unique HUD optical system and the location of the combiner, between the pilot's eyes and the forward windshield, can be especially susceptible to and be the cause of a variety of glare and reflections in the cockpit.

• Section 25.785(k): ''Each projecting object that would injure persons seated or moving about the airplane in normal flight must be padded.'' Typical installations of HUD's include components that project into the space near the pilot's head. Attention should be paid to head contact with these components during all expected operations and pilot activities, especially during turbulence.

• Section 25.1301(a): ''Each item of installed equipment must be of a kind and design appropriate to its intended function.''

Previously, HUD's for transport category airplanes have been certificated with a fully certificated set of primary flight instruments/displays visible on a full-time basis; therefore, the HUD was not required to meet all of the requirements for primary flight instruments. However, the MD–17 HUD's are a primary source of flight information and must comply with those requirements, because alternate instrument flight displays that comply are not in full-time use. Therefore, consideration should be given to the functionality of the MD–17 HUD under all foreseeable operating conditions. For example, looking directly at the sun through the HUD combiner can be painful or harmful to the pilot's eyes; therefore, an alternate display of primary flight information, which complies with the applicable regulatory requirements, must be available on demand. The MD–17 is capable of displaying primary flight information on any of its four multi-function displays (MFD's). To comply with § 25.1321, the two MFD's centered in front of each pilot must be available to display instrument flight information on demand, and the other two center displays must be able to simultaneously display other essential information, such as navigation and engine indications. Selectable display functionality needs special attention in determining compliance with § 25.1301 for the MD–17 suite of displays, including HUD's and MFD's.

The installation of the HUD system must not interfere with or restrict the use of other installed equipment such as emergency oxygen masks, headsets, or microphones. HUD installations typically result in the placement of protruding equipment (e.g., projector, combiner) in the vicinity of the pilot's head and thereby provide the potential for compromising the intended function of the equipment identified above.

The HUD is capable of presenting a large amount of static and dynamic symbology, numbers, and text that can appear cluttered, difficult to interpret, and difficult to see through. Special attention should be given to the potential effects of display clutter, such as interference between moving symbols, other symbols, and alphanumeric information on display functionality, flightcrew task performance, and workload (§ 25.1523; Appendix D).

''Declutter'' modes can selectively remove certain data from the display, so special attention should be given to ensuring that essential data cannot be removed, when needed to continue safe flight and landing.

• Section 25.1381a(2)(ii): ''Instrument lights must be installed so that no objectionable reflections are visible to the pilot.'' Attention should be paid both to reflections from other sources on the HUD and those from the HUD on to windows and other displays.

Advisory Material

Advisory Circular (AC) 25–11, ''Transport Category Airplane Electronic Display Systems,'' provides guidance and policy information regarding means to demonstrate the acceptability of electronic displays, including HUD's. All portions of AC 25–11 are applicable to demonstrate compliance for the

special conditions, except for the color unique criteria of paragraph 5. However, note that the fundamental principles specified in subparagraph 5b, Color Perception vs. Workload, do apply and should be followed with non-color means such as size, shape, and location. Although the HUD does not have color, criteria for evaluation of clutter, workload, and display perception, considering distinctive symbology features such as size, shape, and location, are applicable. Also note that, for HUD's, excessive clutter affects not only the workload and readability of the presentation, but also the pilot's ability to see the outside view and visually detect operational hazards. Also, in spite of its title, the luminance criteria of subparagraph 6b, Chromaticity and Luminance, applies to evaluation of the HUD display luminance. Unique HUD requirements for HUD brightness capability and control are specified in Special Condition 2(b)(2).

3. Protection From Unwanted Effects of High Intensity Radiated Fields (HIRF)

The MD–17 uses electrical and electronic systems that perform critical and essential functions. These systems include electronic displays, electronic engine controls, fly-by-wire flight controls, and others. There is no specific regulation that addresses protection requirements for these systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

Changes in technology have given rise to advanced electrical and electronic airplane systems, use of composite materials in airplane structures, and higher energy levels from radio, television, and radar transmitters. The combined effect of these developments has been an increased susceptibility of electrical and electronic systems to electromagnetic fields.

Many advanced digital systems are prone to upsets and/or damage at energy levels lower than analog systems. Digital systems also allow the location of more complex functions in fewer components. These functions were previously performed manually, electromechanically, or hydraulically. The implementation of such advanced systems has found rapid acceptance since they lower cost, crew workload, and maintenance requirements, while airplane performance and fuel efficiency are enhanced.

Propelled by the need to attain higher efficiency, industry has also proceeded to adopt composite materials for use in airplane structures, thus reducing or replacing the use of aluminum. Due to their low conductivity properties, composite materials afford poor shielding effectiveness, further exposing electrical and electronic systems to the electromagnetic environment.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service. Therefore, to ensure that a level of safety is achieved equivalent to that intended by the current regulations, Special Condition 3 requires that new electrical and electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

Airframe

4. Interaction of Systems and Structures

The MD–17 airplane utilizes a full-time electronic flight control system (EFCS). Pilot control commands are sent to flight control computers which condition the input signals, combine them with other sensor data indicating airplane configuration and flight condition, and apply servo position commands to the actuation systems of the control surfaces. In this way, the EFCS affects control surface actuation and therefore the airplane flight loads. Failures that occur in the EFCS may further affect flight loads, both at the time of the event and thereafter.

The current part 25 airworthiness standards were intended to account for control laws for which control surface deflection is proportional to control device deflection. They do not address any nonlinearities or other effects on control surface actuation that may be caused by the EFCS, whether fully operative or in a failure mode. Since the EFCS may affect flight loads, and therefore the structural capability of the airplane, specific regulations are needed to address these effects. Thus, Special Condition 4 is adopted.

If a failure occurs within the EFCS, the airplane may still be capable of operating within a reduced structural envelope. That is, the airplane may be able to meet the strength and flutter requirements of part 25, but at reduced factors of safety or airspeed, as applicable. This reduced structural envelope is considered acceptable provided that it is based on failure probabilities within the EFCS. Special Condition 4 provides specific structural load and aeroelastic stability requirements with reduced factors of safety and/or airspeeds based on the probability of failure. These requirements ensure that the airplane structural design safety margins will be dependent on system reliability. The requirements of Special Condition 4 also ensure that any influence of the EFCS on airplane flight loads will be accounted for when the system is fully operative.

5. Design Maneuvering Requirements for Fly-by-Wire

Use of the EFCS also affects the maneuvering capability of the MD–17, which is not adequately addressed by the current part 25 design maneuver requirements. Special Condition 5 differs from current requirements in that it requires that certain maneuvers be performed by actuation of the cockpit control device as opposed to the corresponding control surface. In addition, the special condition requires consideration of loads induced by the EFCS itself. These requirements ensure that any influence of the EFCS on airplane flight loads will be accounted for.

6. Limit Engine Torque Loads for Sudden Engine Stoppage

McDonnell Douglas proposes to treat the rare sudden engine stoppage condition resulting from structural failure as an ultimate load condition. Section 25.361(b)(1) specifically defines the seizure torque load, resulting from structural failure, as a limit load condition.

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned by § 25.361(b) when the engine seizure requirement was first adopted. Engines are much larger and are now designed with large bypass fans capable of producing much larger torque loads if they become jammed. It is evident from service history that the frequency of occurrence of the most severe sudden engine stoppage events, resulting from structural failures, is rare.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines.

The FAA is developing a new regulation and a new AC that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the MD–17 type design.

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high-bypass engines. Special condition 6 would distinguish between the more common seizure events and those rare seizure events resulting from structural failures. For these more rare but severe seizure events, the criteria would allow deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high-bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing an additional safety factor.

To provide appropriate structural design criteria for the engine torque on the MD–17, Special Condition 6 is adopted.

Flight Characteristics

7. Flight Characteristics Compliance via Handling Qualities Rating Method

The EFCS will provide an electronic interface between the pilot's flight controls and the flight control surfaces (for both normal and failure states), generating the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because EFCS technology has outpaced existing regulations (written essentially for unaugmented airplanes, with provision for limited ON/OFF augmentation), a suitable special condition is needed to aid in the certification of flight characteristics.

In addition, service history and certification experience have shown that EFCS-type airplanes and others may be susceptible to airplane-pilot coupling (A–PC) tendencies. Pilot induced oscillations can be considered a subset of A–PC problems. An example of these problems are control systems that are rate or position limited during some pilot commands in which the pilot has no feedback through the controller.

The special condition provides a means by which flight characteristics (''satisfactory,'' ''safe flight and landing,'' etc.) can be evaluated and compliance found. The Handling Qualities Rating System (HQRS) was developed for airplanes with control systems having similar functions and is employed to aid in the evaluation of the following:

- For all EFCS/airplane failure states not shown to be extremely improbable, and where the envelope (task) and atmospheric disturbance probabilities are each 1.
- For all combinations of failures, atmospheric disturbance level, and flight envelope that yield flight conditions expected to occur more frequently than extremely improbable.
- For any other flight condition or characteristic where part 25 proves to be inadequate for proper assessment of unique MD–17 flight characteristics.

The HQRS provides a systematic approach to handling qualities assessment. It is not intended to dictate program size or need for a fixed number of pilots to achieve multiple opinions. The airplane design itself and success in defining critical failure combinations from the many reviewed in systems safety assessments would dictate the scope of any HQRS application.

Handling qualities terms, principles, and relationships familiar to the aviation community have been used to formulate the HQRS. For example, similarity has been established between the well-known Cooper-Harper rating scale and the FAA three-part rating system. This approach is derived, in part, from work on flying qualities of highly augmented/relaxed static stability airplanes, namely regulatory and flight test guide requirements.

In addition, experience has shown that compliance with only the qualitative, open-loop (pilot-out-of-the-loop) requirements does not guarantee that the required levels of flying qualities are achieved. There must be an evaluation by certification pilots conducting high gain (wide band width) closed-loop (pilot-in-the-loop) tasks, to ensure that the airplane demonstrates the flying qualities required by §§ 25.143(a) and (b) and to minimize the hazards associated with encountering adverse A–PC tendencies in service.

For the most part, these tasks must be performed in actual flight. For conditions that are considered too dangerous to attempt in actual flight (i.e., certain flight conditions outside of the operational flight envelope, flight in severe atmospheric disturbances, flight with certain failure states, etc.), the closed loop evaluation tasks may be performed on a validated high fidelity simulator.

Special Condition 7 is adopted for the MD–17 to aid in the certification of flight characteristics. An acceptable means of compliance with this special condition is provided in AC 25–7A, ''Flight Test Guide for the Certification of Transport Category Airplanes.''

8. Static Longitudinal Stability

Like other airplanes with similar highly augmented electronic flight control systems, the MD–17 does not literally comply with the requirements prescribed by § 25.173 for static longitudinal stability. In one control mode of the electronic flight control system, no control force is needed to maintain a speed change from the trimmed condition. Although this operating system mode provides quick, accurate pitch response with minimal pilot effort, it does not comply with the literal requirements for static longitudinal stability.

Static longitudinal stability has been required in accordance with part 25 for the following reasons:

- Provides additional speed change cues to the pilot through control force changes.
- Ensures that short periods of unattended operation do not result in any significant changes in attitude, airspeed, or load factor.
- Provides predictable pitch response.
- Provides acceptable level of pilot attention (workload) to attain and maintain trim speed and altitude.
- Provides gust stability.

In order to achieve an equivalent level of safety with part 25, the MD–17 should meet the intent of these principles, even though it may not comply with the literal terms of § 25.173. Special Condition 8 ensures that the MD–17 has suitable static longitudinal stability in any condition normally encountered in service. The HQRS prescribed by Special Condition 7 may be used to make this assessment.

9. Static Lateral-Directional Stability

Because of the MD–17 roll axis design feature in which the commanded roll rate is proportional to roll stick position, aileron control movements and forces do not comply with § 25.177 as they are not proportional to angle of sideslip. This feature is active during all flight phases and conditions, except when the flap/slat handle is at or greater than the 1/2 detent setting, or during a rudder pedal input.

Dihedral effect (as indicated by aileron forces proportional to the angle of sideslip) has been required in accordance with § 25.177 for the following reasons:

- In the event that primary lateral control is lost, roll can be produced by use of the rudder.
- In an airplane with positive dihedral effect, the bank angle and the

lateral control forces required to hold heading provide positive indication of an inadvertent sideslip.

• It can have a beneficial effect on spiral stability.

• In the event of an engine failure, the roll due to the asymmetric yawing moment contributes to the ease of identifying the failed engine.

In order to achieve an equivalent level of safety with part 25, the MD–17 should meet the intent of these principles even though it may not comply with the literal terms of § 25.177.

In lieu of showing compliance with § 25.177, Special Condition 9 is adopted to ensure that the MD–17 has suitable static lateral-directional stability in any condition normally encountered in service. The HQRS prescribed by Special Condition 7 may be used to make this assessment.

10. Control Surface Awareness

In airplanes with electronic flight control systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that may not involve a large control input may nevertheless require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in both manually piloted and autopilot flight, and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner as to cause airplane loss of control or other unsafe stability or performance characteristics.

As a result of these concerns, Special Condition 10 is adopted to require that suitable flight control position annunciation be provided to the flightcrew when a flight condition exists in which near full surface authority (not crew-commanded) is being utilized. Suitability of such a display or alerting must take into account that some pilot-demanded maneuvers are necessarily associated with intended full performance, which may saturate the surface. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed crew awareness and nuisance factors. A monitoring system that compares airplane motion, surface deflection, and pilot demand could be useful for eliminating nuisance alerting.

Approach and Landing Limitations

11. Steep Approach Air Distance

The MD–17 has a number of design features to support steep approach flight path capability with precision landing. McDonnell Douglas proposes to certify MD–17 landing performance for both conventional 3-degree approach glideslope operation and steep approach operation.

Novel and unique features on the MD–17 provide for increased touchdown dispersion accuracy during steep approach operations relative to conventional transport category airplanes. McDonnell Douglas has proposed an alternative method for defining the airborne portion of the landing distance in lieu of the demonstrated distance from a 50-foot height to touchdown. A special condition is adopted to redefine the air distance portion of the MD–17 landing distance for steep approach operations conducted under a proposed Special Federal Aviation Regulation (SFAR), ''Requirements for operational approval of special approaches to short field landings for the McDonnell Douglas Model MD–17 power-augmented-lift airplane,'' currently being developed by the FAA.

Steep approach operations are intended to minimize the air run to help achieve short field performance. Steep approach for the MD–17 is defined as an approach flight path angle no steeper than -5 degrees, with an approach rate of descent not to exceed 1,000 feet per minute. For the landing reference speeds used by the MD–17, almost all operations are limited by the 1,000 feet per minute constraint, which yields approach flight path angles predominantly in the range from 4 to 4.8 degrees.

Several design features on the MD–17 are intended to enable the airplane to safely fly steep approaches. First, the landing gear is designed to withstand touchdown rates of descent of up to 12.5 feet per second for weights up to 435,800 pounds and 11 feet per second for weights up to 502,100 pounds. Second, the high lift system with externally blown flaps allows operation at relatively low landing reference speeds which, when combined with the MD–17 lift/drag characteristics, allows this airplane to be flown using a backside control technique. Third, a spoiler function electronically linking spoilers and throttle movement provides much more precise flight path control. Fourth, the MD–17 is equipped with a HUD, which displays the airspeed and the flight path vector, and a pilot-selectable flight path marker to indicate the desired flight path. The HUD assists the pilot in precisely controlling the airplane flight path to an aim point on the runway. With no pitch flare needed, the aim point is very close to the actual touchdown point. Considered together, these MD–17 features allow pilots to fly steep approaches and accurate touchdowns near the aim point, while maintaining control over speed and the rate of descent at touchdown.

The backside control technique mentioned above uses thrust changes to primarily affect flight path angle, and pitch changes to primarily affect airspeed. As with all airplanes, there is some control coupling such that any control input will affect both flight path angle and airspeed, but the coupling is minimized for the low speed backside operation used by the MD–17. Reduced control coupling leads to greater precision in airspeed and flight path control. The backside control technique allows throttle inputs to be used to control vertical speed all the way to touchdown instead of the ''pitch flare'' maneuver used on other airplanes.

The throttle-spoiler interconnect feature of the MD–17 design allows spoiler motion to simulate the effect of immediate engine response to throttle movement. The spoilers are nominally biased in the up direction during steady-state operation. When the throttles are moved, the spoilers move in the direction necessary to provide essentially the same airplane response as an immediate thrust change. As the engine responds, the spoilers, over time, return to their original (biased) positions. This feature eliminates the lag often associated with thrust control.

Over 175 steep approach landings were performed during C–17 testing to demonstrate the precision landing characteristics. All of these runs were made using an operational technique performed by pilots with only three practice runs to gain familiarity with the technique. These approaches were conducted to establish that no exceptional piloting skill or training was required to achieve the tested performance levels. During the demonstrations, only a limited portion of the flight manual allowable wind and temperature conditions were accounted for. The purpose of the testing was to demonstrate that the precision approach accuracy could yield touchdowns with a ± 2 standard deviation (σ) band of less than 500 feet relative to the mean touchdown point, while also maintaining an acceptable rate of descent at touchdown.

There are two distinct types of landing operations for the MD–17: (1) conventional landings that will be conducted in accordance with existing part 25 and 121 regulations, and applicable special conditions; and (2) special approaches to short field landings that will be conducted in accordance with existing part 25, a proposed SFAR (to be published at a later date), and applicable special conditions. The proposed SFAR would address additional equipment, training, and operating requirements associated with conducting special approaches to short field landings. McDonnell Douglas intends to provide steep approach capability (allowing operators to seek steep approach approval) for both types of landing operations.

For conventional landings, the steep approach air distance would be determined by using the existing applicable type certification and operating requirements. This special condition for steep approach air distance would only apply to special approaches to short field landings conducted in accordance with the proposed SFAR and Special Condition 12, ''Landing Distances for Special Approaches to Short Field Landings.'' It addresses only the determination of landing distance to be used in conjunction with those operations and does not imply approval to conduct steep approach operations.

For MD–17 steep approach operations conducted under the proposed SFAR, Special Condition 11 is adopted in conjunction with Special Condition 12, in lieu of § 25.125(a).

12. Landing Distances for Special Approaches to Short Field Landings

As noted in the discussion of Special Condition 11, McDonnell Douglas proposes two distinct types of landing operations for the MD–17: (1) conventional landings that will be conducted in accordance with existing part 25 and 121 regulations, and (2) special approaches to short field landings that will be conducted in accordance with a proposed SFAR and associated special conditions.

The operational landing distance margin provided by part 121 takes into account steady-state variables that are not included in the part 25 landing distances, differences in operational procedures and techniques from those used in determining the part 25 landing distances, non steady-state variables, and differences in the conditions forecast at dispatch and those existing at the time of landing. Examples of each of these categories include:

Steady-state variables	Non steady-state variables	Operations vs. flight test	Actual vs. forecast conditions
Runway slope	Wind gusts/turbulence	Flare technique	Runway or direction (affecting slope).
Temperature	Flight path deviations	Time to activate deceleration devices.	Airplane weight.
Runway surface condition (dry, wet, icy, texture).		Flight path angle	Approach speed.
Brake/tire condition		Rate of descent at touchdown	Environmental conditions (e.g., temperature, wind, pressure altitude).
Speed additives		Approach/touchdown speed	Engine failure.
Crosswinds		Height at threshold	
		Speed control.	

Note: This is not intended to be an exhaustive list of variables to be considered.

In order to allow the part 121 operational landing distance margins to be reduced as proposed in the SFAR for special approaches to short field landings, additional type certification requirements are needed. In addition to what is currently required by § 25.125, the landing distances to be used under the proposed SFAR would be required to include the effects of runway slope and ambient temperature. Landing distances on a wet runway would also have to be determined in a manner acceptable to the FAA. In addition, during the flight testing to determine the landing distances, the average touchdown rate of descent and the approach flight path angle would be limited to no greater than 4 feet per second and no steeper than −3 degrees, respectively.

The applicant would be required to establish operating procedures for use in service that are consistent with those used to establish the performance data and can be executed by crews of average skill. The applicant would be required to include, as applicable, procedures associated with speed additives for turbulence and gusts for approaches with all engines operating and with an engine failure on final approach, and the use of thrust reversers on all operative engines during the landing rollout.

The operational landing distance margins applicable to the MD–17, and additional operational considerations associated with the use of these reduced margins (e.g., runway markings, meteorological conditions, and flightcrew procedures and training), are covered in the proposed SFAR.

Although this special condition will explicitly take into account many of the variables currently accounted for by the part 121 operational landing distance margins, some operational landing distance margin is still necessary to account for variables that remain. For example, because § 121.195(d) specifies the maximum takeoff weight for the conditions forecast at the time of landing (including environmental conditions such as temperature and pressure altitude, airport conditions such as runway and direction, and airplane conditions such as fuel burnoff and approach speed), potential differences in the forecast and actual conditions should be taken into account. Other operational issues that should be considered in the operational landing distance margins include piloting technique and time to activate deceleration means, unsteady winds and crosswinds, and airspeed and flight path deviations. Therefore, the proposed SFAR will still contain operational landing distance margins, although reduced from those margins currently required by §§ 121.195 and 121.197, that would be applied to the landing distance determined in accordance with this special condition.

Special Condition 12 provides the additional requirements noted above that the FAA considers necessary to allow operational use of the landing distance margins prescribed in the proposed SFAR. Note that the determination of landing distances in accordance with this special condition does not constitute operational approval

to use landing distance margins reduced from those specified in part 121. Operational approval to use the reduced landing distance margins must be obtained in accordance with the proposed SFAR.

13. Thrust for Landing Climb

Section 25.119(a) states that the airplane must achieve a 3.2 percent climb gradient after initiating a thrust increase from the minimum flight idle position. The thrust allowed is that thrust attained within eight seconds of engine spool-up time from the initiation of thrust lever movement. Because of the power-augmented-lift design, the MD–17 thrust required for a stabilized approach is significantly above a conventional turbojet minimum flight idle setting, and thrust would not be reduced to idle during the approach.

Section 25.119(a) was written to assure that the flightcrew would have sufficient airplane performance to safely transition to a climb during a go-around in the landing configuration. The rule assumes that the approach power setting may be as low as the flight idle position. The MD–17 power-augmented-lift design requires a significant approach thrust level during the approach to maintain the approach flight path. Unlike conventional transport category airplanes, thrust reductions during the approach are not necessary to maintain or recover the flight path. The MD–17 operational procedures will discourage use of thrust reduction to make down flight path adjustments during approach. The direct lift control (DLC) feature provides a down path angle control for large flight path adjustments without throttle movement.

To improve the control response to throttle movement, the MD–17 uses a spoiler function where the spoilers are linked with the throttles to simulate the effect of instantaneous engine response to throttle movement. The throttle-spoiler function is a short-term response; as the engine responds to throttle movement, the spoilers return to their original positions. The approach is flown with a non-zero spoiler bias to allow spoilers to react upward or downward in response to throttle movement. This function provides instantaneous response to control input and allows throttle movement to be minimized.

During the segment from 50 feet to touchdown, the MD–17 uses a backside control technique that does not require either thrust to be reduced to an idle power setting or the use of a pitch-up flare maneuver prior to touchdown. With the backside control technique, airplane pitch attitude is used to control airspeed, and thrust is used to control flight path angle.

In lieu of compliance with § 25.119(a), Special Condition 13 is adopted. The thrust for a stabilized approach, including an appropriate margin for operational safety, will be used as a basis for determining the thrust available for the landing climb requirement. The initial thrust level at the start of the 8-second spool-up time will be the thrust for a stabilized approach at a flight path angle 2 degrees steeper than the desired flight path angle. This thrust level will account for thrust variations during the approach and conservatively represents the initial thrust level.

This special condition is applicable only when the following design features are present:

- At no time in the landing configuration should the thrust be reduced to idle.
- A backside control technique must be used such that a thrust reduction is not used to reduce the rate of descent at touchdown.
- Procedures must be provided in the Airplane Flight Manual to define the proper technique for flight path angle adjustments during approach and landing.
- The airplane must have DLC spoilers or other aerodynamic means of making down path angle adjustments without thrust reduction.
- Throttle movement should activate a short-term aerodynamic surface motion in order to provide a high level of control feedback and to avoid excessive throttle adjustments.
- The airplane and engine state (e.g., airplane weight and engine bleed configuration) and operating conditions (e.g., pressure altitude and temperature) should be the most critical combination relative to the thrust level used to show compliance with this special condition.

Discussion of Comments

Notice of Proposed Special Conditions 25–99–04–SC for the McDonnell Douglas Corporation Model MD–17 airplane was published in the **Federal Register** on May 18, 1999 (64 FR 26900). Two commenters, including the applicant, responded. Some of the comments were of an editorial or clarifying nature and have been incorporated where appropriate. A discussion of the remainder of the comments follows, corresponding to the special conditions as proposed in Notice 25–99–04–SC.

General Comments

The commenter asks what the military certification basis is for the Model MD–17 military version (the C–17), and states that it would be interesting to compare it with the civil basis.

The C–17 was designed for the U.S. Air Force in accordance with the design standards defined in the C–17 System Specification and C–17 Air Vehicle Specification documents per the contractual agreement between the company and the U.S. Air Force.

The specifications for C–17 power-augmented-lift performance speeds include: (1) criteria for power-on minimum margins from stall speeds; (2) angle-of-attack margins from stall expressed in terms of vertical gust margins; and (3) maneuvering capabilities. These C–17 criteria and the corresponding MD–17 criteria, which meet the applicable airworthiness standards of part 25 and are discussed in the MD–17 special condition for power-augmented-lift, are similar or identical in both the nature and magnitude of the required margins.

In the areas of flight controls and flying qualities, previously existing military standards were invoked as part of the overall C–17 specifications. For instance, the flying qualities specifications were a tailored revision of Mil–F–8785B. Similarly, for the MD–17, the FAA adopted previous special conditions issued for other fly-by-wire airplanes.

In summary, the MD–17 special conditions are similar to the standards used for contractual acceptance of the C–17 by the U.S. Air Force, but reflect the part 25 airworthiness standards and do not include U.S. Air Force mission specific items.

The commenter would like to know more about the assumptions made when thrust handling techniques were developed, and further states that the technique proposed for flying the approach on the ''backside of the drag curve'' is radically different than conventional airplanes, and from airplanes on which most, if not all, civil pilots will have been trained. The commenter is concerned that while such pilots may be able to demonstrate sufficient proficiency during training, there is a real risk that under certain conditions of high workload they may revert to conventional flying techniques. The commenter believes that there should be some safeguarding of the human factors aspects.

The thrust handling techniques for the backside approach for power-augmented-lift aircraft were developed from flight simulator research dating back to the 1970's. Test pilots from several regulatory agencies, including the FAA and the U.K. CAA, participated in these development tests. Test

findings are summarized in FAA Report No. FAA–RD–76–100, ''Progress Toward Development of Civil Airworthiness Criteria for Powered-Lift Aircraft,'' dated May 1976, a copy of which is in the docket for this rulemaking. The results of this research indicate that the ease of flying the backside approach and the capability to accurately hold airspeed and flight path depend to a great extent on minimizing pitch and thrust coupling. Minimizing airspeed changes as a result of thrust changes and minimizing flight path angle changes as a result of pitch changes not only allows more precise speed and path control, but also provides better feedback to the pilot on the effect of the use of the throttle and pitch controls. As noted in the preamble to the proposed special conditions, the MD–17 design minimizes pitch and thrust coupling.

Notwithstanding the research results noted above, and the MD–17 adherence to the design principles resulting from that research, the FAA considered the potential for pilots to revert to the control techniques used on conventional transport category airplanes to be a major concern during the development of the special conditions. To address this concern, the FAA interviewed U.S. Air Force reserve pilots, flew simulator exercises, and reviewed the C–17 service history.

The interviews with the U.S. Air Force reserve pilots were considered to be especially valuable as many of these pilots also fly as line pilots for major airlines, flying conventional transport category airplanes ranging from older Boeing 727's to more modern Boeing MD–11's. These pilots appeared to have little difficulty in transitioning back and forth between the conventional airplanes and the MD–17 with its unique characteristics. Training was essential for introducing the backside technique, but after being exposed to the differences in techniques in the simulator, reversion has not proven to be a problem. The piloting cues and airplane response are significantly different from those of a conventional transport category airplane, which reinforces the use of the backside technique.

The simulator exercises flown by the FAA reinforced both the conclusions of the earlier research efforts and the experiences of the U.S. Air Force reserve pilots. The service history of the C–17 with the U.S. Air Force has been very good, including experience under high workload, high stress conditions. It should also be noted that the Lockheed C–130 airplane, in the short takeoff and landing mode, also flies on the backside and has had a good safety record.

1. Stall Speeds and Minimum Operating Speeds

The commenter states that credit over and above that already given in the part 25 requirements is given for a reduced factor to obtain V_2 as a result of increased effects of power on stalling speed, and asks if adequate stall margins will be available with the use of reduced thrust/EPR techniques.

The credit for power-augmented lift for stall speed in the takeoff phase of flight is based on the minimum power that exists at any point in the takeoff flight path. This requirement includes consideration of derated/reduced power techniques. The same speed margin will exist between the power-on stall speed and the minimum takeoff safety speed for a derated/reduced power takeoff as for a full power takeoff.

The commenter considers the justification for the reduction in V_{REF} resulting from a lower factor applied to a power-on stall speed to be insufficient, at least until some operational experience is gained. For example, one of the reasons given for using the power-on stall speed is that there is no need to reduce thrust to idle at any point during the approach. The commenter further states that while this may be accurate, it is no guarantee that thrust will never be reduced to idle (unless of course a physical movement restriction is provided). The commenter asks how the probability of the airplane being operated, albeit inadvertently, outside of the certification assumptions has been considered within the special conditions.

The FAA considered inadvertent speed and flight path excursions not only due to piloting issues, but also due to environmental conditions and other reasons. The requirements address each of these concerns by providing margins for speed, angle-of-attack, thrust, and maneuverability. Also, certain design features, combined with the piloting cues and operating characteristics of the airplane, reduce the probability of inadvertent and excessive thrust reduction, as well as provide the capability for a quick recovery from both speed and flight path excursions.

Minimal coupling between pitch and thrust reinforces the proper operating techniques of using thrust to control flight path and pitch to control airspeed. Targets for pitch angle, flight path angle, and thrust level are displayed in the head-up primary flight display, along with the current values to assist the pilot in making appropriate control inputs. Large downward flight path changes are enabled through the use of the Direct Lift Control, and rapid changes in the upward direction are possible because of the separate spoiler bias design feature.

The FAA considers the proposed margins provided at the reference landing speed, V_{REF}, to be adequate considering the specific design features and operating characteristics of the MD–17.

Given that the probability of engine failure for part 25 airplanes is generally assumed to be 1.0, the commenter asks what the justification is for the 5-knot reduction in one-engine-inoperative vertical gust margin based solely on the short exposure time in that condition.

Although ensuring safe flight characteristics and performance capability in the event of an engine failure is a fundamental principle embodied in part 25, this does not mean that the probability of an engine failure is generally assumed to be 1.0. The FAA continues to consider a vertical gust margin of 15 knots is adequate to ensure safety in the event of engine failure. For the normal all-engines-operating condition, the FAA considers it appropriate to require a larger margin, equivalent to the vertical gust margin typical of conventional transport category airplanes operating at their minimum landing approach speed. The commenter states that it is not clear how the power is required to be set for the one-engine-inoperative power-on stall speed demonstrations, and that in any case the thrust must be set asymmetrically to simulate a realistic condition, rather than to have thrust set symmetrically.

The power-on stall speeds for the MD–17 power-augmented-lift design are influenced by which engines are operating. The distribution of the engine efflux interacting with the externally blown flaps is different for the all-engines-operating, outboard-engine-inoperative, and inboard-engine-inoperative configurations. As a result, the power-on stall speeds differ between engines-operating configurations for a given weight and total airplane thrust level. Accordingly, the one-engine-inoperative stall speeds for the C–17, the military version of the MD–17, were determined from flight testing with asymmetric thrust.

In addition to the all-engines-operating configuration, the C–17 one-engine-inoperative power-on stall speeds were determined from flight testing of both the outboard-engine-inoperative and inboard-engine-inoperative configurations. The power-on stall speeds for these different engine operating configurations were determined at airplane thrust levels ranging from idle to takeoff thrust. For

test safety purposes, the one-engine-inoperative stall speeds were determined from flight testing with a majority of the one-engine-inoperative test points flown with the ''inoperative'' engine at idle thrust and the remaining engines at the thrust level desired for a particular test point. A smaller number of power-on stall test points were flown for both the outboard-engine-inoperative and inboard-engine-inoperative configurations with the ''inoperative'' engine shut down. These test points provided a basis for correcting the majority of the power-on stall speed test data, flown with the ''inoperative'' engine at idle thrust, to a power-on stall speed level for the ''inoperative'' engine shut down. This same technique will be acceptable to the FAA for showing compliance with Special Condition 1.

Another commenter points out that the last sentence of Special Condition 1, paragraph (2)(i), ''Approach,'' defines a 2.7 percent gradient of climb requirement without specifying the number of engines. The commenter states that for consistency with the takeoff requirements for gradient of climb [paragraph 1(h)], this should specify the gradient of climb required based on the number of engines.

The inconsistency identified by the commenter was not intended by the FAA when developing the special conditions. The FAA has tailored these special conditions specifically for the MD–17, which is a four-engine airplane. To correct this inconsistency, paragraph 1(h) of the special condition has been revised to limit the applicability to a four-engine airplane.

The commenter states that the preamble description of the spoiler system may imply that the throttle-to-spoiler coupling is a mechanical linkage, and believes that wording changes are needed to clarify that the linkage is not mechanical.

The FAA agrees. The general discussion of the MD–17 design features has been revised to provide clarification that the linkage is electronic. Also, the discussion of ''Stall Speeds and Minimum Operating Speeds'' has been revised to clarify that in addition to a slight thrust increase to reduce the rate of descent at touchdown, ''a throttle-coupled reduction in spoiler deflection'' may be used.

2. Head-Up Display (HUD) Used as Primary Flight Display (PFD)

One commenter considers the reliance on dual HUD's for the display of primary flight information to be radical and in need of careful attention, and further considers that better guidance is required for the unusual attitude recovery training using HUD.

The FAA agrees that the use of the HUD as a primary flight display, which includes its use by the pilots for unusual attitude recognition and recovery, is a novel design feature. This is one of the key reasons for the HUD special condition.

The FAA recognizes that unlike conventional primary attitude displays, the HUD is monochrome and ''stroke-written,'' without the contrast of color and shading found in conventional headdown attitude displays. The FAA conducted a multiple expert opinion team study of the C–17 HUD to explore this and several other factors related to its use as a primary flight display. In addition, FAA test pilots flew several unusual attitude recognition and recovery scenarios.

The special condition specifically requires that the HUD perform the function of conventional color primary flight instruments and that the flightcrew must be able to immediately recognize and perform a safe recovery from unusual attitudes. One of many factors that the FAA must evaluate is the ability of the monochrome HUD symbology to effectively distinguish positive (sky) and negative (ground) pitch attitudes. The FAA will carefully determine compliance with these requirements through the use of flight test and simulation.

The commenter states that the preamble discussion of this special condition seems to imply that the dual HUD installation is the novel feature of the MD–17, and that it should emphasize the HUD as the primary flight display (PFD) for each pilot, not just a dual HUD installation.

The FAA considers that the current preamble discussion does, in fact, adequately emphasize that these HUD's will be used as the primary flight display. The fact that this is a dual-HUD installation is also potentially significant, due to their location, depending on the information content displayed and the concurrent use of both HUD's by the flightcrew. The preamble discussion therefore remains unchanged.

The commenter requests that under the preamble discussion of the ''Arrangement and Visibility'' of the HUD, the second sentence be revised to read, ''Section 25.1303 does not adequately address the MD–17 HUD's location, and novel, unique features which allow the pilots to keep their heads up and eyes out of the cockpit while viewing primary flight data.'' The commenter states that this revision reinforces that the MD–17 HUD installation deviates from the strict location requirements of § 25.1321(b) in order to enhance crew awareness outside the cockpit.

The purpose of this discussion is to explain what is unique and novel about the design that requires the special condition, not to endorse potential advantages of the design. However, to address the commenter's concern, the sentence in question has been revised to read, ''Section 25.1303 does not adequately address the MD–17 HUD's novel and unique location for a primary flight display, which is above the instrument panel and in the field of view of the forward window.''

The commenter requests that the last sentence of the preamble discussion of the ''Arrangement and Visibility'' of the HUD be deleted, stating that it is too vague and implies, too generally, that additional data must be displayed on the HUD.

The FAA disagrees. This portion of the preamble discussion describes the scope of, and need for, the kind of requirements specified in the special condition. It is not meant to state the specific requirements of the special condition that require compliance. This discussion therefore remains unchanged.

The commenter requests that the first sentence of the preamble discussion of the ''Compatibility with Other Cockpit Displays,'' be rewritten as it implies that the MD–17 HUD has monochrome limitations that other current HUD's would not have.

The FAA agrees and has revised this discussion accordingly.

The commenter further states that because the MD–17 monochrome HUD represents current state-of-the art, it should not be made to sound as if it is less than current technology. The commenter adds that this requirement for HUD's to highlight certain information is important only if a monochrome HUD is specifically used as a PFD.

This special condition applies only to the MD–17 HUD, not generally to all HUD's. The FAA did not intend to imply that the MD–17 monochrome HUD, alone, has limitations due to the lack of color. However, to address the commenter's concern, the FAA has revised the preamble discussion referred to by the commenter to state that a ''monochrome HUD'' must have an equivalent means to unmistakably highlight and distinguish the same information.

The commenter states that the wording of the last sentence of the discussion of the ''Compatibility with Other Cockpit Displays'' which reads,

''the existing rules do not adequately address the compatibility of different display formats in the MD–17 cockpit'' implies that the MD–17 cockpit design has a display compatibility problem. The commenter asserts that the MD–17 display formats were designed using human factors design principles to be compatible with other cockpit displays, and recommends that the phrase ''in the MD–17 cockpit'' be removed to prevent potential misunderstandings of the Boeing display design philosophy.

The FAA agrees and has revised the discussion accordingly.

The commenter recommends that the discussion of the ''Additional Recommendations and Supporting Data'' be removed, stating that it provides no additional or revised requirements, but simply collects into one location part 25 requirements that the MD–17 must meet.

The FAA does not agree. The regulations and advisory material referred to by the commenter are not part of the special conditions and are not additional requirements. They are listed in the preamble discussion for information only in the context of this special condition. The FAA considers that they should be given special attention due to the uniqueness of the HUD.

Further to the above discussion, the commenter states that the discussion of § 25.1301(a) digresses into a minimum equipment list set of requirements, dictating which displays must be operative and how displays must be used. The commenter considers these to be operational issues that do not belong in this discussion.

The FAA disagrees. Unlike other transport HUD's, the MD–17 HUD's are used as PFD's. Certain environmental light conditions significantly affect the pilot's ability to use the HUD compared to headdown instruments. In some of these conditions, the HUD cannot be relied on as the PFD, so another PFD must be available. The safety objective is to ensure that the flight has functional primary flight displays in all foreseeable conditions. While it may also have MEL implications, this requirement is stated for the sake of the design and functional allocation of the display suite of the flight deck in which these HUD's are installed.

The commenter states that paragraph (a)(2) of the special condition is confusing. The first sentence allows for guidance to be displayed in ''close proximity'' to the HUD field of view, while the second sentence begins ''Likewise'' and yet implies that the information must be displayed on the HUD, not in close proximity. The commenter suggests that the second sentence be revised to read ''Likewise, other essential information and alerts that are related to displayed information and may require pilot action must be displayed for instant recognition, either on the HUD or in close proximity to the HUD field of view.''

The FAA agrees and has revised the special condition as proposed by the commenter.

The commenter requests that the wording of the third sentence of paragraph (a)(7) of the special condition be revised to state that the HUD symbology must not ''excessively'' interfere with the pilot's forward view, etc. The commenter's reason for the change is that without the word ''excessively,'' a strict FAA interpretation might require all HUD symbology to be removed so as not to interfere with the pilot's forward view at all, thus defeating the intended purpose of the HUD.

The word ''excessively'' was removed because the criteria for what is and is not excessive were undefined at the time. This is a compliance finding based on FAA flight test pilot judgement. The word ''excessively'' has been restored, as suggested by the commenter, with an explanation added that ''interference would be considered excessive if it prevents the pilot from seeing flight hazards, such as airborne traffic, terrain, and obstacles, or outside visual references required for safe operation such as approach lights, runway lights, runways, and runway markings.''

The commenter notes that the term ''slowovers'' in paragraph (a)(9)(ii) of the special condition is used when discussing autopilot failures, and points out that the unique MD–17 fly-by-wire control design is not subject to slowovers in the same way as conventional designs.

The use of the term ''slowover'' was intended only as an example of autopilot failures that may cause an upset; the emphasis is actually on the upset. However, to avoid any confusion in this regard, the reference to ''slowover'' has been removed and the words ''as applicable to the MD–17 type design'' have been added in its place.

In paragraph (b)(5), the commenter recommends that the FAA maintain the portion of the sentence that reads, ''There must be no adverse physiological effects of long term use of the HUD system, such as fatigue or eye strain'' and delete the remainder of that sentence and the sentence that follows. The commenter maintains that the design of the MD–17 is such that the pilot can always choose to use the head-down PFD instead of the HUD while seated in a reclined position, and that the HUD is not intended to be relied on as the sole PFD.

The FAA agrees with the change recommended by the commenter and has revised the special condition accordingly.

The same commenter recommends that paragraphs (c)(2)(i) through (viii) be removed, stating that these paragraphs impose a series of safety requirements interpretations for hazards associated with loss or erroneous display of parameters on the HUD and/or elsewhere in the cockpit. The commenter further states that most of these interpretations are already provided in AC 25–11, ''Transport Category Airplane Electronic Display Systems.'' The commenter questions the value of a special condition that applies criteria with which the MD–17 will comply using existing guidance.

The FAA disagrees that this information should be removed. Since direct reference to the AC cannot be included in the text of the special condition, the applicable criteria were inserted instead. This does not change the requirements that were originally agreed to by the applicant and imposes no additional burden.

The commenter states that the MD–17 HUD, by design, will not display any data unless the combiners are fully deployed and aligned, so the warning called out in paragraph (c)(4) of the special condition is of little value. The commenter suggests revising this paragraph to say that the HUD system must monitor the position of the combiner and must not display conformal data that is hazardously aligned due to combiner position. A suitable warning, alerting the crew of this condition, is also acceptable.

The FAA agrees with the intent of the comment and has revised paragraph (c)(4) accordingly.

4. Interaction of Systems and Structure

The commenter points out that a sentence appears to be missing from the special condition.

The FAA agrees. The sentence the commenter is referring to concerns the flutter clearance speeds that may be based on the speed limitation specified for the remainder of the flight. The omission of this sentence in the proposed special condition was an inadvertent oversight, which has been corrected.

7. Flight Characteristics Compliance via Handling Qualities Rating System

The commenter states that in order to determine whether the airplane has suitable stability, objective requirements

are necessary against which to make the assessment. The commenter does not consider the Handling Qualities Rating System to be an acceptable alternative.

The FAA disagrees. The special conditions for flight characteristics evaluation of the MD–17 are the same as those used on other airplanes with similar fly-by-wire flight control systems. The FAA Handling Qualities Rating System has been used successfully to evaluate airplanes with fly-by-wire flight control systems since the early 1980's.

11. Steep Approach Air Distance, and 12. Landing Distances for Approaches to Short Field Landings

The commenter states that the intention to distinguish between conventional and special approaches to short field landings is noted and would be interested in reviewing the complete SFAR, which will address short field operations, when it becomes available. The commenter further states that there also needs to be a clear distinction operationally between the two and asks, ''While there is a clear upper limit on the steep approach angle (i.e., 5 degrees or 1,000 fpm), what will be the upper limit for a conventional approach?''

The commenter has misunderstood the proposals related to steep approach operations and special approaches to short field landings. There are two distinct types of landing operations for the MD–17: (1) conventional landings that will be conducted in accordance with existing part 25 and 121 regulations; and (2) special approaches to short field landings that will be conducted in accordance with a proposed SFAR (to be published at a later date) and associated special conditions. These two types of landing operations would be distinguished by the additional equipment, training, and operating requirements associated with approval to conduct special approaches to short field landings. The applicant intends to provide steep approach capability (allowing operators to seek steep approach approval) for both types of landing operations.

The Steep Approach Air Distance special condition, which provides an alternative methodology for determining the airborne part of the landing distance, would apply only to those steep approaches flown as part of a special approach to a short field landing conducted in accordance with the proposed SFAR. In general, the FAA considers a steep approach to be any approach conducted at angles steeper than 3.77 degrees. This value is derived from the normal 3 degrees approach path angle, plus the outside limit for vertical displacement from the 3 degrees glide slope on the Instrument Landing System (ILS), as established by the FAA Flight Standardization Board.

Another commenter notes that the steep approach air distance definition in paragraph (a) of Special Condition 11 does not reflect the specific distance between the runway threshold and the touchdown aim point to be used in operation.

The FAA has revised the wording of this special condition to provide the clarification requested by the commenter.

The same commenter notes that Special Conditions 11(a)(4) and 12(a)(4) refer to a ''water loop'' maneuver and questions whether this maneuver has ever been demonstrated with a land-based airplane.

The FAA has determined that there is no need to consider this maneuver for a land-based airplane such as the MD–17, and has removed the reference to the water loop maneuver from both special conditions.

This commenter points out that there are several references to approach flight path angle in both the preamble discussion of Special Conditions 11 and 12, and in the text of paragraph 12(b)(4) of Special Condition 12, that use a negative sign convention that could lead to confusion.

The FAA agrees and has revised the wording accordingly.

With the exception of the changes discussed above, the special conditions are adopted as proposed in Notice 25–99–04–SC.

Applicability

As discussed above, these special conditions are applicable to the McDonnell Douglas Model MD–17 series airplanes. Should McDonnell Douglas apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval to use these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements. The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for McDonnell Douglas Model MD–17 series airplanes:

1. Stall Speeds and Minimum Operating Speeds

(a) In addition to the general definitions, abbreviations, and symbols provided in §§ 1.1 and 1.2, this special condition relies on the following additional definitions, abbreviations, and symbols:

''Reference flight path angle means -3 degrees for a normal approach, and the shallower of -5 degrees or the flight path angle resulting from a 1000 feet per minute rate of descent for a steep approach.''

''V_{SR} means reference stall speed.''

''$V_{SR_{PWR}}$ means power-on reference stall speed.''

''V_{SRO} means reference stall speed in the landing configuration.''

''$V_{SRO_{PWR}}$ means power-on reference stall speed in the landing configuration.''

''V_{SR1} means reference stall speed in a specific configuration.''

''$V_{SR1_{PWR}}$ means power-on reference stall speed in a specific configuration.''

''V_{REF} means reference landing speed.''

''V_{FTO} means final takeoff speed.''

''V_{SW} means speed at which onset of natural or artificial stall warning occurs.''

(b) In lieu of compliance with § 25.103, the following applies:

(1) The reference stall speed, V_{SR}, is a calibrated airspeed as defined in paragraph (3) below. V_{SR} is determined with—

(i) Engines idling, or, if that resultant thrust causes an appreciable decrease in stalling speed, not more than zero thrust at the stall speed;

(ii) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test in which V_{SR} is being used;

(iii) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard;

(iv) The center of gravity position that results in the highest value of reference stall speed; and

(v) The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.13 V_{SR} and not greater than 1.30 V_{SR}.

(2) Starting from the stabilized trim condition, apply elevator control to decelerate the airplane so that the speed

reduction does not exceed one knot per second.

(3) The reference stall speed, V_{SR}, may not be less than a 1-g stall speed, which is a calibrated airspeed determined in the stalling maneuver and expressed as:

$$V_{SR} = V_{C_{L_{MAX}}} / \sqrt{n_{zw}}$$

where:

$V_{C_{LMAX}}$ = Speed occurring when lift coefficient is first a maximum; and

n_{ZW} = Flight path normal load factor (not greater than 1.0) at $V_{C_{LMAX}}$.

(4) The power-on reference stall speed, $V_{SR_{PWR}}$, is a calibrated airspeed as defined in paragraph (6) below. $V_{SR_{PWR}}$ is determined with—

(i) The critical engine inoperative and the power or thrust setting on the remaining engines at the minimum power or thrust level appropriate for the flight condition used to show compliance with a required performance standard;

(ii) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test in which $V_{SR_{PWR}}$ is being used;

(iii) The weight used when $V_{SR_{PWR}}$ is being used as a factor to determine compliance with a required performance standard;

(iv) The center of gravity position that results in the highest value of the power-on reference stall speed; and

(v) The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.18 $V_{SR_{PWR}}$ and not greater than 1.36 vSR_{PWR}.

(5) Starting from the stabilized trim condition, apply elevator control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(6) The power-on reference stall speed, $V_{SR_{PWR}}$, may not be less than a 1-g power-on stall speed, which is a calibrated airspeed determined in the stalling maneuver and expressed as:

$$V_{SR_{PWR}} = V_{C_{L_{MAX}}} / \sqrt{n_{zw}}$$

where:

$V_{C_{LMAX}}$ = Speed occurring when lift coefficient is first a maximum; and

n_{ZW} = Flight path normal load factor (not greater than 1.0) at $V_{C_{LMAX}}$.

(c) In lieu of compliance with § 25.107(b), the following applies: V_{2MIN}, in terms of calibrated airspeed, may not be less than—

(1) 1.03 V_{SR};

(2) 1.18 $V_{SR_{PWR}}$, with the operative engines at the minimum thrust or power existing at any point in the takeoff path; and

(3) 1.10 times V_{MC} established under § 25.149.

(d) In addition to compliance with §§ 25.107(c)(1) and (c)(2), the following also applies: A speed that provides the maneuvering capability specified in paragraph (k) below.

(e) In addition to compliance with § 25.107(a) and §§ 25.107(c) through (f), the following also applies: V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by paragraph (h) below, but may not be less than—

(1) 1.18 V_{SR}; and

(2) A speed that provides the maneuvering capability specified in paragraph (k) below.

(f) In lieu of compliance with § 25.111(a), the following applies: The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and V_{FTO} is reached, whichever point is higher. In addition—

(1) The takeoff path must be based on the procedures prescribed in § 25.101(f);

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(g) In lieu of compliance with § 25.119 (b), the following applies: A climb speed of not more than V_{REF}.

(h) In lieu of compliance with § 25.121(c), the following applies:

Final takeoff. In the en route configuration at the end of the takeoff path determined in accordance with § 25.111, the steady gradient of climb may not be less than 1.7 percent at V_{FTO} and with—

(1) The critical engine inoperative and the remaining engines at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under § 25.111.

(i) In lieu of compliance with § 25.121(d), the following applies:

Approach. In a configuration corresponding to the normal all-engines-operating procedure in which $V_{SR_{PWR}}$ for this configuration, with the operative engines at the minimum thrust or power existing at any point in the go-around, does not exceed 110 percent of the $V_{SR_{PWR}}$ for the related all-engines-operating landing configuration, with the operative engines at the power or thrust setting for approach at the reference flight path angle at V_{REF}, the steady gradient of climb may not be less than 2.7 percent with—

(1) The critical engine inoperative, the remaining engines at the go-around power or thrust setting;

(2) The maximum landing weight;

(3) A climb speed established in connection with normal landing procedures, but not more than 1.4 $V_{SR_{PWR}}$ with the operative engines at the minimum power or thrust setting existing at any point in the go-around; and

(4) The landing gear retracted.

(j) In lieu of compliance with § 25.125(a)(2), the following applies: A stabilized approach, with a calibrated airspeed of not less than V_{REF} or V_{MCL}, whichever is greater, must be maintained down to the 50 foot height. V_{REF} may not be less than—

(1) 1.03 V_{SR0};

(2) 1.20 $V_{SR0_{PWR}}$ with the operative engines at the power or thrust setting for approach at the reference flight path angle;

(3) The airspeed that provides an angle-of-attack margin to stall for not less than a 20 knot equivalent airspeed vertical gust with all engines operating at the power or thrust setting for approach at the reference flight path angle;

(4) The airspeed that provides an angle-of-attack margin to stall for not less than a 15 knot equivalent airspeed vertical gust with the critical engine inoperative at the power or thrust setting for approach at the reference flight path angle; and

(5) A speed that provides the maneuvering capability specified in paragraph (k) below.

(k) In addition to compliance with § 25.143, the following applies: The maneuvering capabilities in a constant speed coordinated turn, as specified in the table below, must be free of stall warning or other characteristics that might interfere with normal maneuvering.

Configuration	Speed	Maneuvering Bank Angle (degrees)	Thrust Representative of
Takeoff	V_2	30	Asymmetric WAT-Limited.[1]

Configuration	Speed	Maneuvering Bank Angle (degrees)	Thrust Representative of
Takeoff	V_2+XX [2]	40	All-engines operating climb.[3]
En route	V_{FTO}	40	Asymmetric WAT-Limited.[1]
Landing	V_{REF}	40	Symmetric for approach at the reference approach flight path angle.[4]

[1] A combination of Weight, Altitude and Temperature (WAT) such that the thrust or power setting produces the minimum climb gradient specified in § 25.121 for the flight condition.

[2] Airspeed approved for all-engines-operating initial climb.

[3] That thrust or power setting which, in the event of failure of the critical engine and without any crew action to adjust the thrust or power of the remaining engines, would result in the thrust or power specified for the takeoff condition at V_2, or any lesser thrust or power setting that is used for all-engines-operating initial climb procedures.

[4] Thrust may be adjusted during the maneuver to maintain the reference approach flight path angle.

(l) In lieu of compliance with § 25.145(a), the following applies: It must be possible at any speed between the trim speed prescribed in paragraph (b)(1)(v), or (b)(4)(v), of this special condition for flaps extended configurations, and the minimum speed obtained in conducting a stalling maneuver, to pitch the nose downward so that the acceleration to this selected trim speed is prompt with—

(1) The airplane trimmed at the speed prescribed in paragraph (b)(1)(v) of this special condition for flaps retracted configurations, or as prescribed in paragraph (b)(4)(v) of this special condition for flaps extended configurations;

(2) The landing gear extended;

(3) The wing flaps—

(i) retracted, and

(ii) extended; and

(4) Power—

(i) off with the flaps retracted and, with the flaps extended, with all engines operating at the minimum power or thrust level consistent with that used to determine the power-on reference stall speeds; and

(ii) at maximum continuous power on the engines.

(m) In lieu of compliance with § 25.145(b)(2), the following applies: Repeat paragraph (b)(1) of this section, except begin with the flaps fully extended and all engines at the minimum power or thrust level consistent with that used to determine the power-on reference stall speed for that flap position, and then retract the flaps as rapidly as possible.

(n) In lieu of compliance with § 25.145(b)(5), the following applies: Repeat paragraph (b)(4) of this section, except with the flaps extended and all engines at the minimum power or thrust level consistent with that used to determine the reference power-on stall speed.

(o) In lieu of compliance with § 25.145(b)(6), the following applies: With all engines at the minimum power or thrust level consistent with that used to determine the reference power-on stall speed, flaps extended, and the airplane trimmed at 1.3 $V_{SR1_{PWR}}$, obtain and maintain airspeeds between V_{SW}, and either 1.6 $V_{SR1_{PWR}}$ or V_{FE}, whichever is lower.

(p) In lieu of compliance with § 25.161(c)(2), the following applies: A glide with the landing gear extended, the most unfavorable center of gravity position approved for landing with the maximum landing weight, and the most unfavorable center of gravity position approved for landing, regardless of weight with the wing flaps—

(1) retracted with power off at a speed of 1.3 V_{SR1}, and

(2) extended with all engines at the minimum power or thrust level consistent with that used to determine the power-on reference stall speed at a speed of 1.3 $V_{SR1_{PWR}}$.

(q) In lieu of compliance with § 25.175(d)(4), the following applies: All engines at the minimum power or thrust level consistent with that used to determine the power-on reference stall speed.

(r) In lieu of compliance with § 25.175(d)(5), the following applies: The airplane trimmed at 1.3 $V_{SR0_{PWR}}$.

(s) In lieu of the speeds given in the following part 25 requirements, comply with the speeds as follows:

§§ 25.145(b)(1) and (b)(4), 1.3 V_{SR1}, in lieu of 1.4 V_{S1}.

§ 25.145(b)(1), 30 percent, in lieu of 40 percent.

§ 25.145(b)(1), power-on reference stall speed, in lieu of stalling speed.

§ 25.145(c), 1.08 V_{SR1}, in lieu of 1.1 V_{S1}.

§ 25.145(c), 1.18 $V_{SR1_{PWR}}$, in lieu of 1.2 V_{S1}.

§ 25.147(a), (a)(2), (c), and (d), 1.3 V_{SR1}, in lieu of 1.4 V_{S1}.

§ 25.149(c), 1.13 V_{SR}, in lieu of 1.2 V_S.

§ 25.161(b), (c)(1), and (c)(2), 1.3 V_{SR1}, or 1.3 $V_{SR1_{PWR}}$ for flaps extended configurations, in lieu of 1.4 V_{S1}.

§ 25.161(c)(3), 1.3 V_{SR1}, in lieu of the first instance of 1.4 V_{S1}, and 1.3 $V_{SR1_{PWR}}$, in lieu of the second instance of 1.4 V_{S1}.

§ 25.161(d), 1.3 V_{SR1} in lieu of 1.4 V_{S1}.

§ 25.161(e)(3), 0.013 V_{SR0}^2, in lieu of 0.013 V_{S02}.

§ 25.175(a)(2), (b)(1), (b)(2), and (b)(3), 1.3 V_{SR1}, in lieu of 1.4 V_{S1}.

§ 25.175(b)(2)(ii), (V_{MO} + 1.3 V_{SR1})/2, in lieu of V_{MO} + 1.4 V_{S1}/2.

§ 25.175(c), V_{SW} and 1.7 $V_{SR1_{PWR}}$, in lieu of 1.1 V_{S1} and 1.8 V_{S1}.

§ 25.175(c)(4), 1.3 $V_{SR1_{PWR}}$, in lieu of 1.4 V_{S1}.

§ 25.175(d), V_{SW} and 1.7 $V_{SR0_{PWR}}$, in lieu of 1.1 V_{S0} and 1.3 V_{S0}.

§ 25.177(c), 1.13 V_{SR1}, or 1.18 $V_{SR1_{PWR}}$ for flaps extended configurations, in lieu of 1.2 V_{S1}.

§ 25.181(a) and (b), 1.13 V_{SR1}, or 1.18 $V_{SR1_{PWR}}$ for flaps extended configurations, in lieu of 1.2 V_{S1}.

§ 25.201(a)(2), 1.5 $V_{SR1_{PWR}}$ (where $V_{SR1_{PWR}}$ corresponds to the power-on reference stall speed with flaps in the approach position, the landing gear retracted, and maximum landing weight), in lieu of 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(t) In addition to compliance with §§ 25.201(a)(1) and (a)(2), the following also applies: The critical engine inoperative and the power or thrust setting on the remaining engines at the minimum power or thrust level appropriate for the flight condition used to show compliance with a required performance standard.

(u) In lieu of compliance with § 25.207(b), the following applies: The warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) of this section at the speed prescribed in paragraph (v)(1) and (2) below.

(v) In lieu of compliance with § 25.207(c), the following applies:

(1) In each normal configuration with the flaps retracted, when the speed is reduced at rates not exceeding one knot per second, stall warning must begin at a speed, $V_{SW,}$ exceeding the speed at which the stall is identified in accordance with § 25.201(d) by not less than five knots or five percent, whichever is greater. Once initiated, stall warning must continue until the angle of attack is reduced to approximately that at which stall warning began.

(2) In addition to the requirement of paragraph (v)(1) above, when the speed is reduced at rates not exceeding one knot per second, in straight flight with engines idling and at the center of gravity position specified in paragraph (b)(1)(iv) above, V_{SW}, in each normal configuration with the flaps retracted, must exceed V_{SR} by not less than three knots or three percent, whichever is greater.

(3) In each normal configuration with the flaps extended, when the speed is reduced at rates not exceeding one knot per second, stall warning must begin at a speed, V_{SW}, exceeding the speed at which the stall is identified in accordance with § 25.201(d) by not less than five knots or five percent, whichever is greater. Once initiated, stall warning must continue until the angle of attack is reduced to approximately that at which stall warning began.

(4) In addition to the requirement of paragraph (v)(3) above, when the speed is reduced at rates not exceeding one knot per second, in straight flight with the critical engine inoperative and the power or thrust setting on the remaining engines at the minimum power or thrust level appropriate for the flight condition used to show compliance with a required performance standard, and at the center of gravity position specified in paragraph (b)(4)(i) above, V_{SW}, in each normal configuration with the flaps extended, must exceed $V_{SR_{PWR}}$ by not less than three knots or three percent, whichever is greater.

(5) In slow-down turns with at least 1.5g load factor normal to the flight path and airspeed deceleration rates greater than 2 knots per second, with the flaps and landing gear in any normal position, the stall warning margin must be sufficient to allow the pilot to prevent stalling (as defined in § 25.201(d)) when recovery is initiated not less than one second after the onset of stall warning. Compliance with this requirement must be demonstrated with—

(i) The airplane trimmed for straight flight at a speed of 1.3 V_{SR} with the flaps retracted or 1.3 $V_{SR_{PWR}}$ with the flaps extended; and

(ii) The power or thrust necessary to maintain level flight at 1.3 V_{SR} with the flaps retracted or 1.3 $V_{SR_{PWR}}$ with the flaps extended.

(w) In addition to compliance with § 25.207(a) and paragraphs (u) and (v) above, the following applies: Stall warning must also be provided in each abnormal configuration of the high lift devices likely to be used in flight following system failures (including all configurations covered by Airplane Flight Manual procedures).

(x) In lieu of the speeds given in §§ 25.233(a) and 25.237(a), comply with speeds as follows: 0.2 $V_{SR0_{PWR}}$ in lieu of 0.2 V_{S0}.

(y) In lieu of the definition of V in § 25.735(f)(2), the following apply:

$V=V_{REF}/1.3$

V_{REF}=Airplane steady landing approach speed, in knots, at the maximum design landing weight and in the landing configuration at sea level.

(z) In lieu of compliance with § 25.735(g), the following applies: The minimum speed rating of each main wheel-brake assembly (that is, the initial speed used in the dynamometer tests) may not be more than the V used in the determination of kinetic energy in accordance with paragraph (f) of this section, assuming that the test procedures for wheel-brake assemblies involve a specified rate of deceleration, and, therefore, for the same amount of kinetic energy, the rate of energy absorption (the power absorbing ability of the brake) varies inversely with the initial speed.

(aa) In lieu of the speeds given in the following part 25 requirements, comply with the speeds as follows:

§ 25.773(b)(1)(i), 1.5 V_{SR1}, in lieu of 1.6 V_{S1}.

§ 25.1001(c)(1) and (c)(3), 1.3 V_{SR1}, in lieu of 1.4 V_{S1}.

§ 25.1323(c)(1), 1.23 V_{SR1}, in lieu of 1.3 V_{S1}.

§ 25.1323(c)(2), 1.20 $V_{SR0_{PWR}}$, in lieu of 1.3 V_{S0}.

§ 25.1325(e), 1.20 $V_{SR0_{PWR}}$, in lieu of 1.3 V_{S0}, and 1.7 V_{SR1}, in lieu of 1.8 V_{S1}.

2. Head-up Display Used as a Primary Flight Display

(a) Display Requirements.

(1) The HUD must provide information necessary to enable rapid pilot interpretation of the airplane's flight state and position during all phases of flight. This information shall enable the flightcrew to manually control the airplane and monitor the performance of the automatic flight control system. The HUD display shall enable manual airplane control including guidance, if necessary, during an engine failure during any phase of flight. The monochrome HUD must equivalently perform the intended function of conventional color primary flight instruments and utilize display features that compensate for the lack of color. Operational acceptability of the HUD system for use while manually controlling the airplane shall be demonstrated and evaluated by the FAA. This task-oriented demonstration will evaluate crew workload and pilot compensation for normal, abnormal, and emergency operations, with single and multiple failures not shown to be extremely improbable by the system safety analysis, and is extended to all HUD display formats, unless use of specific formats is prohibited for specific phases of flight.

(2) The current mode of the flight guidance/automatic flight control system shall be clearly annunciated in the HUD, unless it is displayed elsewhere in close proximity to the HUD field of view and shown to be equivalently conspicuous. Likewise, other essential information and alerts that are related to displayed information and may require immediate pilot action must be displayed for instant recognition, either on the HUD or in close proximity to the HUD field of view. Such information, depending on the phase of flight, includes malfunctions of primary data sources, guidance and control, and excessive deviations that require a go-around maneuver.

(3) If a windshear detection system or a traffic alert and collision avoidance system (TCAS) is installed, the guidance will be provided on the HUD. When the ground proximity warning system detects excessive terrain closure, appropriate annunciations are displayed on the HUD. Additional warnings and annunciations that are required to be a part of these systems, and are normally required as part of the approved design to be in the pilot's primary field of view (i.e., the line of vision when looking forward along the flight path), must remain in the pilot's primary field of view when utilizing the HUD for flight information.

(4) Symbols must appear clean-shaped, clear, and explicit. Lines must be narrow, sharp-edged, and without halo or aliasing. Symbols must be stable with no discernible flicker or jitter.

(5) The optical qualities (accommodation, luminance, vergence) of the HUD shall be uniform across the entire field of view. When viewed by both eyes from any off-center position

within the eyebox, non-uniformities shall not produce perceivable differences in binocular view.

(6) For all phases of flight, the HUD must update the positions and motions of primary control symbols with sufficient rates and latencies to support satisfactory manual control performance.

(7) The HUD display must present all information in a clear and unambiguous manner. Display clutter must be minimized. The HUD symbology must not excessively interfere with the pilots' forward view, ability to visually maneuver the airplane, acquire opposing traffic, and see the runway environment. Interference would be considered excessive if it prevents the pilot from seeing flight hazards, such as airborne traffic, terrain, and obstacles, or outside visual references required for safe operation such as approach lights, runway lights, runways, and runway markings. Critical and essential data elements of primary flight displays must not be removed by any declutter function. Changes in the display format and primary flight data arrangement should be minimized to prevent confusion and to enhance the pilots' ability to interpret vital data.

(8) The content, arrangement, and format of the information must be sufficiently compatible with the head down displays to preclude pilot confusion, misinterpretation, or excessive cognitive workload. Immediate transition between the two displays, whether required by navigation duties, failure conditions, unusual airplane attitudes, or other reasons, must not present difficulties in data interpretation or delays/interruptions in the crew's ability to manually control the airplane or to monitor the automatic flight control system.

(9) The HUD display must enable the flightcrew to immediately recognize and perform a safe recovery from unusual airplane attitudes. This capability must be shown in a simulator and on the airplane for all foreseeable modes of upset. However, ''corner conditions'' (i.e., test conditions where more than one attitude parameter is at its extreme value) may be demonstrated in the simulator. Foreseeable modes of upset include—

(i) flightcrew mishandling;

(ii) autopilot failure, as applicable to the MD–17 type design; and

(iii) turbulence/gust encounters.

(b) *Installation Requirements.*

(1) The arrangement of HUD display controls must be visible to and within reach of the pilot from any normal seated position. The position and movement of the controls must not lead to inadvertent operation. The HUD controls must be illuminated to be visible for all normal cockpit lighting conditions, and must not create any objectionable reflections on the HUD or other flight instruments.

(2) The HUD combiner brightness must be controllable to ensure uninterrupted visibility of all displayed information in the presence of dynamically changing background (ambient) lighting conditions. If automatic control of HUD brightness is not provided, it must be shown that a single setting is satisfactory. When the HUD brightness level is changed, the relative luminance of each displayed symbol, character, or data shall vary smoothly. In no case shall any selectable brightness level allow any information to be invisible while other data remains discernible. There shall be no objectionable brightness transients when switching between manual and automatic control. The HUD data shall be visible in lighting conditions from 0 fL to 10,000 fL. If certain lighting conditions prevent the crew from seeing and interpreting HUD data (for example, flying directly toward the sun), accommodation must be provided to permit the crew to make a ready transition to the head down displays.

(3) To the greatest extent practicable, the HUD controls must be integrated with other controls, including the flight director, to minimize the crew workload associated with HUD operation and to ensure flightcrew awareness of engaged flight guidance modes.

(4) The visibility of the HUD and the primary flight information displayed is paramount to the HUD's ability to perform its intended function as a primary flight display. The fundamental requirements for instrument arrangement and visibility specified in §§ 25.1321, 25.773, and 25.777 apply to these devices.

(i) The design eyebox should be laterally and vertically centered around the respective pilot's design eye position, and should be large enough that the minimum monocular field of view is visible at the following minimum displacements from the cockpit design eye position:

Lateral: 1.5 inches left and right
Vertical: 1.0 inches up and down
Longitudinal: 2.0 inches fore and aft

(ii) The HUD installation must accommodate pilots from 5′2″ to 6′3″ tall, seated with seat belts fastened and positioned at the design eye position (ref. § 25.777(c)). Larger eyebox dimensions may be required for meeting operational requirements for use as a full time primary flight display. Operational suitability and compliance with the requirements of the above cited regulations must be demonstrated and evaluated by the FAA. The design eye position must comply with the above cited regulations.

(5) Notwithstanding compliance with the minimum eyebox dimensions given above, the HUD eyebox must be large enough to serve as a primary flight display without inducing adverse effects on pilot vision and fatigue. Use of the HUD system shall not place physiologically burdensome limitations on head position. There must be no adverse physiological effects of long term use of the HUD system, such as fatigue or eye strain.

(c) *System Requirements.*

(1) The HUD system must be shown to perform its intended function as a primary flight display during all phases of flight. The normal operation of the HUD system cannot adversely affect, or be adversely affected by, other airplane systems. Malfunctions of the HUD system that cause loss of all primary flight information, including that displayed on the HUD and head down instruments, shall be extremely improbable.

(2) The classification of the HUD system's failure to display flight information and navigation information, as applicable to the airplane type design, including the potential to display hazardously misleading information, must be assessed according to §§ 25.1309 and 25.1333. All alleviating flightcrew actions that are considered in the HUD safety analysis must be validated during testing for incorporation in the airplane flight manual procedures section or for inclusion in type-specific training. The failure cases discussed below, which consider the entire suite of cockpit displays of each flight parameter, hazardously misleading failures are, by definition, not associated with a suitable warning.

(i) *Attitude.* Display of attitude in the cockpit is a critical function. Loss of all attitude display, including standby attitude, is classified as a catastrophic failure and must be extremely improbable. Loss of primary attitude display for both pilots is classified as a major failure and must be improbable. Display of hazardously misleading roll or pitch attitude simultaneously on the primary attitude displays for both pilots is classified as a catastrophic failure and must be extremely improbable. Display of hazardously misleading roll or pitch attitude on any single primary attitude display is classified as a major failure and must be improbable.

(ii) *Airspeed.* Display of airspeed in the cockpit is a critical function. Loss of all airspeed display, including standby, is classified as a catastrophic failure and must be extremely improbable. Loss of primary airspeed display for both pilots is classified as a major failure and must be improbable. Displaying hazardously misleading airspeed simultaneously on both pilots' displays, coupled with the loss of stall warning or overspeed warning functions, is classified as a catastrophic failure and must be extremely improbable.

(iii) *Barometric Altitude.* Display of altitude in the cockpit is a critical function. Loss of all altitude display, including standby, is classified as a catastrophic failure and must be extremely improbable. Loss of primary altitude display for both pilots is classified as a major failure and must be improbable. Displaying hazardously misleading altitude simultaneously on both pilots' displays is classified as a catastrophic failure and must be extremely improbable.

(iv) *Vertical Speed.* Display of vertical speed in the cockpit is an essential function. Loss of vertical speed display to both pilots is classified as a major failure and must be improbable.

(v) *Slip/Skid Indication.* The slip/skid or side slip indication is an essential function. Loss of this function to both pilots is classified as a major failure and must be improbable. Simultaneously misleading slip/skid or side slip information to both pilots is classified as a major failure and must be improbable.

(vi) *Heading.* Display of stabilized heading in the cockpit is an essential function. Displaying hazardously misleading heading information on both pilots' primary displays is classified as a major failure and must be improbable. Loss of stabilized heading in the cockpit is classified as a major failure and must be improbable. Loss of all heading information in the cockpit is classified as a catastrophic failure and must be extremely improbable.

(vii) *Navigation.* Display of navigation information (excluding heading, airspeed, and clock data) in the cockpit is an essential function. Loss of all navigation information is classified as a major failure and must be improbable. Displaying hazardously misleading navigational or positional information simultaneously on both pilots' displays is classified as a major failure and must be improbable. However, the nonrestorable loss of the combination of all navigation and communication functions is classified as a catastrophic failure and must be extremely improbable.

(viii) *Crew Alerting Displays.* Loss of crew alerting for essential functions is classified as a major failure and must be improbable. Display of hazardously misleading crew alerting messages is classified as a major failure and must be improbable.

(3) The display of hazardously misleading information on more than one primary flight display is classified as a catastrophic failure and must be extremely improbable; therefore, the HUD system software which generates, displays, or affects the generation or display of primary flight information shall be developed to Level A requirements, as specified by RTCA Document DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' or similar processes that provide equivalent product and compliance data. Monitoring software shown to have no ability to generate, display, or affect the generation or display of primary flight information, and which has the capability to command shutdown of the HUD system, shall be developed to no less rigor than that defined for Level C, or criticality as determined by a safety assessment of the HUD system.

(4) The HUD system must monitor the position of the combiner and must not display conformal data that is hazardously aligned due to combiner position, without a warning to alert the crew of the condition.

(5) The HUD system must be shown to comply with the high intensity radiated fields certification requirements of Special Condition 3.

3. Protection from Unwanted Effects of High Intensity Radiated Fields

(a) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

(b) For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

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

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

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

1a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

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

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

Frequency	Field strength (Volts per meter)	
	Peak	Average
10 KHz–100 KHz	30	30
100 KHz–500 KHz	40	30
500 KHz–2 MHz	30	30
2 MHz–30 MHz	190	190
30 MHz–70 MHz	20	20
70 MHz–100 MHz	20	20
100 MHz–200 MHz ...	30	30
200 MHz–400 MHz ...	30	30
400 MHz–700 MHz ...	80	80
700 MHz–1 GHz	690	240
1 GHz–2 GHz	970	70
2 GHz–4 GHz	1570	350
4 GHz–6 GHz	7200	300
6 GHz–8 GHz	130	80
8 GHz–12 GHz	2100	80
12 GHz–18 GHz	500	330
18 GHz–40 GHz	780	20

4. Interaction of Systems and Structures

(a) *General.* Airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, must account for the influence of these systems and their failure conditions in showing compliance with the requirements of subparts C and D of part 25. The following criteria must be used to evaluate the structural performance of airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If these criteria are used for other systems, it may be necessary to adapt the criteria to the specific system.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the systems from all the limit conditions specified in subpart C, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

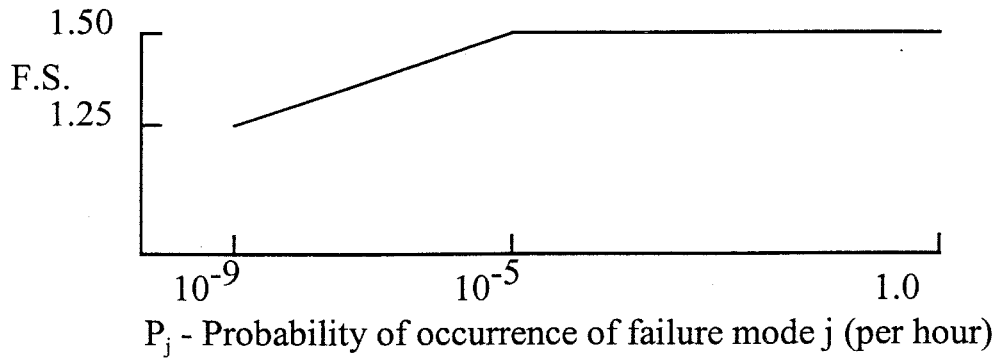
(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined in paragraph (b)(1) above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the systems presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that make it impossible to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) *System in the Failure Condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1–g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure. The factor of safety (F.S.) is defined in Figure 1.

Figure 1
Factor of Safety at Time of Occurrence



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(i) These loads must also be used in the damage tolerance evaluation required by § 25.571(b) if the failure condition is probable.

(ii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C, freedom from aeroelastic instability must be shown to the increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iii) Notwithstanding subparagraph (1) of this paragraph, failures of the system that result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in catastrophic fatigue failure or detrimental deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane in the system failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) Static and residual strength must be determined for loads derived from the following conditions at speeds up to V_c, or the speed limitation prescribed for the remainder of the flight:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust conditions specified in § 25.341, but using the gust velocities for V_c, and in § 25.345.

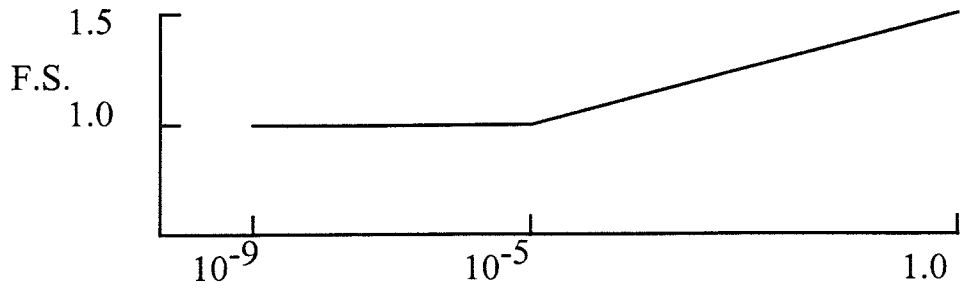
(C) The limit rolling conditions specified § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads specified in subparagraph (2)(i) of this paragraph, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of Safety for Continuation of Flight



Q_j - Probability of being in failure condition j

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$Q_j=(T_j)(P_j)$ where:

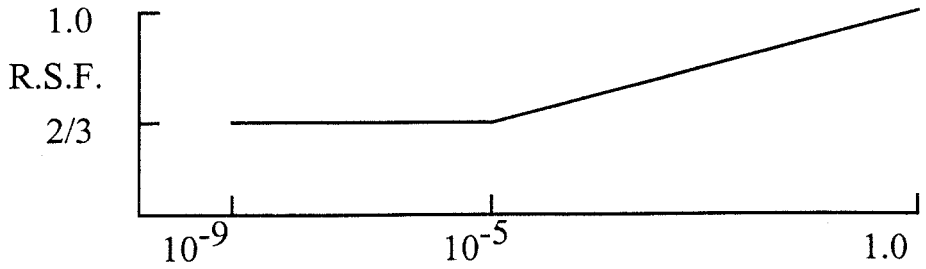
T_j=Average time spent in failure condition j (in hours)

P_j=Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(iii) For residual strength substantiation as defined in § 25.571(b), structures affected by failure of the system and with damage in combination with the system failure, a reduced factor may be applied to the loads of subparagraph (2)(i) of this paragraph. However, the residual strength level must not be less than the 1-g flight load, combined with the loads introduced by the failure condition, plus two-thirds of the load increments of the conditions specified in subparagraph (2)(i) of this paragraph, applied in both positive and negative directions (if appropriate). The residual strength factor (R.S.F.) is defined in Figure 3.

Figure 3
Residual Strength Factor



Q_j- Probability of being in failure condition j

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$Q_j=(Tj)(Pj)$ where:

T_j=Average time spent in failure condition j (in hours)

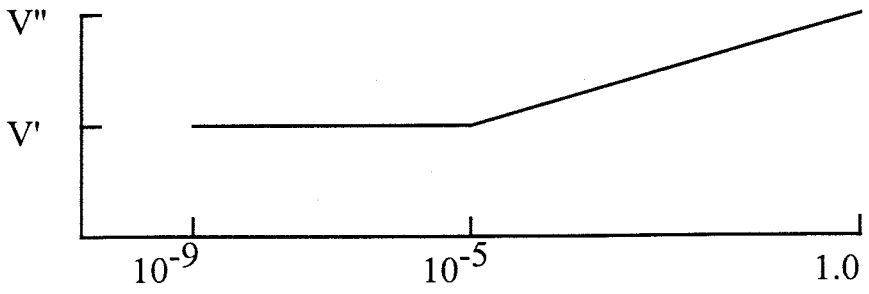
P_j=Probability of occurrence of failure mode j (per Hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a residual strength factor of 1.0 must be used.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to the speeds determined from Figure 4. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 4
Clearance Speed



Qj - Probability of being in failure condition j

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V′=Clearance speed as defined by § 25.629(b)(2).
V″=Clearance speed as defined by § 25.629(b)(1).
Q_j=(Tj)(Pj) where:
T_j=Average time spent in failure condition j (in hours)
P_j=Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 4 above, for any probable system failure condition combined with any damage considered in the evaluation required by § 25.571(b).

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the value prescribed in appendix G to part 25.

(3) Consideration of certain failure conditions may be required by other sections of this part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Warning Considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not shown to be extremely improbable, that degrade the structural capability of the airplane below the level required by part 25 or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to ensure failure detection. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not shown to be extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety below 1.25, as determined by paragraph (c) of this special condition, or flutter clearance speeds below V'', as determined by paragraph (c) of this special condition, must be signaled to the flightcrew during flight.

(e) *Dispatch with Known Failure Conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met for the dispatched condition and for subsequent failures. Operational and flight limitations may be taken into account.

(f) The following definitions are applicable to this special condition:

Structural performance: The capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel and payload limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition are the same as those used in Advisory Circular (AC) 25.1309–1A.

Failure condition: The term failure condition is the same as that used in AC 25.1309–1A; however, this special condition applies only to system failure conditions that affect the structural performance of the airplane (e.g., failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

5. Design Maneuvering Requirements for Fly-by-Wire

(a) *Maximum elevator displacement at V_A.* In lieu of compliance with § 25.331(c)(1) of the FAR; the airplane is assumed to be flying in steady level flight (point A_1, § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397, the cockpit pitching control device is suddenly moved to obtain extreme positive pitching acceleration (nose up). In defining the tail load condition, the response of the airplane must be taken into account. Airplane loads that occur subsequent to the normal acceleration at the center of

gravity exceeding the maximum positive limit maneuvering factor, n, need not be considered.

(b) *Pitch maneuver loads.* In addition to the requirements of § 25.331; it must be established that pitch maneuver loads induced by the system itself (e.g., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are accounted for.

(c) *Roll maneuver loads.* In lieu of compliance with § 25.349(a), the following conditions, speeds, and spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(1) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(2) At V_A, sudden deflection of the cockpit roll control up to the limit is assumed.

(3) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than that obtained in paragraph (2).

(4) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than one third of that obtained in paragraph (2).

(5) It must also be established that roll maneuver loads induced by the system itself (i.e., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(d) *Yaw maneuver loads.* In lieu of compliance with § 25.351, the airplane must be designed for loads resulting from the conditions specified in paragraph (e) below. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces. Physical limitations of the airplane from the cockpit yaw control device to the control surface deflection, such as control stop position, maximum power and displacement rate of the servo controls, or control law limiters, may be taken into account.

(e) *Maneuvering.* At speeds from V_{MC} to V_D, the following maneuvers must be considered. In computing the tail loads, the yawing velocity may be assumed to be zero.

(1) With the airplane in unaccelerated flight at zero yaw, it is assumed that the cockpit yaw control device (pedal) is suddenly displaced (with critical rate) to the maximum deflection, as limited by the stops.

(2) With the cockpit yaw control device (pedal) deflected as specified in paragraph (1) above, it is assumed that the airplane yaws to the resulting side slip angle (beyond the static side slip angle).

(3) With the airplane yawed to the static sideslip angle with the cockpit yaw control device deflected as specified in paragraph (1) above, it is assumed that the cockpit yaw control device is returned to neutral.

6. Limit Engine Torque Loads for Sudden Engine Stoppage

In lieu of showing compliance with § 25.361(b), the following apply:

(a) For turbine engine and auxiliary power unit installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum limit torque load imposed by—

(i) A sudden deceleration due to a malfunction that could result in a temporary loss of power or thrust capability, and could cause a shutdown due to vibrations; and

(ii) The maximum acceleration of the engine and auxiliary power unit.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine or auxiliary power unit stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (a)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the wing and fuselage structure.

7. Flight Characteristic Compliance Determination by Use of the Handling Qualities Rating System (HQRS) for EFCS Failure Cases

(a) In lieu of showing compliance with § 25.672(c), a handling qualities rating system will be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

(1) Satisfactory: Full performance criteria can be met with routine pilot effort and attention.

(2) Adequate: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

(3) Controllable: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope, and/or reconfiguration so that the handling qualities are at least adequate.

(b) Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope. Specifically, within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

8. Static Longitudinal Stability

In lieu of compliance with § 25.173, the airplane must be shown to have suitable static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The HQRS may be used to make this assessment.

9. Static Lateral-Directional Stability

In lieu of compliance with § 25.177, the following applies:

(a) The airplane must be shown to have suitable static lateral directional stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The HQRS may be used to make this assessment.

(b) In straight, steady sideslips, the rudder control movements and forces must be substantially proportional to the angle of sideslip in a stable sense; and the factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder is used or a rudder force of 180 pounds is obtained, the rudder pedal forces may not reverse; and increased rudder deflection must be needed for increased angles of sideslip. Compliance with this paragraph must be demonstrated for all landing gear and flap positions and symmetrical power conditions at speeds from 1.13 V_{SR1}, or 1.18 $V_{SR1_{PWR}}$ for flaps extended configurations, to V_{FE}, V_{LE}, or V_{FC}/ M_{FC}, as appropriate.

10. Control Surface Awareness

In addition to compliance with §§ 25.143, 25.671, and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

11. Steep Approach Air Distance

In lieu of compliance with § 25.125(a) for steep approach landing distances, the following applies:

(a) The horizontal distance necessary to land and to come to a complete stop, including an airborne distance of no less than the greater of 500 feet or the distance resulting from the combination of an aim point on the runway offset 300 feet from the runway threshold to be used in operations plus the demonstrated 3σ touchdown dispersion distance from the touchdown aim point, must be determined (at each weight for temperature, altitude, and wind within the operational limits established by the applicant for the airplane) as follows:

(1) The airplane must be in the landing configuration.

(2) A stabilized approach, with a calibrated airspeed of not less than V_{REF} or V_{MCL}, whichever is greater, must be maintained down to the 50 foot height. V_{REF} may not be less than—

(i) 1.03 V_{SR0};

(ii) 1.20 $V_{SR0_{PWR}}$ with the operative engines at the power or thrust setting for approach at the reference flight path angle;

(iii) The airspeed that provides an angle-of-attack margin to stall for not less than a 20 knot equivalent airspeed vertical gust with all engines operating at the power or thrust setting for approach at the reference flight path angle;

(iv) The airspeed that provides an angle-of-attack margin to stall for not less than a 15 knot equivalent airspeed vertical gust with the critical engine inoperative at the power or thrust setting for approach at the reference flight path angle; and

(v) A speed that provides the maneuvering capability specified in paragraph (k) of Special Condition 1.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop, or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

12. Landing Distances for Special Approaches to Short Field Landings

(a) In lieu of compliance with § 25.125(a), the following applies: The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, wind, temperature, and runway slope within the operational limits established for the airplane) as follows:

(1) The airplane must be in the landing configuration.

(2) A stabilized approach, with a calibrated airspeed of not less than V_{REF} or V_{MCL}, whichever is greater, must be maintained down to the 50 foot height. V_{REF} may not be less than—

(i) 1.03 V_{SR0};

(ii) 1.20 $V_{SR0_{PWR}}$ with the operative engines at the power or thrust setting for approach at the reference flight path angle;

(iii) The airspeed that provides an angle-of-attack margin to stall for not less than a 20 knot equivalent airspeed vertical gust with all engines operating at the power or thrust setting for approach at the reference flight path angle;

(iv) The airspeed that provides an angle-of-attack margin to stall for not less than a 15 knot equivalent airspeed vertical gust with the critical engine inoperative at the power or thrust setting for approach at the reference flight path angle; and

(v) A speed that provides the maneuvering capability specified in paragraph (k) of Special Condition 1.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop, or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(b) In lieu of compliance with § 25.125(b), the following applies: For land planes, the landing distance on land must be determined on level, smooth, dry and wet, hard-surfaced runways. In addition—

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means—

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(4) The average touchdown rate of descent must not exceed 4 feet per second and the approach flight path angle must be no steeper than −3 degrees for a normal approach.

(c) Procedures must be established by the applicant for use in service that are consistent with those used to establish the performance data under this special condition. These procedures must be able to be consistently executed in service by crews of average skill, and must include, as applicable, speed additives for turbulence and gusts for approaches with all engines operating and with an engine failure on final approach, and the use of thrust reversers on all operative engines during the landing rollout.

(d) The procedures and performance data established under this special condition must be furnished in the Airplane Flight Manual.

13. Thrust for Landing Climb

In lieu of compliance with § 25.119(a), the following applies: The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls to the go-around power or thrust setting from the thrust level necessary to maintain a stabilized approach at a flight path angle two degrees steeper than the desired flight path angle.

Issued in Renton, WA on November 17, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30891 Filed 11–29–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–87–AD; Amendment 39–11434; AD 99–24–10]

RIN 2120–AA64

Airworthiness Directives; Precise Flight, Inc. Model SVS III Standby Vacuum Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all aircraft equipped with Precise Flight, Inc. Model SVS III standby vacuum systems installed in accordance with the applicable supplemental type certificate (STC) or through field approval. This AD requires incorporating revised operating limitations for the affected standby vacuum systems into the airplane flight manual (AFM), and repetitively inspecting the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.). This AD also requires immediately correcting any discrepancy found and conducting a function test of the vacuum system after the inspections. This AD is the result of reports of shuttle valve failure and standby vacuum system malfunction on aircraft. The actions specified by this AD are intended to detect and correct problems with the standby vacuum system before failure or malfunction and to provide operating procedures for the pilot regarding the use and limitations of this system.

DATES: Effective January 14, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701; telephone: (800) 547–2558. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–87–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Lundy, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 227–2260; facsimile: (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all aircraft equipped with Precise Flight, Inc. Model SVC III standby vacuum systems installed in accordance with the applicable supplemental type certificate (STC) or through field approval was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 7, 1999 (64 FR 36618). The NPRM proposed to require incorporating revised operating limitations for the affected standby vacuum systems into the airplane flight manual (AFM), and repetitively inspecting the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.). The NPRM also proposed to require immediately correcting any discrepancy found and conducting a function test of the vacuum system after each inspection.

The NPRM was the result of reports of shuttle valve failure and standby vacuum system malfunction on aircraft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The compliance times of this AD are presented in calendar time. Although malfunction or failure of the standby vacuum systems is only unsafe while the aircraft is in flight, the condition is not a direct result of repetitive aircraft operation. The unsafe condition could exist on a standby vacuum system installed on an aircraft with only 50 hours time-in-service (TIS), but may not develop on another standby vacuum system installed on an aircraft until 1,000 hours TIS. The inspection compliance times are utilized to coincide with annual inspections so as to allow the owner/operator of the aircraft to have the required action accomplished at a time when he/she has already scheduled maintenance activities.

Cost Impact

The FAA estimates that 10,000 standby vacuum systems will be affected by this AD, that it will take approximately 3 workhours per vacuum system to accomplish the actions, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,800,000, or $180 per airplane.

These figures only take into account the costs of the initial inspection and initial functional test of the standby vacuum systems; subsequent inspections and functional tests and any corrective actions are not included in the cost impact. The FAA has no way of determining the number of repetitive inspections and functional tests each airplane owner/operator will incur over the life of an airplane incorporating one of the affected standby vacuum systems. The FAA also has no way of determining the number of standby vacuum systems that will require corrective action based on the inspection results.

Regulatory Impact

This rule does not have Federalism implications as defined in Executive Order No. 13132. This means it does 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 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) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–24–10 Precise Flight, Inc.: Amendment 39–11434; Docket No. 98–CE–87–AD.

Applicability: Model SVS III standby vacuum systems, installed on, but not limited to, the aircraft listed in the following chart. These systems can be installed either in accordance with the applicable supplemental type certificate (STC) or through field approval:

Affected STC	Make and model airplanes
SA2160NM	Raytheon Beech Models 23, A23, A23A, A23–19, 19A, B19, B19A, A23–24, B23, C23, A24, A24R, B24R, C24R, 35, A35, B35, C35, D35, E35, F35, G35, 35R, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, B36TC, 4S (YT–34), A45 (T–34A, B–45), D45(T–34B), and 77 Series.
SA2161NM	Raytheon Beech Model V35B.
SA2162NM	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, A150L, 150M, 152, A152, A150K, A150M, 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAFT–41A), 172G, 172H (USAFT–41A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 175, 175A, 175B, 175C, P172D, R172E (USAFT–41B, USAFT41–3, and USAFT–41D), R172F (USAFT–41D and USAFT–41C), R172G (USAFT–41D), R172H (USAFT–41D), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182RG, T182, T182RG, T182R, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188B, T188C, 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D. TP206E, U206–A, U206–B, U206–C, U206–D, U206–E, U206–F, U206G, TU206–A, TU206–B, TU206–C, TU206–D, TU206–E, TU206–F, TU206–G, 207, 207A, T207, T207A, 210, 210A, 210B, 210C, 210D, 210E, 210F, 210–5 (205), 210–5A (205A), T210F, 210G, T–210G, 210H, T–210H, 210J, 205P, T–210J, 210K, T–210K, T210L, 210L, 210M, T210M, 210N, P210N, T210N, 205T, 210R, P210R, 205U, T210R, 210–5, 210–5A, 305A (USAF 0–1A), 305C (USAF 0–1E), 305D (USAF 0–1F), 305F, 305B (USAF T0–1D), 305E (0–1D or 0–1F), and 321 (Navy 0E–2).
SA2163NM	Cessna Model U206G.
SA2164NM	Cessna Model 180Q.
SA2166NM	Cessna Model 177.
SA2167NM	The New Piper Aircraft, Inc. (Piper) Models L–14, PA–12, PA–12S, PA–14, PA–15, PA–16, PA–16S, PA–17, PA–18, PA–18A, PA–18S, PA–18–105 (Special), PA–18S–105 (SP), PA–18–125 (Army L–21A), PA–18AS–125, PA–18S–125, PA–18–135, PA–18A–135, PA–18AS–135, PA–18S–135, PA–18–150, PA–18A–150, PA–18AS–150, PA–18S–150, PA–19 (Army L–18C), PA–19S, PA–20, PA–20S, PA–20–115, PA–20S–115, PA–20–135, PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–25, PA–25–235, PA–25–260, PA–32–260, PA–32RT–300, PA–32RT–301T, PA–32–300, PA–32RT–300T, PA–32–301, PA–32S–300, PA–32R–301, PA–32–301T, PA–32R–300, PA–32R–301T, PA–28–140, PA–28–141, PA–28–150, PA–28–151, PA–28–160, PA–28S–160, PA–28–180, PA–28R–180, PA–28S–180, PA–28–235, PA–28S–235, PA–28–181, PA–28–161, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28–236, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–36–285, PA–36–300, PA–36–375, PA–38–112, and PA–46–310P.
SA2168NM	Mooney Models M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20M, and M22.

Affected STC	Make and model airplanes
SA2683NM	Aerocar, Inc. Model I, Aerodifusion, S.L. Model Jodel D–1190S, Aeromere, S.A. Model Falco F.8.L., Aeronautica Macchi S.P.A. Models AL60, AL60–B, AL60–F5, and AL60–C5, Aeronautica Macchi & Aerfer Model AM–3, Aeronca Inc. Models 15AC and S15AC, Aerospatiale Model TB20 Trinidad, Arctic Aircraft Co., Inc. Models S–1A, S–1A–65F, S–1A–85F, S–1A–90F, S–1B1 (Army L–67 XL–6), and S–1B2, Avions Mudry et Cie Model CAP 10B, American Champion Models (Bellanca, Aeronca) 7AC, 7ACA, S7AC (L–16A), 7BCM (L–16B), 7CCM, 7DC, S7DC, 7EC, S7EC, 7ECA, 7FC, 7GC, 7GCA, 7GCCA, 7GCB, 7GCBA, 7GCBC, 7HC, 7JC, 7KC, 7KCAB, 8KCAB, 8GCBC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC, Bellanca Aircraft Corporation, Models 14–9, 14–9L, 14–12F–3, 14–13, 14–13–2, 14–13–3, 14–13–3W, 14–19, 14–19–2, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, and 17–31ATC, Biemond, C. Model Teal CB1, Board, G.R. Models Columbia XJL–1 and Bolkow Jr., Clark Aircraft, Inc. Models 12 and 1000, Falcon Aircraft Corporation Model F–1, Flug und Fahrzeugwerke AG Model AS 202/15 ''Brand,'' Found Brothers Model FBA–2C, Fuji Heavy Industries Models FA–200–160, FA–200–180, and FA–200–180AO, Funk Aircraft Model Funk C, Kearns, Edward Scott (Garcia, Henry S.) Model (Emigh) Trojan A–2, Swift Museum Foundation, Inc. Model (Globe) GC–1A, GC–1B, Goodyear Aircraft Model GA–22A, Great Lakes Aircraft Model 2T–1A–1 and 2T–1A–2, Grumman American Models G–164, G–164A, G–164B, AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, and AA–5B, Commander Aircraft (Gulfstream) Models 112, (112A, 112B, 112TC, 112TCA, 114, and 114A, Helio Enterprises Models H–250, H–295 (USAF U–10D), H–391 (USAF YL–24), H–395 (SAF L–28A), H–395A, HT–295, and H–700, Prop–Jets, Inc. (Interceptor Corp., Aero Commander, Meyers) Models 200, 200A, 200B, 200C, and 200D, C. Itoh Aircraft Maintenance & Engineering Co. LTD. Model N–62, Jamieson Corporation Model J–2–L1B, Jodel, Avion Models D–140–B, DR–1050, D–1190, and 150, Lake Models C–1, C–2–IV, LA–4, LA–4–200, and LA–4–250, Luscombe Aircraft Corp. Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F, and 11A, Maule Aerospace Technology Corp. Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–180C, M–4–180S, M–4–210, M–4–201C, M–4–210S, M–4–210T, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC, M–T–220C, M–5–235, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–180, MX–7–235, Messerschmitt-Bolkow Models BO–209–150 FV&RV, BO209–160 FV&RV, BO–209, and 150OFF, Nardi S.A. Model FN–333, Jimmie Thompson Enterprise (Navion Rangemaster Aircraft Corporation) Models Navion (L–17A), Navion A (L–17B, L–17C), Navion B, D, E, F, G, and H, White International Ltd. Models (Pitts) S–1S, S–1T, S–2, and S–2A, Procaer S.P.A. Models F 15/B, F 15/C, and F 15/E, Gulfstream Aerospace Corporation (Rockwell) Models 111, 112, 112B, 112TC, 112TCA, and 114, Aermacchi S.p.A Models S.205, S.205–18F, S.205–18/R, S.205–20/F, S.205–20/R, S.205–22/R, S.208, S.208A, F.260, and F.260B, Socata—Groupe Aerospatiale Models Rallye Series MS880B, MS885, MS892–A–150, MS892E–150, MS893A, MS893E, MS894A, MS894E, TB9, TB10, and TB21, Stinson Models 108–2 and108–3, Sud Aviation Models Gardan GY.80–1500, GY.80–160, and GY.80–180, Taylorcraft Aircraft Company Models F19, F21, and F21A, Univair Aircraft Corporation (Forney) Models F–1, F–1A, (ERCO) E, 415D, (ALON) A–2, A20a, (Mooney) M10, (Mooney) (ERCO) 415–C, and 415–CD, Augustair, Inc. (Varga Aircraft Corporation) Models 2150, 2150A, and 2180.

Note 1: The above list includes the aircraft where the Precise Flight, Inc. Model SVS III standby vacuum systems could be installed through STC. This list is not meant to be exhaustive nor does it include all aircraft with the systems installed through field approval.

Note 2: This AD applies to any aircraft with a standby vacuum system installed that is 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 aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished. To detect and correct problems with the standby vacuum system before failure or malfunction and to provide operating procedures for the pilot regarding the use and limitations of this system, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, accomplish whichever (paragraph (a)(1) or (a)(2) below) of the following that applies:

(1) For airplanes with the affected standby vacuum system installed in accordance with the applicable STC, incorporate the applicable Precise Flight, Inc. Airplane Flight Manual Supplement (AFMS) for Standby Vacuum Systems (each document corresponds with the applicable STC as presented in the chart below) into the Airplane Flight Manual (AFM), including installing all placards specified in these AFMS's; or insert a copy of the Appendix to this AD into the AFM, including installing all placards specified in the Appendix:

Applicable STC	AFMS date
SA2160NM	May 7, 1998.
SA2161NM	August 6, 1998.
SA2162NM	August 6, 1998.
SA2163NM	August 6, 1998.
SA2164NM	August 6, 1998.
SA2166M	August 6, 1998.
SA2167NM	August 6, 1998.
SA2168NM	August 6, 1998.
SA2683NM	August 6, 1998; or

(2) For airplanes with the affected standby vacuum system installed through field approval, insert the Appendix to this AD into the AFM, including installing all placards specified in the Appendix.

(b) Within the next 12 calendar months after the effective date of this AD, and thereafter at intervals specified in the following paragraphs, inspect the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.). Accomplish these inspections in accordance with Precise Flight Instructions for Continued Airworthiness (Section 3.3 of Installation Report No. 50050), Revision 25, dated August 26, 1996.

(1) Reinspect the push-pull cable, vacuum lines, and saddle fittings at intervals not to exceed 12 calendar months; and

(2) Reinspect the shuttle valve at intervals not to exceed 24 calendar months.

(c) Prior to further flight after each inspection required by paragraph (b) of this AD, accomplish the following in accordance with Precise Flight Instructions for Continued Airworthiness (Section 3.3 of Installation Report No. 50050), Revision 25, dated August 26, 1996.

(1) Correct any discrepancy found; and

(2) Conduct a function test of the vacuum system and assure proper function.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW, Renton,

Washington 98055–4065. The request shall be forwarded through an appropriate FAA 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.

(f) The inspections, corrections, and test required by this AD shall be done in accordance with Precise Flight Instructions for Continued Airworthiness (Section 3.3 of Installation Report No. 50050), Revision 25, dated August 26, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on January 14, 2000.

Appendix to Docket No. 98–CE–87–AD—Precise Flight, Inc. AFMS for Standby Vacuum System

System Description

A Precise Flight Standby Vacuum System may be installed to provide a temporary vacuum system in the event of a primary vacuum failure. The Standby Vacuum System operates on the differential between the intake manifold and ambient air pressure and is directed through a shuttle valve system to drive your flight instruments.

I. Operating Limitations

A. Instructions

1. The Standby Vacuum System is for emergency or standby use only and not for dispatch purposes.

2. Vacuum powered and/or Vacuum gyro directed autopilot operation may be unreliable when the Standby Vacuum System is the sole source of vacuum. Vacuum powered or vacuum gyro directed autopilot should be OFF when operating with a failed primary vacuum system.

3. The Supplemental Vacuum System is not designed to operate pneumatic de-ice systems. DO NOT operate a pneumatic de-ice system when operating with a failed primary vacuum system.

4. Above 10,000 ft. pressure altitude, engine power settings may have to be significantly reduced to provide adequate vacuum power for proper gyro instrument operation.

5. The following placards are required to be in full view of pilot:

B. Placards

Placard to be located on the push/pull control cable.

Placard to be located around the LED for the pump inop warning light.

Placard to be placed in front and in full view of the pilot.

> STANDBY VACUUM SYSTEM EQUIPPED: FOR OPERATING INSTRUCTIONS AND LIMITATIONS SEE SUPPLEMENT IN OWNERS MANUAL OR PILOTS OPERATING HANDBOOK

One of the following placards must be placed in full view of the pilot near the instrument vacuum indicator after appropriate entries have been made.

APPROXIMATE STANDBY VACUUM AVAILABLE—ALTITUDE—POWER CHART FOR AIRCRAFT WITH CONSTANT SPEED PROPELLER—MAXIMUM CONTINUOUS RPM

Press alt. (ft.)	RPM	Man. pressure	SVS Vacuum in. hg min.
2000	Max. Cont.		
4000	Max. Cont.		
6000	Max. Cont.		
8000	Max. Cont.		
10,000	Max. Cont.		

APPROXIMATE STANDBY VACUUM AVAILABLE—ALTITUDE—POWER CHART FOR AIRCRAFT WITH A FIXED PITCH PROPELLER

Press alt. (ft.)	RPM	SVS Vacuum in. hg min.
2000		
4000		
6000		
8000		
10,000		

II. Operating Procedures

A. Normal Procedures

1. Ground Check

a. Cycle the Standby Vacuum Control Knob OUT—ON—and return Control Knob IN—OFF—position.

2. Before Takeoff

a. Idle Engine at low speed, momentarily pull the standby vacuum knob out—ON—and check vacuum gauge. Normally, the vacuum reading will be slightly higher. After checking system push Standby Vacuum System knob IN—OFF—. Check that vacuum gauge has returned to the previous reading.

3. Enroute

a. Regularly check vacuum gauge and monitor warning light for proper vacuum system operation.

B. Emergency Procedures

1. Primary Vacuum Failure Warning Light Illuminates

a. Pull the Standby Vacuum System knob OUT—ON—and adjust throttle setting as required to maintain adequate vacuum for the primary instruments—Suction Gauge Reading in the Green Arc—If necessary descend to a lower altitude to obtain a larger differential between manifold and ambient pressure. Vacuum power must be closely monitored by checking the vacuum gauge frequently.

b. The SVS is not designed for continued IFR flight. Immediate steps should be taken to return to VFR conditions or to land. If this is not possible, IFR flight should be continued only as long as necessary to return to VFR conditions or land the airplane.

WARNING: FAILURE OF THE VACUUM SYSTEM STILL CONSTITUTES AN EMERGENCY SITUATION REGARDLESS OF THE INSTALLATION OF THE SVS. IT MAY NOT BE POSSIBLE TO MAINTAIN A SAFE ALTITUDE AND MAKE USE OF THE SVS. IN SUCH A SITUATION THE AIRPLANE MUST BE FLOWN USING NON-VACUUM POWERED INSTRUMENTS.

c. If descent is impractical:

- Periodically and temporarily reduce power as required to provide adequate vacuum to the aircraft primary instruments.
- Reapply power as required, while comparing vacuum driven gyros against the Turn and Bank Indicator, Turn Coordinator, VSI and/or other flight instruments.
- When an obvious discrepancy is noted between the vacuum driven instruments and other flight instrumentation. Periodically and temporarily reduce power as required to provide adequate vacuum to the aircraft primary instruments.

III. Performance

No Change.

Issued in Kansas City, Missouri, on November 15, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30519 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–46–AD; Amendment 39–11441; AD 99–24–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires removal of cable guards in the lateral control system and replacement with new, improved cable guards. This amendment is prompted by reports of high control wheel forces and restricted control wheel movement. The actions specified by this AD are intended to prevent deterioration of cable guards in the lateral control system, which could result in a jam of the lateral control system and consequent reduced lateral controllability of the airplane.

DATES: Effective January 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38383). That action proposed to require removal of cable guards in the lateral control system and replacement with new, improved cable guards.

Comments

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise Cost Impact Information

One commenter requests that the cost impact information be revised to include the work hours required to gain access and close up, and to test the lateral flight control system after the replacement of the cable guards. The commenter states that cost impact information provided in the proposed rule estimates 10 work hours per airplane is necessary for the replacement, whereas the Boeing service bulletin estimates 31.5 work hours per airplane.

The FAA does not concur with the commenter's request. The cost impact information, below, describes only the ''direct'' costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 10 in the cost impact information, below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. No change to the final rule is necessary in this regard.

Request To Extend the Compliance Time

One commenter requests that the compliance time for the replacement of the cable guards be extended from 2 years to 4 years. The commenter states that it has replaced deteriorated cable guards found during various inspection and maintenance tasks in the area, but that it is unaware of any cases where deterioration of the cable guards has led to binding of the control cables. Due to the access required for the replacement, the commenter states that a longer compliance time would better accommodate its work schedule.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, as well as two reports of cable binding due to cable guard deterioration in service, the FAA has determined that 2 years represents an appropriate interval of time allowable wherein the modifications can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Consider Repetitive Inspections in Lieu of Replacement

One commenter requests that the FAA consider allowing repetitive inspections of the cable guards in lieu of the required replacement. The commenter states that repetitive inspections and on-condition replacement of cable guards, as well as the elimination of existing cable guards from spares, provides an acceptable level of safety. The commenter also notes that, on freighters, the lateral control cables are exposed and can be easily inspected.

The FAA does not concur with the commenter's request. The FAA has determined that the eventual replacement of all existing cable guards is required because it is not known how long the cable guards will remain intact after exposure to airplane grease. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 956 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 219 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $11,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,540,400, or $11,600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–24–16 Boeing: Amendment 39–11441. Docket 99–NM–46–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2364, dated September 3, 1998, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent deterioration of cable guards in the lateral control system, which could result in a jam of the lateral control system and consequent reduced lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 2 years after the effective date of this AD, remove existing cable guards in the lateral control system and replace with new, improved cable guards in accordance with Boeing Alert Service Bulletin 747–27A2364, dated September 3, 1998.

Note 2: Removal of existing cable guards and replacement with new, improved cable guards between Stations 300 and 420 accomplished prior to the effective date of this AD in accordance with Boeing Service Letter 747–SL–27–134, dated December 23, 1993, is considered acceptable for compliance with paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install a cable guard with a part number and dash number listed in Table 1 of this AD, on any airplane.

TABLE 1.—CABLE GUARDS NOT TO BE INSTALLED

Part No.	Part dash No.
65B82025	65B82025–2 through 65B82025–4 inclusive 65B82025–9 through 65B82025–10 inclusive 65B82025–17 through 65B82025–22 inclusive 65B82025–25 65B82025–27 through 65B82025–46 inclusive 65B82025–48 through 65B82025–57 inclusive
65B82204	65B82204–9 through 65B82204–10 inclusive 65B82204–18 through 65B82204–22 inclusive 65B82204–25 65B82204–31 through 65B82204–40 inclusive 65B82204–43 through 65B82204–44 inclusive 65B82204–61 through 65B82204–76 inclusive 65B82204–81 through 65B82204–86 inclusive
65B82443	65B82443–9 through 65B82443–10 inclusive 65B82443–12 65B82443–14 through 65B82443–18 inclusive 65B82443–21 through 65B82443–22 inclusive 65B82443–26 through 65B82443–31 inclusive

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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

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

Incorporation by Reference

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin 747–27A2364, dated September 3, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 4, 2000.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30629 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–89–AD; Amendment 39–11435; AD 99–24–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –300 series airplanes, that requires modification of the slide/raft evacuation system by installing a girt reinforcement chafing patch. This amendment is prompted by reports of holes in the inflatable area of the slide/raft evacuation system due to chafing against the installation support bracket. The actions specified by this AD are intended to prevent holes in the inflatable portion of the slide/raft evacuation system, which could result in the slide/raft being less effective as a raft during an emergency water landing.

DATES: Effective January 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Air Cruisers Company, Technical Publications Department, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –300 series airplanes was published in the **Federal Register** on July 20, 1999 (64 FR 38846). That action proposed to require modification of the slide/raft evacuation system by installing a girt reinforcement chafing patch.

Comments

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

Support for the Proposal

Two commenters support the proposed rule. One commenter states that it is not affected by the proposed rule because its airplanes are not equipped with the slide/rafts referenced in the proposal. Another commenter states that it is in the process of accomplishing the actions specified by Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999.

Request To Revise the Unsafe Condition

One commenter suggests that the unsafe condition cited in the notice of proposed rulemaking (NPRM) be revised to state that holes caused by the slide/raft chafing on the harness bracket could result in the slide/raft being ''less effective'' as a raft during an emergency water landing rather than ''unusable.'' The commenter contends that the escape slide/rafts are designed with two independent inflation chambers. Each independent chamber is capable of supporting the rated occupancy of the slide/raft, and there have been no reports of holes in both chambers.

The FAA concurs with the commenter's statement that the holes caused by the slide/raft chafing against the bracket could result in the slide/raft being ''less effective'' rather than ''unusable.'' Based on reports that only one chamber of the slide/raft would be affected, the FAA has determined that this change is appropriate and has changed the final rule accordingly.

Request To Add an Inspection Requirement

One commenter states that an immediate inspection of the slide/rafts is required to ensure that any slide/raft already chafed ''to the point of failure'' be repaired immediately.

The FAA does not concur that an immediate inspection of the slide/rafts is necessary. To date, the FAA has received only two reports of chafing/scuffing of the slide/rafts that have resulted in a small hole being worn through one of the two inflatable chambers. The FAA adds that such a condition would result in a slow leak that would only affect the rafting use of the escape slide/raft. In light of this, the FAA has determined that accomplishment of paragraph (a) of this AD to require modification of the slide/raft within 36 months after the effective date of this AD is adequate in ensuring operational safety. No change to the final rule is necessary in this regard.

Request To Revise Paragraph (a) of the Proposed Rule

One commenter questions the effectiveness of the proposed repair (modification) action of adding a chafing patch, as specified by paragraph (a) of the proposed AD, since that patch may cause wear of another component, or simply delay the onset of a hole from wear. The commenter states that ''a corrective action to eliminate the interference and subsequent repetitive abrasion would seem more appropriate in order to solve this problem.''

The FAA does not concur with the commenter's request to revise the action (modification) required by paragraph (a) of the proposed AD. Although the FAA acknowledges the concerns of the commenter regarding corrective action to eliminate damage to the slide/raft, the FAA has evaluated this modification for

its wear resistance and determined that modification of the slide/raft, in accordance with the requirements of paragraph (a) of the AD, is adequate to ensure the continued safety of the affected fleet.

Request To Extend the Compliance Time in Paragraph (b)

One commenter requests that the compliance time in paragraph (b) of the proposed AD be extended from ''As of the effective date of this AD'' to ''As of 30 days after the effective date of this AD.'' The commenter contends that the compliance time should be extended to allow additional time for obtaining the slide/raft spares and to ensure that sufficient stock levels of those parts can be maintained.

The FAA does not concur with the commenter's request to extend the compliance time in paragraph (b) of the proposed AD to 30 days. The FAA considers that the specified compliance time allows sufficient time for obtaining spares and maintaining stock levels. Further, the intent of that paragraph is to prohibit the installation of spares that have been determined to create an unsafe condition, and to simply require the use of one part rather than another. In general, once an unsafe condition has been determined to exist, it is the FAA's policy not to allow that condition to be introduced into the fleet. When it is determined that approved parts are immediately available to operators, the installation of unsafe parts after the effective date of the AD is prohibited. Further, the FAA considers that the period of time between publication of the final rule AD in the **Federal Register** and the effective date of the final rule (usually 30 days) is sufficient to provide operators with an opportunity to determine their immediate need for modified spares and to obtain them. However, in individual cases where this is not possible, every AD contains a provision that allows an operator to obtain an extension of compliance time based upon a specific showing of need. The FAA considers that this policy does increase safety and does not impose undue burdens on operators. Therefore, no change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 445 Model 757–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $145 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $137,950, or $445 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–24–11 Boeing: Amendment 39–11435. Docket 99–NM–89–AD.

Applicability: Model 757–200 and –300 series airplanes, equipped with Air Cruisers Company slide/raft evacuation systems having part and serial numbers identified in Table 1 of this AD; certificated in any category.

TABLE 1.—AIR CRUISERS COMPANY SLIDE/RAFT EVACUATION SYSTEMS SUBJECT TO THIS AD

Name	Part No.	Serial No.
Air Cruisers	D30657–( )	Prior to 1132.
Air Cruisers	D30658–( )	Prior to 0859.
Air Cruisers	D30659–( )	Prior to 0860.
Air Cruisers	61570–( )	Prior to 0321.
Air Cruisers	61475–( )	Prior to 0137.
Air Cruisers	61475–( )	0138, 0139.

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 holes in the inflatable portion of the slide/raft evacuation system, which could result in the slide/raft being less effective as a raft during an emergency water landing, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD, modify the slide/raft evacuation system in accordance with Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999.

Spares

(b) As of the effective date of this AD, no person shall install a slide/raft evacuation system having a part number and serial number identified in Table 1 of this AD, on any airplane, unless that slide/raft evacuation system has been modified in accordance with Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The modification shall be done in accordance with Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Company, Technical Publications Department, P.O. Box 180, Belmar, New Jersey 07719–0180. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 4, 2000.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30628 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–122–AD; Amendment 39–11436; AD 99–24–12]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that currently requires revision of the Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add maintenance procedures for operating the airplane under certain conditions. That AD also requires the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps is prohibited under certain conditions. This amendment adds a terminating modification for the requirements of the existing AD. This amendment is prompted by reports of internal electrical failures in the fuel boost pump of the wing fuel tanks that could result in either electrical arcing or localized overheating. The actions specified by this AD are intended to prevent such electrical arcing or overheating, which could breech the protective housing of the fuel boost pump and expose it to fuel vapors and fumes, and consequent potential fire or explosion in the wing fuel tank.

DATES: Effective January 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–08–09, amendment 39–10492 (63 FR 20062, April 23, 1998), which is applicable to certain Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on July 14, 1999 (64 FR 37920). The action proposed to supersede AD 98–08–09 to continue to require revision of the Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add maintenance procedures for operating the airplane with an inoperative fuel boost pump assembly or with an inoperative flight station fuel quantity indicating system. The action also proposed to continue to require the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing fuel tank is prohibited. It also proposed to require installation of a modified fuel boost pump assembly, which would terminate the requirements of the existing AD.

Comments

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

Support for the Proposal

One commenter supports the proposed rule.

Request to Revise Note 2

One commenter requests that the FAA revise Note 2 [following paragraph (c) of the proposed AD] to read ''**Note 2**: Modification of the fuel boost pump assemblies, prior to the effective date of this AD, in accordance with Lockheed Service Bulletin 093–28–093, dated

January 15, 1999, or Revision 1, dated February 8, 1999, is considered acceptable for compliance with paragraph (c) of this AD.'' The commenter contends that accomplishment of the modification required by Lockheed Service Bulletin 093–28–093, Revision 1, would be an acceptable means of compliance with paragraph (c) of the proposed AD, irrespective of whether the modification was accomplished prior to, or within 18 months after the effective date of the proposed AD.

The FAA does not concur with the commenter's request. Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' The FAA's intent is that operators accomplish the requirements of this AD after the effective date of this AD in accordance with the latest FAA-approved revision of Lockheed Service Bulletin 093–28–093 (*i.e.*, Revision 1, dated February 8, 1999). **Note 2** gives credit to operators that accomplished the modification prior to the effective date of this AD in accordance with the original version of the service bulletin. Therefore, no change to the final rule is necessary.

Explanation of Change Made to Proposal

Since issuance of the proposed rule, the FAA has become aware that Lockheed Service Bulletin 093–28–093, dated January 15, 1999, which was referenced in Note 2 of the proposed AD, was never released by the manufacturer. Therefore, the FAA has deleted **Note 2** from the final rule and renumbered the subsequent notes accordingly.

The FAA also has added paragraph (d)(2) to the final rule to inform operators that alternative methods of compliance, approved previously in accordance with AD 98–08–09, amendment 39–10492, are approved as alternative methods of compliance for this final rule.

Conclusion

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

Cost Impact

There are approximately 235 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 98–08–09 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $7,020, or $60 per airplane.

The modification that is required in this AD action will take approximately 8 work hours (1 hour per fuel pump assembly) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $18,880 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $2,265,120, or $19,360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10492 (63 FR 20062, April 23, 1998), and by adding a new airworthiness directive (AD), amendment 39–11436, to read as follows:

99–24–12 Lockheed Aeronautical Systems Company: Amendment 39–11436. Docket 99–NM–122–AD. Supersedes AD 98–08–09, Amendment 39–10492.

Applicability: Model L–1011–385–1, -385–1–14, -385–1–15, and -385–3 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a potential fire or explosion in the wing fuel tank, accomplish the following:

Restatement of Requirements of AD 98–08–09, Amendment 39–10492 AFM Revision

(a) Within 50 flight hours or 10 days after April 28, 1998 (the effective date of AD 98–08–09, amendment 39–10492), whichever occurs first, revise the Limitations and Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

Add to Limitations Section:

''FUEL SYSTEM

Fuel Pumps

Do not operate the fuel boost pumps of the affected wing tank in the air or on the ground when fuel quantities are less than the following:

Wing tanks 1 and 3: Less than 1,200 lbs (545 kg) in each tank.

Wing tanks 2L and 2R: Less than 1,200 lbs (545 kg) total in the two compartments (inboard and outboard) of each tank.
These quantities should be considered unusable fuel for the purposes of fuel management.

When operating with a fuel boost pump assembly inoperative per Master Minimum Equipment List (MMEL) item number 28–24–01, add the following maintenance procedure:

Pull and collar the affected circuit breaker.

When operating with an inoperative flight station fuel quantity indicating system per MMEL item 28–41–00, do not operate the fuel boost pumps of the affected wing tank in the air or on the ground when fuel quantities are less than the following:

Wing tanks 1 and 3: Less than 7,000 lbs (3,175 kg) in the affected tank.
Wing tanks 2L and 2R: Less than 1,200 lbs (545 kg) total in the two compartments (inboard and outboard) of the affected tank.''

Add to Procedures Section:

''FUEL SYSTEM

Fuel Pumps

If the circuit breaker for any wing tank fuel boost pump (circuit breakers U3, U4, U7, U8, U9, U10, U13, U14) trips, do not reset. If the pump trips while in flight, continue flight in accordance with the procedures in the ''Tank Pumps LOW Lights On'' portion of the Procedures section of the AFM. If the breaker trips while on the ground, do not reset without first identifying the source of the electrical fault.

ELECTRICAL SYSTEM

Fuel Pumps

If the circuit breaker for any wing tank fuel boost pump (circuit breakers U3, U4, U7, U8, U9, U10, U13, U14) trips, do not reset. If the pump trips while in flight, continue flight in accordance with the procedures in the ''Tank Pumps LOW Lights On'' portion of the Procedures section of the AFM. If the breaker trips while on the ground, do not reset without first identifying the source of the electrical fault.''

Placard Installation

(b) Within 50 flight hours or 10 days after April 28, 1998, whichever occurs first, install a placard on the engineer's fuel panel that states:

''If FQIS is operative, do not operate the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing tanks.''

New Requirements of this AD

Modification

(c) Within 18 months after the effective date of this AD: Modify each fuel boost pump assembly in accordance with Parts 2.A. through 2.I. inclusive of the Accomplishment Instructions of Lockheed Service Bulletin 093–28–093, Revision 1, dated February 8, 1999. Accomplishment of this modification terminates the requirements of this AD. Following accomplishment of the modification, the AFM revision may be removed from the AFM, and the placard may be removed.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 98–08–09, amendment 39–10492, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Incorporation by Reference

(f) The modification shall be done in accordance with Lockheed Service Bulletin 093–28–093, Revision 1, dated February 8, 1999, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4, 6	Original	January 15, 1999.
5	1	February 8, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 4, 2000.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30627 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–197–AD; Amendment 39–11442; AD 99–24–17]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires modification of the airplane by coldworking fastener holes at the front and rear wing spars and by installing modified support angles for the lower trailing edge panel of the wing. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking in the lower spar cap of the wing rear spar and in the lower skin at the wing front spar, just outside the nacelle, on the left-hand and right-hand side of the airplane, which could result in fuel leakage and consequent fire in or around the wing.

DATES: Effective January 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on September 23, 1999 (64 FR 51486). That action proposed to require modification of the airplane by coldworking fastener holes at the front and rear wing spars and by installing modified support angles for the lower trailing edge panel of the wing.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 work hours per airplane to accomplish the actions, at an average labor rate of $60 per work hour. The manufacturer states that necessary parts will be provided at no cost to operators. Based on these figures, the cost impact of the this AD on U.S. operators is estimated to be $32,400, or $10,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–24–17 SAAB Aircraft AB: Amendment 39–11442. Docket 99–NM–197–AD.

Applicability: Model SAAB 2000 series airplanes, as listed in Saab Service Bulletin 2000–57–029, dated June 4, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent fatigue cracking in the lower spar cap of the wing rear spar and in the lower skin at the wing front spar, just outside the nacelle, on the left-hand and right-hand side of the airplane, which could result in fuel leakage and consequent fire in or around the wing, accomplish the following:

(a) Prior to the accumulation of 13,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, modify the airplane by coldworking the fastener holes at the front and rear wing spar (including all applicable nondestructive test and detailed visual inspections and repairs of holes) and installing modified support angles for the lower trailing edge panel of the wing, in accordance with the instructions of Saab Service Bulletin 2000–57–029, dated June 4, 1999.

(b) Where Saab Service Bulletin 2000–57–029, dated June 4, 1999, specifies that Saab be contacted for repair instructions for certain damage conditions, this AD requires that such damage conditions must be repaired in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

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. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

Special Flight Permits

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

Incorporation by Reference

(e) Except as provided by in paragraph (b) of this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–57–029, dated June 4, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD 1–142, dated June 4, 1999.

(f) This amendment becomes effective on January 4, 2000.

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

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30626 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–340–AD; Amendment 39–11437; AD 99–24–13]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–135 and EMB–145 series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to prohibit in-flight operations of the autopilot coupled to flight director #2 during certain conditions; and installation of an associated warning placard. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of the autopilot to automatically disconnect from flight director #2, as intended, at a low altitude during windshear conditions. Such failure could result in reduced controllability of the airplane.

DATES: Effective December 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–340–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Angela Compton, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–135 and EMB–145 series airplanes. The DAC advised that tests indicated that, when the autopilot system is coupled to the co-pilot's flight director (flight director #2), the autopilot system does not automatically disengage when a windshear is detected by the ground proximity warning system at a height below 1,500 feet above ground level (AGL). The cause of this malfunction has been attributed to a software discrepancy in the autoflight IC–600 integrated avionics computer, which causes the autopilot to remain engaged in windshear mode. This condition, if not corrected, could result in failure of the autopilot to automatically disconnect from flight director #2, as designed, at a low altitude during windshear conditions, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Embraer has issued Service Bulletin No. 145–31–0017, Change No. 01, dated October 22, 1999, which describes procedures for installation of a warning placard on the glareshield panel of the cockpit that states, ''DO NOT OPERATE FLIGHT DIRECTOR #2 COUPLED TO AUTOPILOT BELOW 1,500 FT. AGL.'' The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 1999–10–01, dated October 20, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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 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, this AD is being issued to prevent failure of the autopilot to automatically disconnect from flight director #2, as intended, at a low altitude during windshear conditions. Such failure could result in reduced controllability of the airplane. This AD requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with revised procedures to prohibit in-flight operations of the autopilot coupled to flight director #2 below 1,500 feet AGL; and installation of an associated warning placard.

Difference Between This AD, the Service Bulletin, and the Brazilian Airworthiness Directive

Operators should note that, although the service bulletin and the Brazilian airworthiness directive specify effectivity based on manufacturer serial numbers, the applicability of this AD is expanded to include all Model EMB–135 and EMB–145 series airplanes. The FAA has determined that the autoflight IC–600 integrated avionics computer, which is the probable cause of the unsafe condition, is installed on all Model EMB–135 and EMB–145 series airplanes.

Interim Action

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

FAA may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–340–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–24–13 Empresa Brasileira De Aeronautica S.A. (Embraer): Amendment 39–11437. Docket 99–NM–340–AD.

Applicability: All Model EMB–135 and EMB–145 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the autopilot to automatically disconnect from flight director #2, as intended, at a low altitude during windshear conditions, which could result in reduced controllability of the airplane, accomplish the following:

AFM Revision/Placard Installation

(a) Within 20 flight hours after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

''Operations are prohibited with flight director #2 coupled to autopilot below 1,500 feet above ground level (AGL).''

(2) Install a warning placard on the glareshield panel of the cockpit in accordance with Embraer Service Bulletin No. 145–31–0017, Change No. 01, dated October 22, 1999, which states:

''DO NOT OPERATE FLIGHT DIRECTOR #2 COUPLED TO AUTOPILOT BELOW 1,500 FT. AGL.''

Note 1: Installation of the warning placard, prior to the effective date of this AD, in accordance with Embraer Service Bulletin No. 145–31–0017, dated October 15, 1999, is considered acceptable for compliance with the requirements of paragraph (a)(2) of this AD.

Alternative Methods of Compliance

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

Special Flight Permits

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

Incorporation by Reference

(d) The placard installation shall be done in accordance with Empresa Brasileira De Aeronautica Service Bulletin 145–31–0017, Change No. 01, dated October 22, 1999 which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	01	October 22, 1999.
3–5	Original	October 15, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos–SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 1999–10–01, dated October 20, 1999.

(e) This amendment becomes effective on December 15, 1999.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30625 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–41–AD; Amendment 39–11443; AD 99–24–18]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model AS–350B, B1, B2, B3, BA, and D, and AS–355E, F, F1, F2, and N helicopters, that requires inspecting certain versions of the tail rotor spider plate bearing (bearing) for the proper rotational torque, axial play, and any brinelling of the bearing. This amendment has the same inspection requirements as the current AD. Also, this AD expands the applicability to include additional part numbers (P/N's) and reduces the initial and recurring inspection compliance times. This amendment is prompted by additional reports of deterioration of the bearing. The actions specified by this AD are intended to prevent seizure of the bearing, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective December 15, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–41–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: On April 14, 1999, the FAA issued AD 99–09–06, Amendment 39–11139 (64 FR 19881, April 23, 1999), to require inspecting the bearing for the proper rotational torque, axial play, and any brinelling of the bearing. That action was prompted by service difficulty reports citing the need to prematurely replace bearings due to wear and by two in-flight incidents of increased tail rotor vibration levels due to bearing wear. That condition, if not corrected, could result in seizure of the bearing, loss of tail rotor control, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has received additional reports of deterioration of the bearing affected by AD 99–09–06 and other bearings not covered by AD 99–09–06. Therefore, this AD expands the applicability to include additional bearing P/N's and to reduce the initial and recurring inspection compliance times.

Eurocopter France has issued Service Bulletin (SB) 05.00.29, Revision 2, applicable to Model AS–350 series helicopters, and SB 05.00.30, Revision 2, applicable to Model AS–355 series helicopters, both dated September 29, 1999. These SB's specify a check of the bearing for rotational torque. The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, classified these SB's as mandatory and issued AD's 1999–085–076(A)R2 and 1999–084–057(A)R2, both dated October 20, 1999, to ensure the continued airworthiness of these helicopters in France.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–350B, B1, B2, B3, BA, and D, and AS–355E, F, F1, F2, and N helicopters of the same type design, this AD supersedes AD 99–09–06 (64 FR 19881, April 23, 1999). This AD has the same requirements as the current AD. This AD also expands the applicability to include additional P/N's 350A33–2004–00, –01 and –02, and 350A33–2009–00 and –01, installed, and excludes a bearing which has MOD 076551 incorporated. This AD also revises the initial and recurring inspection compliance times. The actions are required to be accomplished in accordance with the SB's described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, including additional P/N's in the applicability, requiring an initial inspection within 10 hours time-in-service (TIS) to measure the bearing rotational torque, and inspecting the bearing for axial play or brinelling at intervals not to exceed 50 hours TIS or 6 months, whichever occurs first, are required and this AD must be issued immediately.

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

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

Comments Invited

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

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–41–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not impose substantial direct compliance costs on states or local governments or 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 13132, the FAA has not consulted with States or local authorities prior to the publication of this rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11139 (64 FR 19881, April 23, 1999), and by adding a new airworthiness directive (AD), Amendment 39–11443, to read as follows:

AD 99–24–18 Eurocopter France: Amendment 39–11443. Docket No. 99–SW–41–AD. Supersedes AD 99–09–06, Amendment 39–11139, Docket No. 98–SW–44–AD.

Applicability: AS–350B, B1, B2, B3, BA, and D, and AS–355E, F, F1, F2, and N helicopters, with tail rotor spider assembly, part number (P/N) 350A33–2004–00, –01, –02, –03, –05, or 350A33–2009–00 or –01, installed, and which do not incorporate MOD 076551, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent seizure of the tail rotor spider plate bearing (bearing), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following in accordance with the specified paragraphs of Eurocopter Service Bulletin (SB) 05.00.29, Revision 2, applicable to Model AS–350 helicopters, or SB 05.00.30, Revision 2, applicable to Model AS 355 helicopters, both dated September 29, 1999, as applicable.

(a) Within 10 hours time-in-service (TIS), measure the rotational torque of the bearing using the operational procedure in paragraph 2.B.1) of the Accomplishment Instructions in the applicable SB. If the rotational load is equal to or greater than 300 grams, replace the pitch change spider plate assembly with an airworthy pitch change spider plate assembly before further flight.

(b) At intervals not to exceed 50 hours TIS or at intervals not to exceed 6 months, whichever occurs first, measure the axial play and inspect for rotational binding or brinelling of the bearing using the operational procedure in paragraph 2.B.2) of the Accomplishment Instructions in the applicable SB.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(f) The inspections and replacements, if necessary, shall be done in accordance with paragraph 2.B of Eurocopter SB 05.00.29, Revision 2, applicable to Model AS–350 helicopters, or Eurocopter SB 05.00.30, Revision 2, applicable to Model AS 355 helicopters, both dated September 29, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, Rules Docket No. 99–SW–41–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 15, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–084–057(A)R2 and AD 1999–085–076(A)R2, both dated October 20, 1999.

Issued in Fort Worth, Texas, on November 19, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–30797 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–176–AD; Amendment 39–11444; AD 99–25–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Raytheon Model BAe.125 series 1000A and 1000B, and Model Hawker 1000 series airplanes, that requires inspection of P1 pitot pipes for chafing or damage, and various follow-on actions. This amendment is prompted by reports of P1 pitot pipes chafing against adjacent flight control cables. The actions specified by this AD are intended to prevent a hole in the P1 pitot pipes, which would lead to erroneous input to the instrumentation and warning systems associated with the pilot's instruments.

DATES: Effective January 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Raytheon Model BAe.125 series 1000A and 1000B, and Model Hawker 1000 series airplanes, was published in the **Federal Register** on September 15, 1999 (64 FR 50018). That action proposed to require inspection of P1 pitot pipes for chafing or damage, and various follow-on actions.

Comments

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

Conclusion

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

Cost Impact

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–25–01 Raytheon Aircraft Company: Amendment 39–11444. Docket 99–NM–176–AD.

Applicability: All Model BAe.125 series 1000A and 1000B, and Model Hawker 1000 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a hole in the P1 pitot pipes, which would lead to erroneous input to the instrumentation and warning systems associated with the pilot's instruments, accomplish the following:

Inspections and Corrective Actions

(a) Within 150 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect chafing or damage of the P1 pitot pipes, in accordance with Raytheon Service Bulletin SB.34–3028, dated January 1998.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior

area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no chafing or damage is found, prior to further flight, ensure a clearance of 0.25 inch or more exists between the P1 pitot pipes and flight control cables. If clearance is less than 0.25 inch, prior to further flight, reposition the P1 pitot pipes to achieve 0.25-inch clearance, in accordance with the service bulletin.

(2) If a pitot pipe is found to be chafed or damaged, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Replace the discrepant pitot pipe with a new pipe, and ensure that a clearance of 0.25 inch or more exists between the flight control cables and the new pitot pipe, in accordance with the service bulletin. If clearance is less than 0.25 inch, reposition the P1 pitot pipes to achieve 0.25-inch clearance, in accordance with the service bulletin.

(ii) Perform a general visual inspection for damage of the flight control cables adjacent to the area of chafing or damage of the P1 pitot pipes, in accordance with the service bulletin. If damage is found, replace the damaged flight control cables with new cables in accordance with Chapter 20–10–31 of the Aircraft Maintenance Manual.

(iii) Perform a test of the P1 pitot system to ensure proper function, in accordance with the service bulletin. If the P1 pitot system fails the test, perform the corrective actions specified in Chapter 34–11–00 of the Aircraft Maintenance Manual.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

Special Flight Permits

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

Incorporation by Reference

(d) Except as provided by paragraphs (a)(2)(ii) and (a)(2)(iii) of this AD, the action shall be done in accordance with Raytheon Service Bulletin SB.34–3028, dated January 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 2000.

Issued in Renton, Washington, on November 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30947 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–332–AD; Amendment 39–11445; AD 99–25–02]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This action requires a one-time inspection to verify correct installation of the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank, and corrective actions, if necessary. For certain airplanes, this action requires replacement of the nut, bolt, and cotter pin that connects the input rod of the spoiler mixer mechanism to the torque tube crank with a new or serviceable nut, bolt, and cotter pin. This amendment is prompted by reports indicating numerous discrepancies in the installation of the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank. The actions specified in this AD are intended to prevent the linkage between the ratio changer input rod and the aft aileron control quadrant from becoming disconnected, which could result in reduced controllability of the airplane.

DATES: Effective December 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Robert C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating numerous discrepancies in the installation of the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank on Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. These discrepancies include the use of incorrect hardware, the lack of secondary means of retention, and the incorrect (inverted) installation of the bolt. Additionally, the airplane manufacturer has indicated that the torque values specified, in a previously issued service bulletin, for the nut and bolt of the fastener in the spoiler mixer mechanism were too high. The previously specified torque values could cause the nut and bolt to fail, which could result in a disconnection of the linkage between the ratio changer input rod and the aft aileron control quadrant. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1213, Revision 1, dated May 21, 1998, which describes procedures for a one-time visual inspection to verify

correct installation of the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank, and corrective actions, if necessary. The corrective actions involve either re-installation of the existing fastener, or replacement of the fastener with a new or serviceable fastener.

For certain airplanes on which the initial issue of the alert service bulletin has been accomplished, the alert service bulletin describes procedures for replacement of the nut, bolt, and cotter pin that connects the input rod of the spoiler mixer mechanism to the torque tube crank with a new or serviceable nut, bolt, and cotter pin.

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

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the linkage between the ratio changer input rod and the aft aileron control quadrant from becoming disconnected, which could result in reduced controllability of the airplane. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below. This AD also requires that operators report certain results of the one-time inspections to the FAA.

Differences Between AD and Alert Service Bulletin

Operators should note that the Boeing alert service bulletin recommends that the inspection to verify correct installation of the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank be performed at the operator's earliest maintenance opportunity. However, the FAA has determined that such an interpretive compliance time may not address the identified unsafe condition in a timely manner. In developing appropriate compliance times for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the accessibility of the area to be inspected, the time necessary to accomplish the inspection (approximately 1 hour), and the time necessary to accomplish the replacement (approximately 1 hour). In light of all these factors, the FAA finds that inspecting to verify correct installation of the fastener in the spoiler mixer mechanism within a 90-day compliance time is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that the Boeing alert service bulletin specifies the effectivity to be Boeing Model 737–100, –200, –300, –400, and –500 series airplanes having line numbers 1 through 2681. However, the FAA has determined that this effectivity would not address all the affected airplanes on which the identified unsafe condition is likely to exist or develop. Therefore, the applicability of this AD includes all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–332–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–25–02 Boeing: Amendment 39–11445. Docket 99–NM–332–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 the linkage between the ratio changer input rod and the aft aileron control quadrant from becoming disconnected, which could result in reduced controllability of the airplane; accomplish the following:

Detailed Visual Inspection

(a) Within 90 days after the effective date of this AD, accomplish the actions required by paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 737–27A1213, Revision 1, dated May 21, 1998.

(1) For airplanes on which Boeing Alert Service Bulletin 737–27A1213, dated April 23, 1998, has not been accomplished: Perform a one-time detailed visual inspection to verify correct installation of the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank, in accordance with Revision 1 of the alert service bulletin.

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.''

(i) If the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank is installed correctly, no further action is required by this AD.

(ii) If the fastener that connects the input rod of the spoiler mixer mechanism to the torque tube crank is not installed correctly, prior to further flight, either re-install the existing fastener, or install a new or serviceable fastener, in accordance with Revision 1 of the alert service bulletin.

(2) For airplanes on which Boeing Alert Service Bulletin 737–27A1213, dated April 23, 1998, has been accomplished: Replace the nut, bolt, and cotter pin that connects the input rod of the spoiler mixer mechanism to the torque tube crank with a new or serviceable nut, bolt, and cotter pin in accordance with Revision 1 of the alert service bulletin.

Reporting Requirement

(b) Within 10 days after accomplishing the actions required by paragraph (a)(1) of this AD, submit a report of any findings of fasteners that connect the input rod of the spoiler mixer mechanism to the torque tube crank that require corrective action to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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, ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1213, Revision, 1, dated May 21, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 15, 1999.

Issued in Renton, Washington, on November 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30946 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–19]

Revocation of Class E and Class D Airspace, El Toro MCAS, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action revokes the Class E surface area (E2) and Class D extension (D2) at El Toro MCAS, CA. The U.S. Marine Corps ceased operations at El Toro MCAS on July 2, 1999, thereby eliminating the necessity and criteria for controlled airspace.

EFFECTIVE DATE: 0901 UTC December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, A WP–520.10, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

In order to meet federal mandates with regard to Base Realignment and Closure, the U.S. Marine Corps ceased operations at El Toro MCAS on July 2, 1999. The airport was closed, air traffic control services were suspended, and all associated instrument procedures were cancelled. The cessation of all air operations and the closure of the airport have necessitated the revocation of the associated controlled airspace. The intended effect of this action is to revoke the class E surface area (E2) and Class D extension (D2) at El Toro MCAS, CA, as published in Paragraphs 6002 and 5000 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 E2 and Class D2 airspace designations listed in this document would be subsequently removed from this Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes previously designated controlled airspace associated with El Toro MCAS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP CA E2 El Toro MCAS, CA [Removed]

* * * * *

Paragraph 5000 Class D airspace area designated as an extension to a Class C surface area.

* * * * *

AWP CA D2 El Toro MCAS, CA [Removed]

* * * * *

Issued in Los Angeles, California, on November 4, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–31042 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29833; Amendment No. 91–258]

RIN 2120–AA66

General Operating and Flight Rules; Airports/Locations Special Operating Restrictions; Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the Appendix listing airports/locations with special operating restrictions in FAA's general operating and flight rules. Specifically, this action adds a new entry for Covington, KY, in alphabetical order and revises the entries for Houston, TX, and Washington, DC, in section 1 of the Appendix, which lists the airports where aircraft operating within 30 nautical miles of the listed airports, from the surface upward to 10,000 feet mean sea level (MSL) must be equipped with an altitude encoding transponder. Additionally, this action ''Reserves'' section 2 which is no longer required, and revises the entries for Covington, KY, Houston, TX, and Washington, DC, in section 3 which lists locations at which fixed-wing special VFR operations are prohibited. The FAA is taking this action to correctly identify applicable airports under the appropriate sections in the Appendix.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Part 91, Appendix D, Section 1

This section of 14 CFR part 91, Appendix D, lists airports where special operating restrictions apply. Specifically, section 1 lists locations at which aircraft operating within 30 nautical miles of the listed airports, from the surface upward to 10,000 MSL are required to be equipped with an altitude encoding transponder.

On November 30, 1998, the FAA issued the Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation of the Cincinnati/Northern Kentucky International Airport Class C Airspace Area, KY, Final Rule (63 FR 65972). This rule established a Class B airspace area for the Cincinnati/Northern Kentucky International Airport (CVG). However, in the final rule the FAA inadvertently did not include CVG in part 91, Appendix D, section 1. This action corrects that omission.

Additionally, on December 17, 1991, the FAA issued the Airspace Reclassification Final Rule (56 FR 65638). This rule established the Washington Tri-Area, DC, Class B airspace area. This airspace area is comprised of four primary airports (Baltimore-Washington International, Ronald Reagan Washington National, Washington Dulles International, and Andrews Air Force Base). At the time this rule was published, the Andrews Air Force Base was omitted from part 91, Appendix D, section 1. This action corrects that inadvertent error.

Lastly, this amendment makes editorial corrections to part 91, Appendix D, section 1 by replacing the words ''Washington National Airport'' with ''Ronald Reagan Washington National Airport'' and ''Houston Intercontinental Airport'' with ''George Bush Intercontinental Airport/Houston.''

Part 91, Appendix D, Section 2

Section 2 lists those locations at which the requirements of § 91.215(b)(5)(ii) apply. This section requires any aircraft, except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider, from the surface to 10,000 feet MSL within a 10-nautical-mile radius of any airport listed in Appendix D, section 2 of this part, excluding the airspace below 1,200 feet outside of the lateral boundaries of the surface area of the airspace designated for that airport must be equipped with an altitude encoding transponder. The two airport airspace areas that met the criteria of § 91.215(b)(5)(ii) were reclassified as Class C and Class D airspace areas in accordance with the Airspace Reclassification Final Rule (56 FR 65655). Consequently, this particular section of the appendix is no longer required. Therefore, the FAA reserves section 2 of Appendix D.

Part 91, Appendix D, Section 3

This section lists airports where fixed-wing special visual flight rule operations are prohibited. Currently, this section lists the name of the Covington, KY, international airport as

''Greater Cincinnati International Airport,'' the Washington, DC, airport as ''Washington National Airport,'' and the Houston, TX, airport as ''Houston Intercontinental Airport.''

This amendment makes editorial corrections to reflect the name changes for the above airports by replacing the words ''Greater Cincinnati International Airport'' with ''Cincinnati Northern Kentucky International Airport,'' ''Washington National Airport'' with ''Ronald Reagan Washington National Airport'' and ''Houston Intercontinental Airport'' with ''George Bush Intercontinental Airport/Houston'' in section 3 of Appendix D.

List of Subjects in 14 CFR Part 91

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

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. Amend Appendix D to part 91 as follows:

a. In *Section 1,* by adding a new entry in alphabetical order and by revising the entries for Houston, TX, and Washington, DC.

b. In *Section 2,* by adding ''[Reserved]'' at the end of the existing text.

c. In *Section 3,* by revising the entries for Covington, KY, Houston, TX, and Washington, DC.

The additions and revisions read as follows:

Appendix D to Part 91—Airports/ Locations: Special Operating Restrictions

Section 1. * * *

* * * * *

Covington, KY (Cincinnati Northern Kentucky International Airport)

* * * * *

Houston, TX (George Bush Intercontinental Airport/Houston)

* * * * *

Washington, DC (Ronald Reagan Washington National Airport and Andrews Air Force Base, MD)

Section 2. * * * *[Reserved]*

Section 3. * * *

* * * * *

Covington, KY (Cincinnati Northern Kentucky International Airport)

* * * * *

Houston, TX (George Bush Intercontinental Airport/Houston)

* * * * *

Washington, DC (Ronald Reagan Washington National Airport and Andrews Air Force Base, MD)

* * * * *

Issued in Washington, DC, on November 5, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–29683 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 3163]

Bureau of Consular Affairs; Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's Schedule of Fees for Consular Services by adding to regulations containing the list of certifications and fees and to regulations on the requests for services the certification of documents relating to births, marriages, and deaths of citizens of the United States and foreign nationals from records maintained by the former Canal Zone Government prior to September 30, 1979, and transferred as of December 1, 1999, from the Panama Canal Commission to the Department of State.

DATES: This rule becomes effective December 1, 1999.

FOR FURTHER INFORMATION CONTACT: William Crawford, Passport Services Correspondence Branch, Bureau of Consular Affairs, Department of State, Washington, DC 20524, telephone (202) 955–0307; telefax (202) 955–0300.

SUPPLEMENTARY INFORMATION:

Background

From 1904 until 1979, when the vital records function was transferred to the Republic of Panama, the U.S.-administered Canal Zone Government recorded all civil acts of birth, marriage and death of United States citizens and foreign nationals within the Canal Zone. The Panama Canal Commission was created in 1979 as an agency of the U.S. Government for the operation, management and improvement of the Canal Area. Since October 1, 1979, it has processed requests from the public for certified copies of certificates of birth, marriage or death recorded prior to September 30, 1979, concerning both United States citizens and foreign nationals born, married or deceased in the former Canal Zone while it was under United States administration.

The Panama Canal Commission will cease to exist on December 31, 1999, when the Canal Area is transferred to the Panama Canal Authority, a Panamanian agency. By December 1, 1999, the records will be transferred to the Department of State as the custodian for such documents issued abroad. This rule provides that, as successor custodian, the Department upon request will provide certified copies of those records, for both U.S. citizens and foreign nationals, under procedures similar to the certification of documents relating to births, marriages and deaths abroad of U.S. citizens issued by a U.S. Embassy or Consulate, and as currently provided for in the regulations. This rule also identifies the Department's office to which requests are to be made.

Section 9701 of Title 31, United States Code requires charging a fee for services provided to individuals that are not generally for the benefit of all the public, and Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services by embassies and consulates. All consular fees and exemptions therefrom must be reflected in the Schedule of Fees for Consular Services. Therefore, the Department is revising paragraph (c) under item 36 (certifications) of 22 CFR Subchapter C—Fees and Funds, Part 22—Schedule of Fees for Consular Services—Department of State and Foreign Service, § 22.1. The Department has established the fee for processing and

certifying Panama Canal Zone vital records at $20.00 for the initial certified copy under official seal, with a fee of $10.00 for each additional copy thereof, for each request. This fee is the same as the fee charged for the certification of consular records issued abroad for United States citizens, and reflects the actual costs incurred to provide this service.

Since the rule provides a benefit to the class of affected persons for a fee that recovers the cost of the service, the Department has determined that prepublication notice and comment are unnecessary and is exempted by 5 U.S.C. 553(b)(B), the ''good cause'' exemption.

The Department does not consider this rule to be a major rule for purposes of E.O. 12291. These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35. Nor does the rule have federalism implications warranting the application of Executive Order No. 12372 and No.13132. This rule is exempt from E.O. 12866, but the Department has reviewed the rule to ensure consistency with the objectives of the Executive Order, as well as with E.O. 12988, and the Office of Management and Budget has determined this rule would not constitute a significant regulatory action under E.O. 12866.

Final rule

List of Subjects in 22 CFR Part 22

Foreign Service, Fees, Passports and visas.

Accordingly, this rule amends 22 CFR Part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note. 1351, 1351 note; 22 U.S.C. 214, 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is amended by revising paragraph (c) at item (36) to read as follows:

§ 22.1 Schedule of Fees

Item No.	Fee
* * * * * * *	
Documentary Services	
* * * * * * *	
36. Certifications:	
(c) Certifying the fact of issuance of a Report of Birth Abroad of a Citizen of the United States and certifying copies of documents relating to births, marriages, and deaths of citizens abroad issued by a U.S. Embassy or Consulate (obtainable from the Department of State, Washington, D.C.); and, certifying copies of documents relating to births, marriages, and deaths of citizens of the United States or foreign nationals within the former Canal Zone of Panama from records maintained by the Canal Zone Government from 1904 to September 30, 1979 (obtainable from the Department of State, Washington, D.C.).	Fee: $20.00; each additional copy $10.00.
* * * * * * *	

3. Section 22.2(a) is revised to read as follows:

§ 22.2 Requests for services in the United States.

(a) Requests for records. Requests by the file subject or the individual's authorized agent for services involving U.S. passport applications and related records, including consular birth, marriage and death records and authentication of other passport file documents, as well as records of births, marriages and deaths within the former Canal Zone of Panama recorded and maintained by the Canal Zone Government from 1904 to September 30, 1979, shall be addressed to Passport Services, Correspondence Branch, Department of State, Washington, D.C. 20524. Requests for consular birth records should specify whether a Consular Report of Birth (Form FS 240, or long form) or Certification of Birth (Form DS 1350, or short form) is desired. Advance remittance of the exact fee is required for each service.

* * * * *

Dated: November 15, 1999.

Bonnie R. Cohen,

Under Secretary for Management.

[FR Doc. 99–30905 Filed 11–29–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 63

RIN 1076–AC97

Indian Child Protection and Family Violence Prevention; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published on June 21, 1996 (61 FR 32272). The regulations implemented the provisions of the Indian Child Protection and Family Violence Prevention Act of 1990.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs, P.O. Box 1887, Albuquerque, New Mexico 87103–1887, (505) 248–6082.

SUPPLEMENTARY INFORMATION:

Background

The Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101–630, 26 U.S.C. 3201 *et seq.*, authorizes such actions as are necessary to ensure effective child protection in Indian country, including character investigations to ensure no individual appointed to a position with duties and responsibilities involving regular

contact with, or control over, Indian children has been found guilty of, or entered a plea of *nolo contendere* or guilty to, any offense under Federal, State or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons. See 25 U.S.C. 3201(b) and 3207. This was the first Federal statute to authorize background investigations by tribes and tribal organizations and mandate screening standards for the Bureau of Indian Affairs, as well as tribes and tribal organizations that receive funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988.

The following day, the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. § 13041, was enacted. It authorized Federal agencies and facilities operated by the Federal Government or operated under contract with the Federal Government to conduct criminal history background checks for individuals providing child care services. It provides that an individual who has been convicted of a sex crime, an offense involving a child victim, or a drug felony may be denied employment for or dismissed from a child care services position. This is in contrast to the absolute prohibition in Pub. L. 101–630, that is cited above. Pub. L. 101–647 further provides that conviction for a crime other than a sex crime may be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children. See 42 U.S.C. 13041(c).

The Bureau conducted extensive consultation with tribes and Indian organizations prior to and following the publication of the proposed rule. The regulations were intended to describe the process for determining suitability for positions with duties and responsibilities involving regular contact with, or control over, Indian children, including the standards set forth in 5 CFR part 731, the Indian Child Protection and Family Violence Prevention Act and the Crime Control Act. Section 63.19 currently reads:

(a) An employer may deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or *nolo contendere* to any Federal, state or tribal offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution, or crimes against persons.

(b) An employer may deny employment or dismiss an employee when an individual has been convicted of an offense involving a child victim, a sex crime, or a drug felony. Paragraph (a) refers to the requirements of the Indian Child Protection and Family Violence Prevention Act, while subsection (b) refers to the Crime Control Act. While the screening requirements in Section 408 of the Indian Child Protection and Family Violence Prevention Act [25 U.S.C. 3207(a)], are clearly not permissive, the Bureau's regulations imply that its practice and application are. In fact, when the Bureau determines the suitability of volunteers for, selectees to, and employees in positions with duties and responsibilities involving regular contact with or control over Indian children, the standard in Section 408 (25 U.S.C. 3207) serves as a permanent statutory bar to employment as contemplated by the Indian Child Protection and Family Violence Prevention Act, Office of Personnel Management Suitability requirements found at 5 CFR 731.202, and the Office of Indian Education Programs Suitability Disqualifications found at 62 BIAM 11.36(A)(7). Based upon a finding of guilt or a plea of *nolo contendere* or guilty to any offense under Federal, State or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons, volunteers, selectees and employees have been determined unsuitable for Public Trust positions with duties and responsibilities involving regular contact with or control over Indian children.

Although these individuals may be determined suitable for Federal employment under 5 CFR part 731, a suitability determination under the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3207, serves as a statutory bar to employment with the Office of Indian Education Programs, Social Services, and with few exceptions, the Office of Law Enforcement Services. Such positions include not only teachers, social workers, and law enforcement officers and investigators, but cooks, custodians, bus drivers, correctional personnel, and volunteers as well. In addition, the same standard is applied to Bureau facilities management personnel if their duties and responsibilities include the provision of services to schools or housing and other programs where children may be present.

The Bureau now proposes to correct this obvious error and to clarify that other convictions may be considered when determining suitability for employment if they bear on the question of whether an individual is fit to have responsibility for the safety and well-being of children.

Need for Correction

As published, the final rules contain errors which may prove misleading and are in need of correction.

List of Subjects in 25 CFR Part 63

American Indians, Alaska Natives, Children, Child Care, Employment.

Accordingly, 25 CFR part 63 is corrected by making the following correcting amendment.

PART 63—INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

1. The authority citation for 25 CFR part 63 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 200, 3201 *et seq.*; 42 U.S.C. 13041.

§ 63.19 [Amended]

2. In § 63.19, paragraph (a), in the first sentence, the word ''may'' is changed to ''must.''

Dated: November 22, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–30959 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Amendments to Gas Valuation Regulations for Indian Leases—Additional Information Related to Valuing Indian Gas Produced From Leases Located in Index Zones

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Eligible Index Zones.

SUMMARY: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation). The new regulations resulted from a negotiated rulemaking between Indian tribes and allottees, oil and gas industry, and Government. The rule requires that MMS publish additional information related to valuing Indian gas produced from leases located in index zones. This document lists: the Index Zones Eligible

for the Index-Based Valuation Method; the Acceptable Publications and Indices to Use for the Index-Based Method; the lease prefixes associated with each MMS-Designated Area; and the new MMS-Designated Areas.

EFFECTIVE DATE: January 1, 2000.

ADDRESSES: Address all comments concerning this document to David S. Guzy, Chief, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff; telephone (303) 231–3432; FAX, (303) 231–3385; E-mail David.Guzy@mms.gov; mailing address, Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165.

SUPPLEMENTARY INFORMATION: The intent of the amendments to the valuation regulations is to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of the Interior's (Secretary) trust responsibility and lease terms. It is also our desire to improve the regulatory framework so that information is available which would permit lessees to comply with the regulatory requirements at the time that royalties are due.

Under the rule, the lessee will determine the value of gas production based upon whether the gas is produced from an index zone or not produced from an index zone. MMS defines an index zone as a field or area with an active spot market and published indices applicable to that field or area that are acceptable to MMS.

The rule requires that MMS publish the following: the index zones that are eligible for the index-based valuation method; leases that MMS excluded from index-based valuation; and any index zones that MMS disqualified. If market conditions change so that an index-based method for determining value is no longer appropriate for an index zone, MMS will hold a technical conference to consider disqualification of an index zone. Under the rule, if an index is disqualified, then production from leases under that index zone cannot be valued under the index-based valuation method. At this time, MMS has not disqualified any index zones.

The rule also requires that MMS periodically publish a list of MMS-approved publications and indices to use in computing the index-based formula price and the lease prefixes associated with each MMS-designated area (including any new MMS-designated areas.) MMS will publish future notices in the **Federal Register** announcing any changes to the index zones, changes to the acceptable publications and indices, and any new MMS-designated areas.

Table No. 1 below provides a list of the index zones that are *eligible* for the index-based valuation method.

TABLE NO. 1.—MMS-DESIGNATED AREAS AND INDEX ZONES

MMS-Designated areas	Index zones
Unitah and Ouray Reservation	Central Rocky Mountains
Alabama-Coushatta	East Texas
Wind River Reservation	Northern Rocky Mountains
Jicarilla Apache Reservation, Navajo Reservation, Southern Ute Reservation, Ute Mountain Ute Reservation.	San Juan Basin
Counties: Alfalfa, Beaver, Cimarron, Cleveland, Creek, Garfield, Grant, Harper, Kay, Lincoln, Noble, Nowata, Oklahoma, Pawnee, Payne, Pottawatomie, Rogers, Texas, Tulsa, Washington, Woods.	Oklahoma-Zone 1.
Counties: Beckham, Blaine, Caddo, Canadian, Comanche, Cotton, Custer, Dewey, Ellis, Garvin, Grady, Greer, Harmon, Jackson, Jefferson, Kingfisher, Kiowa, Logan, Major, McClain, Roger Mills, Stephens, Tillman, Washita, Woodward	Oklahoma-Zone 2.
Counties: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Craig, Delaware, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Marshall,Mayes, McCurtain, McIntosh, Murray, Muskogee, Okfuskee, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, Wagoner.	Oklahoma-Zone 3

Table No. 2 below contains the MMS-approved publications that establish index prices that accurately reflect the value of production in the field or area where the production occurs.

TABLE NO. 2.—MMS-APPROVED PUBLICATIONS

MMS-approved publications	Which issue?	Which table?	Which spot gas prices?
Inside F.E.R.C.'s Gas Market Report.	Use the issue containing the spot gas prices for the first of the month.	Use the table labeled ''Prices of Spot Gas Delivered to Pipelines''.	Use the high end of the range of the applicable spot gas price.
Natural Gas Intelligence Weekly Gas Price Index.	Use the issue containing the Bidweek Range for the month.	Use the table labeled ''Spot Gas Prices.''.	Use the high end of the range of the applicable Bidweek price.

Under the rule, any publication may petition MMS to be added to the list of acceptable publications by writing to: Minerals Management Service, Royalty Valuation Division, P.O. Box 25165, Mail Stop 3150, Denver, Colorado 80225–0165.

As stated in 30 CFR 206.172 (64 FR 43517), an Indian tribe may ask MMS to exclude some or all of its leases from valuation under the index-based valuation method. After consulting with the Bureau of Indian Affairs (BIA), MMS may also exclude any Indian allotted leases from valuation under the index-based valuation method. If MMS approves any requests for exclusion from an index zone, the lessee must value the production under the non-index-based valuation method.

Revenue analysis indicated that some Indian leases would receive less revenue under the index methodology than under gross proceeds methodology. As a result of this analysis and after consulting with BIA, MMS excluded the Ute allotted leases in the Uintah and Ouray Reservation and the Navajo allotted leases in the Navajo Reservation from valuation under the index-based method. MMS also approved the Ute Indian Tribe's request to exclude the Ute Tribal leases in the Uintah and

Ouray Reservation from valuation under the index-based method.

Because of these exclusions, MMS also terminated the previously defined designated areas for Uintah and Ouray Reservation and the Navajo Reservation. MMS designated these two areas for royalty computation purposes in the August 10, 1999, final rule (64 FR 43506). Accordingly, we created the following four new MMS-designated areas:

1. Ute Tribal Leases in the Uintah and Ouray Reservation;
2. Ute Allotted Leases in the Uintah and Ouray Reservation;
3. Navajo Tribal Leases in the Navajo Reservation; and
4. Navajo Allotted Leases in the Navajo Reservation.

Table No. 3 below contains the index zones with the associated MMS-designated areas and also includes the list of acceptable publications and the indices to use for the index-based valuation method. Lessees should use this table when calculating the value of gas produced from leases from an index zone.

TABLE NO. 3.—INDEX ZONES, MMS-DESIGNATED AREAS, AND INDICES

Index zone	MMS-approved publications for index zones		
	Inside FERC's	Natural gas intel. report	Spot gas prices
East Texas	X		Natural Gas Pipeline Co. of America
			Louisiana Zone
Includes: Alabama-Coushatta	X		Texas Eastern Transmission Corp.
			East Texas Zone
			South Texas Zone
	X		Tennessee Gas Pipeline Co.
			Texas (zone 0)
	X		Transcontinental Gas Pipe Line Corp.
			Zone 2 (pooling point)
	X		Trunkline Gas Co.
			Texas
		X	East Texas
			NGPL Texok
			Tennessee
			Texas Eastern E. TX
			Trunkline
			Houston Pipeline
			MidCon Texas
		X	South Texas
			Florida Gas Zone 1
			Texas Eastern S. TX
			Tennessee
Northern Rocky Mountains	X		Colorado Interstate Gas Co.
			Rocky Mountains
Includes: Wind River Reservation		X	Rocky Mountains
			CIG
San Juan Basin	X		El Paso Natural Gas Co.
			San Juan Basin
Includes: Jicarilla Apache Reservation		X	Rocky Mountains
			El Paso non-Bondad
			Transwestern San Juan
Navajo Tribal Leases in the Navajo Reservation			
Southern Ute Reservation			
Ute Mountain Ute Reservation			
Oklahoma—Zone 1			
Includes the following counties: Alfalfa, Beaver, Cimarron, Cleveland, Creek, Garfield, Grant, Harper, Kay, Lincoln, Noble, Nowata, Oklahoma, Pawnee, Payne, Pottawatomie, Rogers, Texas, Tulsa, Washington, Woods.	X		ANR Pipeline Co.
			Oklahoma Natural Gas Pipeline Co. of America
	X		Mid-Continent Zone
	X		Northern Natural Gas Co.
			Texas, Oklahoma, Kansas
	X		Panhandle Eastern Pipe Line Co.
			Texas, Oklahoma (mainline)
	X		Reliant Energy Gas Transmission Co.
			West
	X		Williams Gas Pipelines Central Inc.
			Texas, Oklahoma, Kansas
		X	Mid-Continent
			ANR SW
			NGPL Mid-Continent
			Northern Natural Mid 10–13
			Panhandle Eastern
			Enogex
			Reliant West (NorAm)
			Williams

TABLE NO. 3.—INDEX ZONES, MMS-DESIGNATED AREAS, AND INDICES—Continued

Index zone	MMS-approved publications for index zones		
	Inside FERC's	Natural gas intel. report	Spot gas prices
Oklahoma—Zone 2			
Includes the following counties: Beckham, Blaine, Caddo, Canadian, Comanche, Cotton, Custer, Dewey, Ellis, Garvin, Grady, Greer, Harmon, Jackson, Jefferson, Kingfisher, Kiowa, Logan, Major, McClain, Roger Mills, Stephens, Tillman, Washita, Woodward.	X		ANR Pipeline Co. Oklahoma
	X		Natural Gas Pipeline Co. of America Mid-Continent Zone
	X		Reliant Energy Gas Transmission Co. West
	X		Northern Natural Gas Co. Texas, Oklahoma, Kansas
	X		Panhandle Eastern Pipe Line Co. Texas, Oklahoma (mainline)
	X		Williams Gas Pipelines Central Inc. Texas, Oklahoma, Kansas
		X	Mid-Continent ANR SW NGPL Mid-Continent Reliant West (NorAm) Northern Natural Mid 10–13 Panhandle Eastern Enogex Williams
Oklahoma—Zone 3			
Includes the following counties: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Craig, Delaware, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Marshall, Mayes, McCurtain, McIntosh, Murray, Muskogee, Okfuskee, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, Wagoner.	X		Natural Gas Pipeline Co. of America Texok Zone
	X		Reliant Energy Gas Transmission Co. East
	X		Williams Gas Pipelines Central Inc. Texas, Oklahoma, Kansas
		X	East Texas NGPL Texok
		X	Mid-Continent Reliant East (NorAm) Williams

Most Indian lease terms require accounting for comparison (dual accounting) when gas produced from the lease is processed. Under the rule, the lessee may elect to perform actual dual accounting or alternative dual accounting. The rule requires that MMS publish a list of the lease prefixes associated with each MMS-designated area for the purpose of the dual accounting election. The dual accounting election for a designated area must apply to all of the lessee's Indian leases in that area.

Table No. 4 contains the lease prefixes and associated MMS-designated areas:

TABLE NO. 4.—LEASE PREFIXES AND MMS-DESIGNATED AREAS

MMS-designated areas	Lease prefixes
Alabama-Coushatta	615.
Blackfeet Reservation	507, 512, 513, 514, 515, 517, 526.
Crow Reservation	520, 619.
Fort Belknap	538.
Fort Berthold	528, 529, 540.
Fort Peck Reservation	506, 523, 533, 536, 622.
Oklahoma Counties: Alfalfa, Beaver, Cimarron, Cleveland, Creek, Garfield, Grant, Harper, Kay, Lincoln, Noble, Nowata, Oklahoma, Pawnee, Payne, Pottawatomie, Rogers, Texas, Tulsa, Washington, Woods.	503, 505, 510, 511, 518, 521, 601, 602, 607, 615, 714.
Oklahoma Counties: Beckham, Blaine, Caddo, Canadian, Comanche, Cotton, Custer, Dewey, Ellis, Garvin, Grady, Greer, Harmon, Jackson, Jefferson, Kingfisher, Kiowa, Logan, Major, McClain, Roger Mills, Stephens, Tillman, Washita, Woodward.	503, 505, 518, 601, 602, 607.
Oklahoma Counties: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Craig, Delaware, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Marshall, Mayes, McCurtain, McIntosh, Murray, Muskogee, Okfushee, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, Wagoner.	503, 505, 511, 601, 602, 607, 615.
Navajo Allotted Leases in the Navajo Reservation	516, 525, 527, 621, 623.
Navajo Tribal Leases in the Navajo Reservation	415, 516, 525, 527, 620, 621, 623.

TABLE NO. 4.—LEASE PREFIXES AND MMS-DESIGNATED AREAS—Continued

MMS-designated areas	Lease prefixes
Northern Cheyenne Reservation	None.
Rocky Boys Reservation	053, 154, 537, 889.
Southern Ute Reservation	519, 522, 524, 614, 750.
Turtle Mountain Reservation	610.
Ute Mountain Ute Reservation	519, 522, 524, 614, 750.
Ute Allotted Leases in the Uintah and Ouray Reservation	509, 531, 532.
Ute Tribal Leases in the Uintah and Ouray Reservation	509, 531, 532.
Wind River Reservation	502, 535, 634.

Dated: November 23, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–30991 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA073–7207A;A–1–FRL–6481–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Massachusetts; Interim Final Determination That Massachusetts Has Corrected the Deficiencies of Its I/M SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: On September 27, 1999, EPA published in the **Federal Register** (64 FR 51937) a rulemaking action proposing approval of the Commonwealth of Massachusetts' motor vehicle inspection and maintenance (I/M) program, and in a separate action (64 FR 51943) proposing approval of rate-of-progress (ROP) plans as part of the State Implementation Plan (SIP), under Section 110 of the Clean Air Act (CAA). Elsewhere in today's **Federal Register** EPA is publishing a supplemental proposed rulemaking notice for comment clarifying the test method used in Massachusetts' I/M program, providing additional information on the emission reduction credit projected for the program, and explaining the impact on the ROP plans. Based on the proposed action, today's supplemental document, the commencement of I/M program roll-out on October 1, 1999, and the commitments made by the Commonwealth, including a commitment to fully enforce compliance with the I/M program as of December 15, 1999, EPA is making an interim final determination that the State will have more likely than not implemented an approvable enhanced I/M program when it becomes effective on December 15, 1999. Today's action will, beginning on December 15, 1999, defer the application of the offset sanction that has been in effect since May 15, 1999, and the federal highway fund sanctions that take effect on November 15, 1999.

DATES: *Effective Date:* This rule is effective December 15, 1999. *Comments:* Written comments must be received on or before December 30, 1999. Public comments on this document are requested and, although this action will be effective on December 15, 1999, comments will be considered for appropriate subsequent action.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress St., Suite 1100, Boston, MA 02114–2023. Copies of the Commonwealth's submittal are available for public inspection during normal business hours, by appointment, at the above EPA address and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: On March 27, 1997 Massachusetts submitted an inspection and maintenance plan under the provisions of the National Highway Systems Designation Act. On July 14, 1997, EPA published in the **Federal Register** (62 FR 37506) an Interim Final Rule conditionally approving the I/M SIP submitted by the Commonwealth. The notice conditioned approval on start-up of the program by November 15, 1997 which was based on a commitment made by Massachusetts as part of the SIP submittal. That **Federal Register** notice also listed other elements of the I/M program for which Massachusetts was required to submit additional information. By means of a November 14, 1997, letter, EPA notified Massachusetts that EPA was converting the conditional approval of the Massachusetts enhanced I/M SIP revision to a disapproval on November 15, 1997 due to the fact that the program was not starting on November 15, 1997. The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the CAA. Therefore, the Act's offset sanction applied beginning May 15, 1999 because Massachusetts still had no enhanced I/M program started or approved as part of its SIP.

In order to remedy that failure, on May 14, 1999, Massachusetts submitted a revision to its SIP for an enhanced I/M program to begin on October 1, 1999. Massachusetts in fact commenced operation of the program on October 1, 1999. Although the SIP revision provided for start-up of an enhanced I/M program, there were other elements of the I/M SIP identified in the September 27, 1999 **Federal Register** proposed approval which needed to be addressed prior to final action by EPA. These elements will be addressed by the contractor Massachusetts has retained to implement the program and are listed as work elements of the contractor's scope of services. Since the focus of Massachusetts and the contractor has been program start-up, these elements have not been addressed by the contractor to date. In response to EPA's September 27, 1999 proposed approval which describes the program elements Massachusetts must supplement, Massachusetts submitted a letter dated November 3, 1999 with a schedule for submitting these elements from January to March 2000. An additional letter dated November 15, 1999 informed EPA that Massachusetts has taken steps that ensure the I/M program will be fully enforced starting December 15, 1999. Additional information submitted in support of the Massachusetts I/M program is included in the contract with Keating Technologies signed January 28, 1999, Department of Environmental Protection (DEP) Regulations, chapter 310 CMR 60.02, Registry of Motor Vehicles Regulations, chapter 540 CMR 4.00–4.09, and administrative items,

including a description of the program being implemented and DEP's response to comments document dated May 14, 1999.

II. EPA's Current Rulemaking Actions

On September 27, 1999 EPA proposed approval of the Massachusetts I/M SIP revision to meet the requirements of the federal I/M rule. In addition, on the same day EPA proposed approval of the Massachusetts rate-of-progress emission reduction plans which includes the 15% plan. In order for Massachusetts to meet the low enhanced performance standard for I/M the 15% plan must be approvable. In today's **Federal Register** EPA is publishing a supplemental notice of proposed rulemaking providing additional information concerning testing in the I/M program, estimates of emission reductions achieved by the program, and the schedule for submittal of additional elements for the Massachusetts I/M program. The same notice addresses the impact of the changes in estimated emission reduction credits from I/M on the 15% plan.

Critical to EPA's finding to stay sanctions is the Agency's determination that Massachusetts has taken the steps necessary to ensure program start-up by December 15, 1999. Although Massachusetts commenced operation of the I/M program on October 1, 1999, there were routine start-up difficulties which required that DEP temper full enforcement of the program for two and one half months. During October, November and early December 1999, the Commonwealth is allowing drivers to obtain pre-printed stickers approving cars to operate for a year if a station in the program did not have fully operational test equipment ready when a driver came in for a test. In its November 15, 1999 letter to EPA, Massachusetts has indicated that such pre-printed stickers will not be available starting December 15, 1999, and any car that must get tested will be required to find a station with operable testing equipment. This step ensures that the I/M program will meet EPA's definition of start-up and that Massachusetts will be fully enforcing an approvable I/M as of December 15, 1999.

EPA believes, as a result of the proposed rulemaking actions and the fact that Massachusetts commenced operation of the I/M program on October 1, 1999, has committed to submitting additional information necessary to fully approve that program and has prohibited the use of pre-printed stickers to meet EPA's definition of start-up by December 15, 1999, that it is more likely than not that Massachusetts will have a fully approvable I/M SIP that has started up as of December 15, 1999. Given the fact that the contract was not signed until late January 1999 and the magnitude of the Massachusetts program, it is commendable that Massachusetts met the start-up criteria by December 15, 1999. The state's failure to start-up an approvable enhanced I/M program by November 15, 1997 was what triggered the sanctions clock in Massachusetts. The state has now taken the steps necessary to fully enforce a transient testing program by December 15, 1999 to cure the problem which triggered the sanctions clock.

This interim determination will not halt or reset the sanctions deadlines, but will defer the implementation of sanctions until EPA takes final action on the SIP. In the proposed rule for the Massachusetts I/M program, EPA proposed in the alternative to issue a limited approval/limited disapproval of the program if Massachusetts failed to start the program in a timely manner or failed to submit any of the program elements that the Contractor will provide under its scope of work. The limited disapproval would effectively withdraw the proposed approval. Withdrawal of the proposed approval would result in growth and highway sanctions being imposed again immediately.

This action will take effect on December 15, 1999, when vehicles can no longer postpone the emissions inspection in Massachusetts through the use of pre-printed stickers. Should Massachusetts continue to issue pre-printed stickers after December 15, 1999, EPA will withdraw this determination and sanctions will go back in effect until pre-printed stickers are no longer issued and EPA reinstates this determination. EPA will take comment on this interim final determination. EPA will publish a final notice taking into consideration any comments received on EPA's proposed actions and this interim final action. If, based on any comments received by EPA upon this interim final determination action and any comments on EPA's proposed approval or supplemental proposed approval with respect to Massachusetts' I/M SIP or rate-of-progress revisions, EPA determines that those actions are inappropriate and the SIP revisions are not approvable and, therefore, this final action was also inappropriate, EPA will take further action to withdraw this action and the proposed approval of the Massachusetts I/M SIP revision, thereby returning the SIP to disapproved status. If this action is withdrawn or EPA's proposed approval of the Massachusetts I/M SIP revision is disapproved, then sanctions would be applied as required under Section 179(a) of the CAA and 40 CFR 52.31.

III. EPA Action

Based on the proposed approval of the Massachusetts I/M SIP in the September 27, 1999 **Federal Register** and the start-up of the program on December 15, 1999, EPA believes that it is more likely than not that the Commonwealth has taken the steps necessary to start an approvable enhanced I/M program. Disapproval of the Massachusetts I/M SIP and initiation of sanctions clocks on November 15, 1997 was based on the fact that Massachusetts did not start-up an approved enhanced I/M program. Therefore, EPA concludes that since Massachusetts is operating an I/M program that will be fully enforceable on December 15, 1999, the Commonwealth will have met the start-up definition and sanctions should be stayed on December 15, 1999. In the event the Commonwealth fails to submit the other elements of the program, EPA will issue a limited disapproval which will lift this stay of sanctions and reimpose them at that time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP 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

Because Massachusetts has met the start-up requirements as defined by EPA, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. section 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed and proposed approval of the State's May 14, 1999 I/M SIP revision. Through this interim final determination action, the Agency believes that it is more likely than not that the Commonwealth will have submitted all the necessary information to meet the requirements for start-up of

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

an approvable I/M program, therefore eliminating the basis for imposition of sanctions. Therefore, it is not in the public interest to apply sanctions when the Commonwealth has submitted an enforceable program which will start-up on December 15, 1999. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State is no longer subject to that requirement prior to the date sanctions would take effect. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process. In addition, EPA is invoking the good cause exception to the 30-day advance notice requirement of the APA because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

A. Executive Order 12866

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

B. Executive Order 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 final 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 not economically significant under E.O. 12866 and does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility 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 rule will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, because this rule 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.

F. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act (CRA), 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made a good cause finding, including reasons thereof, and established an effective date of December 15, 1999. EPA will submit a report containing this rule and other required information to the United States Senate, the House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 15, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–30780 Filed 11–29–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–34

[FPMR Amendment G–114]

RIN 3090–AG12

Motor Vehicle Management; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: The General Services Administration (GSA) published a final rule on November 2, 1999, revising Federal Property Management Regulation (FPMR) coverage on motor vehicle management, and moving it into the Federal Management Regulation (FMR). This correction fixes an inadvertent error in one of the amendatory instructions of that final rule.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Shari Kiser, Federal Acquisition Policy Division, (202) 501–2164.

SUPPLEMENTARY INFORMATION: The final rule published on November 2, 1999 (64 FR 59592), which revised the FPMR coverage on motor vehicle management and moved it into the FMR, inadvertently stated in one of the amendatory instructions that the new part 102–34 was added to subchapter D of 41 CFR chapter 102 when in fact it should have been added to subchapter B. This document corrects that error. Another correction to the same final rule is being published elsewhere in this issue of the **Federal Register.**

In rule document 99–27747 beginning on page 59592 in the issue of Tuesday, November 2, 1999, make the following correction:

CHAPTER 102—[CORRECTED]

On page 59592, in the second column, in amendatory instruction 3., correct ''subchapter D'' to read ''subchapter B''.

Dated: November 23, 1999.

Sharon A. Kiser,

Federal Acquisition Policy Division.

[FR Doc. 99–30933 Filed 11–29–99; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[USCG–1999–5118]

RIN 2115–AF76

Standard Measurement System Exemption from Gross Tonnage

AGENCY: Coast Guard.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On August 31, 1999, the Coast Guard published a direct final rule (64 FR 47402; USCG–1999–5118). This direct final rule notified the public of the Coast Guard's intent to amend its vessel tonnage regulations to reinstate a previously allowed method of holding tonnage opening cover plates in place. This amendment will increase flexibility and can decrease costs in vessel design and construction, while in no way diminishing vessel safety. The reinstated method was omitted in error during a comprehensive revision of the tonnage regulations in 1989. We have not received an adverse comment, or notice of intent to submit an adverse comment, objecting to this rule. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as November 29, 1999.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mr. Peter Eareckson, Project Manager, Marine Safety Center, Coast Guard, telephone 202–366–6441.

SUPPLEMENTARY INFORMATION:

Discussion of Comment

We received one comment, which took issue with the prohibition against the use of battens, caulking, or gaskets in the installations of tonnage opening cover plates, citing maintenance concerns. While we sympathize with the concerns cited, we do not consider the comment to be an adverse comment to this rulemaking, as ''adverse comment'' is defined in 33 CFR 1.05–55(f). The underlying premise of this rulemaking is to reinstate a method of securing tonnage opening cover plates in place that was deleted in error in the 1989 revision. The prohibition against sealing tonnage openings is one of long-standing and predates the 1989 revision. Regardless of the merits of the request to eliminate this prohibition, it is outside the scope of this rulemaking.

Dated: November 19, 1999.

Jeffrey P. High,

Acting Assistant Commandant for Marine Safety & Environmental Protection.

[FR Doc. 99–30894 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 97–21 and 96–45; FCC 99–269]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Changes to the Board of Directors of the National Exchange Association, Inc. and Federal-State Joint Board simplifies the process for rural health care providers to receive support from the

universal service support mechanism, among other things, and adopts rules to permit the Universal Service Administrative Company to provide support for any commercially available telecommunications service, regardless of the bandwidth. It also requires USAC to calculate support based upon all actual distance-based charges, unless the rural health care provider or carrier requests a more comprehensive support calculation and substantiates that request.

DATES: Effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Armstrong, Assistant Division Chief, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Order on Reconsideration in CC Docket No. 97–21, Fifteenth Order on Reconsideration in CC Docket No. 96–45 released on November 1, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In this *Fifteenth Order on Reconsideration,* we reconsider, on our own motion, some of the Commission's conclusions in the *Universal Service Order,* 62 FR 32862 (June 17, 1997), in order to simplify the process for rural health care providers to receive support from the universal service support mechanism. Specifically, we amend our rules to permit the Universal Service Administrative Company (USAC) to provide support for any commercially available telecommunications service, regardless of the bandwidth. We further modify our rules to require USAC to calculate support based upon all actual distance-based charges, unless the rural health care provider or carrier requests a more comprehensive support calculation and substantiates that request. We affirm the conclusion reached in the *Universal Service Order* that, despite the difficulties of allocating costs and preventing abuses, the benefits of permitting rural health care providers to join consortia with other subscribers of telecommunications service outweigh the danger that such arrangements will lead to significant abuse of the prohibition on resale. Accordingly, we clarify that new members may be added to a consortium at any time after the rural health care provider applies for universal service support, and we clarify our use of the term ''tariffed or market rate'' to permit a rural health care provider participating in a consortium with ineligible private sector members to receive support. Finally, in order to achieve a more equitable distribution of USAC's joint and common billing and collection costs, we clarify that USAC should include these costs in the projected administrative expenses of the high-cost, low-income, schools and libraries, and rural health care programs, based upon the volume of disbursements by each program.

II. Scope of Services Eligible for Support

A. Per-Location Funding Limit

2. We eliminate the per-location funding limit because it has made it more difficult for rural health care providers to receive the benefits of the rural health care support mechanism, and it is no longer necessary to ensure that demand for support remains below the $400 million per year cap that the Commission established in the *Universal Service Order.* We believe that eliminating the per-location funding limit will make it easier for rural health care providers to select and receive support for the telecommunications services that they need for telemedicine. We find that, even if USAC substantially underestimated the demand for support by rural health care providers, demand would still be well within the $400 million cap. Moreover, we find that the Commission's initial decision to limit support to a T–1 or some combination of lesser services was driven by two express concerns that are no longer relevant. We further find that, because the per-location funding limit imposes some cost and generates no apparent benefit, it would be contrary to the public interest to maintain it. Accordingly, we conclude that the universal service support mechanism for rural health care providers shall support any commercially available telecommunications services, necessary for the provision of health care services in a state, regardless of the bandwidth, and we revise § 54.613 of the Commission's rules to reflect this change.

3. Based upon the information in the record, we find that the Commission's initial demand estimate was much too high. Section 254(g) directs that universal service support mechanisms should be specific, predictable, and sufficient. The only qualification, in section 254(h)(1)(A), of the type of telecommunications service that may be supported is the requirement that the telecommunications service be ''necessary for the provision of health care services in a [s]tate.'' In order to establish a ''specific, predictable, and sufficient'' mechanism for a program with no track record, the Commission concluded that it must limit the telecommunications services that a rural health care provider may receive for the provision of health care services in a state.

4. The Commission's original estimate for the cost of the program predicted that maximum demand for support would be $366 million per year. The Commission arrived at this conclusion without the benefit of expert assessment of the cost of leaving rural health care providers free to purchase whatever telecommunications services they deemed necessary for the provision of health care. According to the USAC Report, ''[t]he best current estimates show that this Program is not likely to exceed $10 million in annual support level in the near term.'' Specifically, the USAC Report estimates that the total demand for support for rural health care providers will not exceed $3.1 million for the 18 month period from January 1, 1998 through June 30, 1999. USAC projects that the total demand for rural health care provider support for the second funding year (July 1, 1999 through June 30, 2000) will be no more than $9.3 million. Although armed with a significantly more comprehensive set of data than used in the *Universal Service Order,* USAC estimates that, even if we remove the per-location funding limit, demand would not exceed $10 million per year. Apparently, as the Advisory Committee believed, the urban rates for telecommunications services are costly enough to deter rural health care providers from demanding excessive levels of telecommunications service. USAC also reports that there are a number of other factors that have served to reduce demand, which we discuss. Accordingly, we conclude that, beginning with the third funding cycle, the universal service support mechanism for health care providers will support all commercially available telecommunications services necessary for the provision of health care services, and that this expansion of eligible telecommunications services will not increase demand beyond the funding cap.

5. The Commission's initial decision to limit support to a T–1 or some combination of lesser services was based upon two factors that are now irrelevant, given that there is little risk of demand exceeding the cap. First, the Commission's initial decision to limit support to a T–1 or some combination of lesser services was based in part upon

a finding that the record did not demonstrate that rural health care providers would require higher bandwidths than T–1. Specifically, the Commission found that the Advisory Committee and the majority of commenters who recommended a specific level of telecommunications bandwidth recommended a capacity of up to and including 1.544 Mbps or its equivalent. The Advisory Committee and the majority of commenters contended that rural health care providers did not need higher bandwidths for the provision of health care services, and that the cost of higher bandwidth connections would outweigh the benefits. It is still unclear to us whether rural health care providers need services with greater or lesser bandwidth than 1.544 Mbps for the provision of health care. On the one hand, the Rural Utilities Service (RUS) argues that the current supported bandwidth of 1.544 Mbps may be inadequate because, with the rapid evolution of high-speed broadband networks approaching the 1.544 Mbps capability, the medical community's needs are expected to significantly exceed this level in the near future. On the other hand, the National Rural Health Association (NRHA) asserts that it appears that many telehealth applications are moving away from dedicated point-to-point T–1 type services to switched, lower bandwidth applications such as ISDN and POTs. Further, a letter jointly filed by the American Telemedicine Association, the American College of Nurse Practitioners, the Association of Telemedicine Service Providers, and the NRHA states that:

> The program should include discounts for all forms of communications services when used in the delivery of health care to rural health care providers. As currently designed, services eligible for the rural health care program are effectively limited to a T1 line, largely because of the use of distance costs associated with this service. However, advancements over the past few years in technology and communications have enabled health care providers to transmit and receive information at speeds lower than that required of T1 lines. Although lower in cost, this still remains an impediment to many health providers due to the few resources available in support of rural health care.

6. We, therefore, affirm our finding in the *Universal Service Order* that rural health care providers are best able to determine what telecommunications services best meet their needs; moreover, we find that allowing rural health care providers to choose the transmission speeds necessary for health care services in rural areas, outweigh our need to determine with certainty the required bandwidth. Accordingly, we conclude that, given that the per-location funding limit is not necessary for keeping demand on the fund within the $400 million cap, as long as the telecommunications services are necessary for health care services in rural areas, there is little reason to ascertain definitively whether rural health care providers need telecommunications services with greater or lesser bandwidth than T–1.

7. The second reason that the Commission decided to support only bandwidths up to 1.544 Mbps was because it agreed with the parties who weighed the cost of higher services against the benefits and found that the limited data suggested that the cost of higher bandwidths could unnecessarily increase the cost of the program by a significant amount. While very few respondents to the *USAC Report Public Notice* discussed the cost of supporting higher services, the USAC Report suggests that the cost of higher bandwidths would not unnecessarily increase the cost of the program by a significant amount.

8. More importantly, it appears from the record, particularly the USAC Report, that maintaining the current limits on services does not adequately serve the public interest. That is, regardless of whether rural health care providers need services with greater or lower bandwidth, the public interest would be better served by allowing rural health care providers to have affordable access to all modern telecommunications services necessary to provide medical services. The majority of interested parties in this proceeding assert that the per-location funding limit imposed by the Commission's rules increases the cost of participating in the program, while reducing the value of the potential benefit that a rural health care provider may receive. For example, USAC reports that one of the costs of the restriction is that it discourages some rural health care providers from seeking services. This is in part because of the complexity of securing some combination of services of less than 1.544 bandwidth. Specifically, in May 1999, USAC reported that ''calculation of the PLFL for each applicant to this program has taken a significant amount of effort by carriers and RHCD staff.'' Consistent with the findings reported by USAC, RUS asserts that the Commission's rules significantly limit the value of the support provided by the program.

9. Finally, we reject the argument by USTA that any change to the Commission's rules that would expand the class of eligible services would be inconsistent with the Act. Although USTA admits that the per-location funding limit could be made simpler to administer, USTA argues that the Commission should not expand the scope of eligible services for the sole purpose of increasing demand to the level that we previously anticipated would be reached. We agree with USTA that the Commission should not expand the scope of eligible services solely for the sake of increasing demand. Instead, we expand the scope of eligible services because the current restrictions are in large part the result of the per-location funding limit, and for the reasons discussed, we now reject the per-location funding limit. The per-location funding limit is not necessary to ensure that demand for support remains below the $400 million per year cap. We find that demand will be sufficiently limited by the statutory requirement that supported telecommunications services must be necessary for the provision of health care. Moreover, as previously discussed, we find that a rural health care provider is ill served by our current rule, which further limits the rural health care provider's choices to telecommunications services within bandwidths up to and including 1.544 Mbps, and limits the total amount of support that a rural health care provider can receive to the cost of one T–1 connection. We believe that a rural health care provider may under some circumstances need, for the provision of health care services, telecommunications services with a higher bandwidth than 1.544 Mbps; a single service with a lesser bandwidth that requires more support than a T–1; or a number of services with lesser bandwidth that together require more support than one T–1. Accordingly, while we recognize that removing the per-location funding limit will potentially increase the amount of support for services that are already eligible for support, and expand the list of eligible services, we conclude that this result is consistent with the Act.

B. Long Distance Charges

10. Based upon the information in this record, we remain unconvinced that the rural health care program should provide additional support for long distance and toll charges, with the exception of support for toll charges incurred by accessing an Internet service provider (for those unable to secure toll-free Internet access). We find that section 254(h)(1)(A) does not obligate telecommunications carriers to deliver service to rural health care providers at rates that are *less* than those

charged to urban health care providers. We note that section 254(h)(1)(A) directs telecommunications carriers to deliver service to rural health care providers at rates that are *reasonably comparable* to those charged to health care providers in urban areas of the state. Further, we note that, although many of the commenters argue that using long distance service makes it more expensive for rural health care providers to engage in the practice of telemedicine, none have argued that telecommunications carriers charge more for long distance service provided to rural health care providers than for similar service provided to urban residents. Based on the record before us, therefore, we find no basis for providing additional support for long distance and toll charges.

C. Urban/Rural Rate Calculation

11. In light of the entire record now before us, we determine that most of the base rates for telecommunications service elements charged to rural health care providers are already reasonably comparable to those charged in urban areas. This position is consistent with USTA's recommendation. Accordingly, we conclude that the Administrator need not compare the tariffed or publicly available base rates for telecommunications service elements to determine the amount of support that it can provide for the benefit of a rural health care provider. We, therefore, direct that, beginning with the third funding cycle, the Administrator must calculate support based upon all actual distance-based charges.

12. At the time that the rural health care program was established, the Commission did not realize the extent to which directing the parties to identify the highest tariffed or publicly available rate actually being charged to urban customers, in order to set rates for telecommunications services ''that are reasonably comparable to rates charged for similar services in urban areas in that State,'' would consume an unwarranted amount of resources for very little benefit. In the *Universal Service Order,* the Commission specifically acknowledged that most base rates for telecommunications services are averaged across a state or study area, and concluded, therefore, that it is often the distance-based charges that account for the difference between the urban and rural rates charged to rural health care providers. As a result, the Commission directed that, in addition to providing rural health care providers with support for the difference between the highest tariffed or publicly available rate actually being charged to urban customers and the rate charged to the rural health care providers (i.e. the base rates for telecommunications service elements), the Administrator must also provide support for distance-based charges. We have since learned that, because of the need to refer to the various tariffs, calculating the difference between the urban and rural base rates for telecommunications service elements is extremely labor intensive. For many carriers and rural health care providers, the cost of calculating the difference between the urban and rural base rates for telecommunications service elements outweighs the benefits of participating in the rural health care program, because it is the distance charges that account for the rate differences of any significance. For example, Alaska argues that FCC Forms 466 and 468 should be simplified because,

> [r]equirements for detailed diagramming of circuits have proven confusing and time-consuming to some LECs in Alaska. Rural health care providers throughout the State have often encountered complaints or resistance from telecommunications carriers with respect to this task. Moreover, the information is also of questionable value, particularly when the rate for the service provided is not distance-sensitive.

Because the failure to properly calculate the difference between the urban and rural base rates for telecommunications service elements must be corrected by the Administrator, this activity has proven to be a burden for the Administrator as well.

13. We, therefore, simplify the method for calculating support found in § 54.609 of the Commission's rules. Consistent with the approach proposed by USTA in response to the *USAC Report Public Notice,* we direct the Administrator to consider the base rates for telecommunications services elements in rural areas to be reasonably comparable to the base rates charged for similar telecommunications service elements in urban areas in that state. The Administrator, therefore, shall not include these charges in calculating support. In addition, we direct the Administrator to treat a rural health care provider as if it is located in the nearest large city in the state, in the same manner as it does under the current rules. That is, if the requested service distance is less than or equal to the SUD for the state, the distance-based charge for that service can be no higher than the distance-based charged for a similar service over the same distance in the large city nearest to the rural health care provider. If the requested service distance is greater than the SUD for the state, but less than the maximum allowable distance, the distance-based charge for that service can be no higher than the distance-based charged for a similar service, transmitted the length of the SUD, in the large city nearest to the rural health care.

14. Consistent with the approach proposed by USTA, we also conclude that, in the event a rural health care provider or carrier can establish that there is a difference between the urban and rural base rates charged for a telecommunications service, the rural health care provider or the telecommunications carrier may request a more comprehensive rate comparability calculation consistent with the Commission's current rules. We note that it would not be feasible for the Administrator to document the tariffed or publicly available urban rates for all commercially available telecommunications services to establish a benchmark for comparison of the base rates of telecommunications service elements. Consequently, in the rare instance where there is a difference between the urban and rural base rates for services, we require the rural health care provider or carrier to provide the evidence thereof.

15. We do not modify our rules to require the Administrator to deduct a standardized SUD from the total distance-based charge. We believe that such an approach would generally result in establishing a national SUD to calculate the support amount. We reject this approach because the Administrator has already established the average of the longest diameters of all cities with a population of 50,000 or more within each state, and adding the state averages together to ultimately arrive at a national SUD would not be as accurate as using each state's SUD. We also reject this suggestion because we believe that it would not result in rural health care providers paying distance-based charges that are reasonably comparable to those required of urban subscribers as required by section 254(h)(1)(A), since it would require a rural health care provider to pay the balance of the distance-based charge. We find that this balance would generally be more than urban subscribers are required to pay.

16. We reject USAC's proposal to establish statewide average discount percentages to apply to the rural base rates and/or distance sensitive charges for eligible services. Section 254(h)(1)(A) requires the Commission to adopt mechanisms designed to make telecommunications services available to rural health care providers at rates reasonably comparable to ''*rates charged* for similar services in urban

areas.'' As the Joint Board previously stated, however, use of an average rate ''would entitle some rural customers to rates below those paid by some urban customers, creating fairness problems for those urban customers and arguably going farther with this mechanism than Congress intended.''

D. Equipment

17. Section 254(h)(1)(A) does not authorize the provision of universal service support for equipment needed by rural health care providers to establish telemedicine programs. We note that section 254(h)(1)(A) directs telecommunications carriers to provide telecommunications services to rural health care providers at a discounted rate, and permits the telecommunications carriers to have the amount of the discount treated as part of their obligation to participate in the mechanisms to preserve and advance universal service. There is nothing in section 254(h)(1)(A) that authorizes the provision of universal service support for the purchase of equipment by rural health care providers. Indeed, the Joint Explanatory Statement indicates that Congress' intent was that ''the rural health care provider receive an affordable rate for the services necessary for the purposes of telemedicine and instruction relating to such services.'' Consistent with the Joint Explanatory Statement, USTA argues that it would be inappropriate and unlawful to provide support for equipment, or any other non-telecommunications service component of telemedicine. RUS similarly opposes providing support to reduce the cost of any non-telecommunications service expenses of telemedicine. RUS notes that other federal programs, such as the RUS Distance Learning and Telemedicine Loan and Grant Program are available to assist with the financing of end-user hardware and facilities used in telemedicine projects. Under these circumstances, we conclude that the rural health care support mechanism cannot assist in reducing the cost of the equipment necessary for rural health care providers to provide telemedicine services.

E. Insular Areas

18. Because we still lack sufficient information to ensure that health care providers located in the insular areas have access to the telecommunications services available in urban areas in the country at affordable rates, on August 5, 1999, the Commission adopted the *Unserved, Tribal, and Insular Areas FNPRM,* 64 FR 52738 (September 30, 1999), seeking public input on these and many related issues. We note that the record here contains insufficient information about the status and availability of health care services and telemedicine in most of the insular areas.

19. We are concerned that, to the extent that section 254(h)(1)(A) was intended solely to help equalize the rates paid by residents of urban and rural areas within a state, the Commission would be constrained in its ability to provide relief to rural health care providers in the insular areas. We note that Congress could have provided discounts on the telecommunications service that rural health care providers use to connect to the nearest *major urban hospital within or outside the state* when rural health care providers rely on such hospitals for consultations. This approach would have directed assistance to rural health care providers hindered by the high costs of linking to major hospitals they need to reach outside of their states. Moreover, the Act could have sought to equalize rates paid by rural health care providers in different states, ensuring that no rural health care provider paid significantly more than hospitals in the largest urban areas, regardless of state boundaries. The language of section 254(h)(1)(A), however, merely directs the Commission to provide universal service support to rural health care providers to enable them to pay rates similar to those paid in urban areas *of their states.*

20. On the other hand, we have always recognized that our method for determining the amount of support that a rural health care provider may receive is ill suited to insular areas. In the *Universal Service Order,* for example, we noted that ninety-five percent of American Samoa's population of 56,000 lives on the island of Tutuila, where the territory's single hospital is located. Since we designated Tutuila as an urban area for purposes of setting the urban rate, rural health care providers in American Samoa will be constrained in their ability to take full advantage of the benefits of the rural health care support mechanism.

21. The Commission concluded in the *Universal Service Order* that section 254(h)(2)(A) authorizes the Commission to adopt special mechanisms to calculate support for the insular areas. Section 254(h)(2)(A) directs the Commission, in part, to establish competitively neutral rules ''to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications . . . services for all public and nonprofit . . . health care providers.'' In order to implement the statute's directives, among other things, we need to identify the necessary services and determine what is ''technically feasible and economically reasonable.'' That is, we need additional data about the specific needs of insular areas in this context, as well as the estimated cost of providing such support for those needs. We also note that, were we to grant support for links between rural health care providers in insular areas and the nearest advanced health care facilities in some other jurisdiction, we would need to set standards for identifying such facilities. We would also need to ensure that such rules would not be inconsistent with state physician licensing requirements that might preclude a rural health care provider from establishing a telemedicine connection with an advanced facility in the nearest large city in another state. Consequently, we encourage interested parties to submit their comments in the *Unserved, Tribal, and Insular Areas FNPRM* proceeding that we initiated on August 5, 1999, as we will be addressing these issues in the near future.

III. Eligibility of Health Care Providers

A. Definition of Health Care Provider

22. We affirm our initial conclusion that section 254(h)(5)(B) adequately describes those entities Congress intended to be eligible for universal service support. We find that, given the specific categories of health care providers listed in section 254(h)(5)(B), if Congress had intended to include nursing homes, hospices, or other long-term care facilities, and emergency medical service facilities, it would have done so explicitly. Thus, we find that the definition of ''health care provider'' does not include nursing homes, hospices, or other long-term care facilities, and emergency medical service facilities.

23. Moreover, we clarify that a rural nursing home is ineligible to receive universal service support from the rural health care support mechanism, whether or not it is part of a not-for-profit hospital or rural health clinic. We are not persuaded that an entity omitted from the list in the statute should be allowed to apply for and receive the benefits of the program directly from the universal service support mechanism simply because of the relationship between the ineligible and eligible entity. Moreover, we find no rational basis for distinguishing between a rural nursing home that is part of a not-for-profit hospital or rural health clinic and a rural nursing home that is associated with any of the other categories of

eligible entities listed in the statute. Finally, we believe that allowing nursing homes to receive support directly from the rural health care support mechanism based upon their association with eligible entities would very likely result in a flood of other types of ineligible entities requesting similar treatment, and thus would render meaningless the limitations imposed by Congress in section 254(h)(5)(B). We find, therefore, that, to the extent that the instructions for the current version of the FCC Form 465 state that nursing homes that are ''part of a not-for-profit hospital or rural health care clinic'' are health care providers eligible to receive support, those instructions are incorrect.

B. Restrictions on Resale and Aggregated Purchases

24. We affirm the conclusion that we reached in the *Universal Service Order* that, despite the difficulties of allocating costs and preventing abuses, the benefits of permitting rural health care providers to join consortia with other subscribers of telecommunications service outweigh the danger that such arrangements will lead to abuse of the prohibition on resale. Accordingly, we clarify that new members may be added to a consortium at any time after the rural health care provider applies for universal service support. We note that the Commission's rules do not restrict a rural health care provider's ability to join a consortium with other eligible health care providers, or public sector governmental entities (such as schools and libraries). The Commission's rules also do not restrict a rural health care provider's ability to continue to participate in a consortium to which any of the above are added after the rural health care provider applies for universal service support. The Commission's rules limit a rural health care provider's ability to receive universal service support only if the consortium includes a private sector entity. Section 54.601(b) of the Commission's rules state that, in the event that a consortium includes a private sector entity, a rural health care provider may receive support only if the consortium is paying tariffed or market rates for the subject services. We believe that our interpretation is consistent with both the section 254(h)(1)(A) requirement to ensure that health care providers located in rural areas have access to telecommunications services at rates available to urban residents, and the section 254(h)(3) prohibition against the sale, resale, or other transfer of supported services for money.

25. We also clarify that a tariffed or market rate received by a consortium of eligible and ineligible entities may include a volume discount, or otherwise reflect consideration of the unique characteristics of the subscribers, to the extent that characteristic is not a rural health care provider's eligibility to receive support from the rural health care program. This is because the Commission's restriction on consortium membership was intended to prohibit ineligible private entities from receiving the benefits of the rural health care support mechanism. The *Universal Service Order* clearly states that the Commission and the Joint Board supported broad-based participation in consortia and intended to encourage their growth. The Commission explained, in the *Universal Service Order,* that this restriction is necessary to ''deter ineligible, private entities from entering into aggregated purchase arrangements with rural health care providers to receive below-tariff or below-market rates that they otherwise would not be entitled to receive.'' We find that an ineligible private entity that enters into an aggregated purchase arrangement with a rural health care provider, and receives a tariff or market rate that includes a volume discount, would not be receiving a below-tariff or below-market rate because of the eligibility status of a rural health care provider participating in the consortium. We, therefore, find that such an arrangement would not violate our rules, as long as entities and individuals not eligible for universal service support pay the full contract rates for their portion of the services.

26. The section of the *Universal Service Order* that addresses the universal service support mechanism for schools and libraries offers an additional reason for the Commission's restriction on consortium membership, which would not be contradicted by the finding. In the section of the *Universal Service Order* that discusses the universal service support mechanism for schools and libraries, the Commission noted that it was concerned that ''permitting large private sector firms to join with eligible schools and libraries to seek prices below tariffed rates could compromise both the federal and state policies of non-discriminatory pricing.'' The Commission found congressional support for permitting eligible schools and libraries to secure prices below tariffed rates, and no basis for extending that exception to enable all private sector firms to secure such prices. The Commission concluded that eligible schools and libraries would generally qualify for universal service discounts and prices below tariffed rates for interstate services, only if any consortia they join include only other eligible schools, libraries, rural health care providers, and public sector customers. Although the *Universal Service Order* does not define the term ''tariffed rates,'' the definition of the term ''pre-discount price,'' and the explanation of the Commission's intent in the schools and libraries section of the *Universal Service Order* is instructive in determining whether permitting a consortium of eligible and ineligible entities to obtain tariff rates that include a volume discount could compromise the policies of non-discriminatory pricing. The *Universal Service Order* defines pre-discount price as the price of services to schools and libraries prior to the application of a discount from the universal service support mechanism. It is ''the total amount that carriers will receive for the services they sell to schools and libraries: the sum of the discounted price paid by a school or library and the discount amount that the carrier can recover from universal service support mechanisms for providing such services.'' The *Universal Service Order* explains:

> Although consortia-negotiated prices might commonly be characterized as ''discounted prices,'' because they are lower than the prices that individual members of the consortia would be able to secure on their own, we still characterize them as ''pre-discount prices'' for the purposes of section 254(h) because they are the prices eligible schools and libraries could obtain even without application of the relevant universal service support discounts. All members of such consortia, including those ineligible for universal service support, would benefit from these lower ''pre-discount'' prices produced by such statewide, regional, or large group contracts. . . . While those consortium participants ineligible for support would pay the lower pre-discount prices negotiated by the consortium, only eligible schools and libraries would receive the added benefit of universal service discount mechanisms.

It is clear from this statement that the Commission's intent as expressed in both the rural health care and schools and libraries sections of the *Universal Service Order* is the same; to wit, to ensure that only eligible entities receive the benefit of the universal service support mechanism, not to prohibit a consortium from taking advantage of the tariff or other publicly available rates that reflect the economies of scale. Accordingly, we conclude that it would not violate section 254, or compromise Federal and state policies of non-discriminatory pricing to permit a rural health care provider to benefit from the

rural universal service support mechanism, where the rural health care provider is a member of a consortium of eligible and ineligible entities receiving service at tariffed or other publicly available rates that include a volume discount.

27. The fact that the Commission's rules prohibit a rural health care provider from receiving support if it is in a consortium that includes private sector members, unless the consortium is receiving tariffed rates or market rates, has apparently largely been erroneously interpreted as requiring the consortium members to be paying rates that do not include volume discounts. As a result, commenters such as the Rural Telecommunications Policy Working Group (RTP) and the Health Care Systemic Change Initiative (HCSCI) believe that the Commission's treatment of consortia discourages community-based telecommunications facilities. Consequently, they request that the Commission generally encourage the community use of telecommunications service facilities that the rural health care providers use for telemedicine. Similarly, RUS argues that community use should be allowed because it is not resale.

28. We find that, to the extent that the Commission's exception is being narrowly interpreted as requiring a rural health care provider in a consortium with ineligible private entities to receive rates that do not include a volume discount, the interpretation largely defeats the purpose of participating in a consortium, and, therefore, is inconsistent with our intention to encourage participation in consortia. OAT and NTIA provide ample justification for rejecting the narrow interpretation of the terms ''tariffed rates'' and ''market rates.'' OAT and NTIA indicate that together they support over 400 rural telemedicine sites in the United States, and about ninety percent of those sites organize their networks into formal and informal consortia to achieve greater economic efficiency. They further indicate that the consortium typically includes an urban ''hub'' site such as a medical college, urban hospital, medical center, or state governmental unit associated with several small rural ''spoke'' sites. According to OAT and NTIA, many rural health care providers use telecommunication infrastructures established and maintained by the ''hub'' site. We are not convinced that requiring a consortium to receive tariffed or market rates should mean that the rate cannot take volume into consideration, and reflect the economies of scale. We believe that a better interpretation is one that recognizes that there are tariffed and market rates that include volume discounts, just as there are tariffed and market rates that recognize the unique characteristics of other subscribers of telecommunications service. Consequently, we conclude that entities not explicitly eligible for support cannot gain eligibility for support by participating in consortia with those that are eligible, but every member of the consortium may receive the benefits otherwise available to them in tariffed or other publicly available rates without jeopardizing a rural health care provider's eligibility to receive the benefits of the rural health care support mechanism.

29. Because of the difficulties of allocating costs and preventing abuses, we also find that, in addition to telecommunications carriers, health care providers and consortia of health care providers must share in the responsibility for calculating and justifying the request for support by maintaining documentation of the amount of support for which each member of a consortium is eligible. Health care providers and consortia of health care providers must also carefully maintain complete records of how they allocate the costs of shared facilities among consortium participants in order to charge eligible health care providers the correct amounts. Accordingly, we revise § 54.601 of the Commission's rules to extend the record-keeping requirement to health care providers and consortia of health care providers. Finally, to the extent that a telecommunications carrier will not be applying the discount directly to a billing telephone number in the name of the rural health care provider, the rural health care provider and the lead member of the consortium must certify to the proper disposition of the benefits of the rural health care support mechanism.

30. Based upon the information in the record, we also clarify that it is not necessary to set a time limit for rural health care providers to report the identities of all of the consortia participants in order to enforce the statutory prohibition against the resale of telecommunications services by rural health care providers, or to otherwise ensure that the support provided by the rural health care universal service support mechanism is used for the purposes intended by Congress. We find that USAC should permit a rural health care provider to add new consortium members by submitting a new form 465 that the Administrator will use to re-evaluate the eligibility of the rural health care provider. The rural health care provider must satisfy anew the competitive bidding requirements only if the addition of a new consortium member would be more than a minor change in the contract or other arrangement for service from the carrier. Consistent with the *Fourth Reconsideration Order,* a rural health care provider must look to state or local procurement laws and regulations to determine whether a proposed contract modification would be considered minor, and, therefore, exempt from state or local competitive bid processes. If a proposed modification would be exempt from state or local competitive bid requirements, the applicant would not be required to undertake an additional competitive bid process in connection with the applicant's request to add a new member to the consortium. Similarly, if a proposed modification would have to be re-bid under state or local competitive bid requirements, then the applicant would also be required to comply anew with the Commission's universal service competitive bid requirements in order to be eligible to receive the benefits of the rural health care program. Consistent with the *Fourth Reconsideration Order,* 63 FR 2093 (January 13, 1998), where state and local procurement laws and regulations are silent, or otherwise inapplicable with respect to whether a proposed contract modification must be re-bid under state or local competitive bid processes, the Commission will look to the ''cardinal change doctrine'' to determine whether the contract modification requires re-bidding. The ''cardinal change doctrine'' generally examines the extent to which a modification exceeds the scope of the original contract. We understand that USAC might prefer that rural health care providers list all possible participants in their initial applications, thus, permitting USAC to evaluate all participants at once. We, however, are not persuaded that the administrative difficulties are so great as to warrant restricting joint purchasing and network-sharing arrangements.

IV. Administration

A. Billing and Collection

31. Consistent with the USAC Report, we direct USAC to include its joint and common billing and collection costs in the projected administrative expenses of the high cost, low-income, schools and libraries, and rural health care programs, based upon the volume of disbursements by each program, beginning January 1, 2000. We agree with USAC that, in order to ensure a fair and accurate allocation of billing and

collection costs among the four support mechanisms, it is better to use an allocator that takes into account the actual size of the programs. The Commission did not know, in 1997, the actual size of the individual programs, or the extent of the difference in their sizes. Based upon the information in the record, we find that there is no longer any rational basis for requiring the rural health care program to be responsible for twenty-five percent of the joint and common billing and collection costs in question. We further find that continuing to include one-fourth of USAC's joint and common billing and collection costs in the projected administrative expenses of the rural health care program would place a disproportionate burden on the rural health care support mechanism.

B. Consolidation of Support Mechanisms

32. Consistent with the *USAC Reorganization Order,* we conclude that, where efficiencies can be achieved, USAC should consolidate the functions and operations that are common to the administration of all three universal service support mechanisms. We decline, however, to further direct the consolidation of any additional specific functions and operations at this time. There is very little information in the record upon which to base any decision to further consolidate additional functions of the various universal service support mechanisms. Although both the schools and libraries, and rural health care programs have completed their first funding cycle, there will be enough changes to the rural health care program as a result of this Order, that the rural health care program will, in essence, be repeating its first program year. We believe that, under these circumstances, not only would it be difficult to identify with any certainty the division with which we should merge RHCD, we find that there would be little benefit to merging RHCD with any of the other divisions of USAC while RHCD is undergoing significant change. Moreover, as we indicated in the *USAC Reorganization Order,* we will review USAC's performance after one year from the merger to assess whether USAC has succeeded in eliminating duplicative functions, and whether it has succeeded in preserving the distinct missions of the schools and libraries, and rural health care support mechanisms. Given that it has been less than one year since the merger, we conclude that it would be premature to further direct the consolidation of additional functions and operations that are common to the administration of the support mechanisms.

V. Supplemental Final Regulatory Flexibility Analysis

33. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order* only to the extent that changes to that Order adopted herein on reconsideration require changes in the conclusions reached in the FRFA. As required by 603 RFA, 5 U.S.C. 603, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), and an IRFA, prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision.

34. *Need for and Objective of this Order.* The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider two aspects of those rules and clarify one aspect of those rules. First, we direct USAC to provide support for any commercially available telecommunications service necessary for health care in rural areas, regardless of the bandwidth. Second, we find that the Administrator need not compare the tariffed or publicly-available base rates for telecommunications service elements to ensure that rural health care providers are receiving rates that are reasonably comparable to those in urban areas, and we direct the Administrator to calculate support based upon all actual distance-based charges. Finally, we clarify that new members may be added to a consortia at any time after the rural health care provider applies for universal service support. We also conclude that, a rural health care provider participating in a consortium with eligible private sector members may receive support, even if the consortium is receiving a tariffed or market rate that includes a volume discount. Because of the difficulties of allocating costs and preventing abuses, we find that, in addition to telecommunications carriers, health care providers, and consortia of health care providers must share in the responsibility for calculating and justifying the request for support by maintaining documentation of the amount of support for which each member of a consortium is eligible.

35. *Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA.* In this Order, the Commission simplifies the process for rural health care providers to receive support from the universal service support mechanism. The Commission reconsiders, on its own motion, the rules that define the services that are eligible for support, and clarifies the definition of the entities eligible to receive the benefits of that support. In addition, the Commission clarifies the rules associated with the administration of the universal service support mechanisms. Specifically, the Order modifies the rules to allow the universal service mechanism for rural health care providers to support any commercially available telecommunications service regardless of the bandwidth, and allow the Administrator to calculate support based solely upon all actual distance-based charges. The Order clarifies the rules to allow a rural health care provider participating in a consortium with ineligible private sector members to be able to receive support even if the consortium is receiving a tariffed or market rate that includes a volume discount. It also clarifies the rules to enable USAC to include its joint and common billing and collection costs in the projected administrative expenses of the high cost, low-income, schools and libraries, and rural health care programs, based upon the volume of disbursements by each program.

36. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.''

37. In the FRFA of the *Universal Service Order,* we estimated and described in detail the number of small entities that might be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily rural health care providers. Specifically, the Commission modifies the rules that define the services that are eligible for support. Health care providers will now receive universal service support for any commercially available telecommunications services, necessary for the provision of health care services in a state, regardless of the bandwidth. The Commission also revises the rules that calculate support based on the urban/rural rate. Rural health care providers' universal service support will now be calculated using actual distance-based charges. Finally, the Commission clarifies the rules that define limitations on supported services for rural health care providers. Rural health care providers are allowed to participate in a consortium with ineligible private sector members and will be able to receive support even if the consortium is receiving a tariffed or market rate that includes a volume discount. The adopted rules will allow rural health care providers to benefit more fully from the rural health care universal service support mechanism, constituting a positive economic impact on these small entities.

38. As noted, small entities includes ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' All three types of small entities may also constitute rural health care providers for the purpose of this analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. As for ''small organizations,'' as of 1992, there were approximately 275,801.

39. In addition, the Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there is less than 12,296 health care providers potentially affected by the rules in the *Universal Service Order.* We note that these small entities may potentially be affected by the rules adopted in this Order.

40. *Summary Analysis of the Projected Reporting, Record keeping, and Other Compliance Requirements and Significant Alternatives.* In the FRFA to the *Universal Service Order,* we described the projected reporting, record keeping, and other compliance requirements and significant alternatives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order.* Because the rules adopted herein may only affect those requirements in a marginal way, we incorporate by reference paragraphs 956 through 960, 968 through 971, and 980 of the *Universal Service Order,* which describe those requirements and provide the following analysis of the new requirements adopted herein.

41. Under the rules adopted herein, we revise the rules governing the eligibility of services that the universal service support mechanism will support. We find that regardless of whether rural health care providers need services with greater or lower bandwidths, the public interest would be better served by allowing rural health care providers to have affordable access to all modern telecommunications service to provide medical services without regard for the bandwidth thereof. We also revise the rules to allow the Administrator to calculate the support based upon all distance-based charges. We've learned that because of the need to refer to the various tariffs, calculating the difference between the urban and rural base rates for telecommunications is extremely labor intensive. We have determined that most of the base rates for telecommunications service elements charged to rural health care providers are already comparable to those charged in urban areas so there is no need to continue to require the comparison of tariffs to other publicly available rates. Finally, we revise the rules to show that a rural health care provider participating in a consortium with ineligible private sector members may receive support even if the consortium is receiving a tariffed or market rate that includes a volume discount. We find that, an ineligible private entity that enters into an aggregated purchase agreement with a rural health care provider, and receives a tariff or market rate that includes a volume discount, would not be receiving a below-tariff or below-market rate because of the eligibility status of a rural health care provider participating in the consortium. We also find that new members may be added to a consortium even after the rural health care provider submits it application for support. Finally, because of the difficulties of allocating costs and preventing abuses in consortium arrangements, we find that, in addition to telecommunications carriers, health care providers and consortia of health care providers must maintain documentation of the amount of support for which each member of a consortium is eligible. These changes will not have a significant impact on the reporting, record keeping, and other compliance requirements for participation in the rural health care support program.

42. *Steps Taken To Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives.* In the FRFA to the *Universal Service Order,* we described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order.* Because the rules adopted herein may only affect those requirements in a marginal way, we incorporate by reference paragraphs 961 through 967, 972 through 976, and 981 through 982 of the *Universal Service Order,* which describe those requirements and provide the following analysis of the new requirements adopted herein.

43. Our decision to simplify the process for rural health care providers to receive support from the universal service support mechanism, will benefit rural health care providers, as well as their chosen service providers, who may be small entities. We also find that this approach should permit all parties to use fewer resources (*i.e.* less time and labor) to access the benefits of the universal service support program.

VI. Ordering Clauses

44. The authority contained in 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, § 1.108 of the Commission's rules, 47

CFR 1.108, the Fifteenth Order on Reconsideration is adopted.

45. The authority contained in 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, § 1.108 of the Commission's rules, 47 CFR 1.108, Part 54 of the Commission's rules, 47 CFR Part 54, are amended.

46. This Fifteenth Order on Reconsideration, the rule changes set forth are effective beginning with the third funding cycle of the rural health care universal service support program.

47. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Fifteenth Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.601 by revising paragraphs (b)(3), (b)(4), and (c)(1) to read as follows:

§ 54.601 Eligibility.

* * * * *

(b) * * *

(3) Telecommunications carriers, health care providers, and consortia of health care providers shall carefully maintain complete records of how they allocate the costs of shared facilities among consortium participants in order to charge eligible health care providers the correct amounts. Such records shall be available for public inspection.

(4) Telecommunications carriers, health care providers, and consortia of health care providers shall calculate and justify with supporting documentation the amount of support for which each member of a consortium is eligible.

(c) * * *

(1) Any telecommunications service that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal service support, subject to the limitations described in this paragraph. The length of a supported telecommunications service may not exceed the distance between the health care provider and the point farthest from that provider on the jurisdictional boundary of the nearest large city as defined in § 54.605(c).

* * * * *

3. Amend § 54.609 by adding paragraphs (a)(1), (a)(2), and by revising paragraphs (b) and (c) to read as follows:

§ 54.609 Calculating support.

(a) * * *

(1) With one exception, the Administrator shall consider the base rates for telecommunications services elements in rural areas to be reasonably comparable to the base rates charged for similar telecommunications service elements in urban areas in that state, and, therefore, the Administrator shall not include these charges in calculating the support. The Administrator shall include, in the support calculation, all other charges specified, and all actual distance-based charges as follows:

(i) If the requested service distance is less than or equal to the SUD for the state, the distance-based charge for that service can be no higher than the distance-based charged for a similar service over the same distance in the large city nearest to the rural health care provider;

(ii) If the requested service distance is greater than the SUD for the state, but less than the maximum allowable distance, the distance-based charge for that service can be no higher than the distance-based charged for a similar service in the large city nearest to the rural health care provider over the SUD.

(iii) ''Distance-based charges'' are charges based on a unit of distance, such as mileage-based charges.

(iv) Except with regard to services provided under § 54.621, a telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the actual distance-based charges for the health care provider's portion of the shared telecommunications services.

(2) If a telecommunications carrier, health care provider, and/or consortium of health care providers reasonably determines that the base rates for telecommunications services elements in rural areas are *not* reasonably comparable to the base rates charged for similar telecommunications service elements in urban areas in that state, the telecommunications carrier, health care provider, and/or consortium of health care providers may request that the Administrator perform a more comprehensive support calculation. The requester shall provide to the Administrator the information to establish both the urban and rural rates consistent with § 54.605 and § 54.607, and submit to the Administrator all of the documentation necessary to substantiate the request.

(i) Except with regard to services provided under § 54.621, a telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the applicable rural base rates for telecommunications service elements for the health care provider's portion of the shared telecommunications services, as well as the applicable urban base rates for the telecommunications service elements.

(b) Absent documentation justifying the amount of universal service support requested for health care providers participating in a consortium, the Administrator shall not allow telecommunications carriers to offset, or receive reimbursement for, the amount eligible for universal service support.

(c) The universal service support mechanisms shall provide support for intrastate telecommunications services, as set forth in § 54.101 paragraph (a), provided to rural health care providers as well as interstate telecommunications services.

4. Revise § 54.613 to read as follows:

§ 54.613 Limitations on supported services for rural health care providers.

(a) Upon submitting a bona fide request to a telecommunications carrier, each eligible rural health care provider is entitled to receive the most cost-effective, commercially-available telecommunications service at a rate no higher than the highest urban rate, as defined in this paragraph, at a distance not to exceed the distance between the eligible health care provider's site and the farthest point from that site that is on the jurisdictional boundary of the nearest large city, as defined in § 54.605(c).

(b) This section shall not affect a rural health care provider's ability to obtain supported services under § 54.621.

[FR Doc. 99–30989 Filed 11–29–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995; Notice 7]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations; Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of revision of random drug testing.

SUMMARY: RSPA has received and evaluated the 1999 Management Information System (MIS) Data Collection forms for the drug testing pipeline industry personnel. RSPA determined that the random positive drug testing rate for pipeline industry for the period of January 1, 1998, through December 31, 1998, was 0.7 percent. Therefore, the minimum random drug testing rate for the pipeline industry will be maintained at 25 percent of the covered employees for the period of January 1, 2000, through December 31, 2000.

DATES: Effective January 1, 2000 through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Office of Pipeline Safety, Compliance and State Programs, (DPS–23), Research and Special Programs Administration, 400 7th Street SW., Room 7128, Washington, DC 20590, telephone (202) 366–6199.

SUPPLEMENTARY INFORMATION: In a final rule published on December 23, 1993 (58 FR 68257), RSPA announced that it would require operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas facilities, who are subject to 49 CFR parts 192, 193 and 195 to implement, maintain, and submit an annual report of their drug testing program data. Any operator with 51 or more covered employees had to submit this information on an annual basis. Operators with 50 or fewer covered employees had to maintain this information, and RSPA randomly selected 100 operators in this category to submit their data. The drug testing statistical data was essential for RSPA to use the data to analyze its current approach to deterring and detecting illegal drug abuse in the pipeline industry, and, as appropriate, plan a more efficient and effective approach. In 1997, RSPA lowered the random drug testing rate to 25 percent. Since the positive random testing rate continues to be less than 1 percent industry-wide, RSPA announces that in accordance with Section 199.11(c)(3) the minimum random drug testing rate is 25 percent of covered pipeline employees for the period of January 1, 2000, through December 31, 2000.

Submission of MIS reports are due to the Office of Pipeline Safety, Research and Special Programs Administration, DPS–23, Room 7128, 400 7th Street SW., Washington, DC 20590, not later than March 15 each calendar year. Notice of statistical data will be published in the future to report results of each calendar year's MIS Data Collection results. RSPA will also publish at that time whether or not the random rate will be reduced or increased for the pipeline industry pursuant to Section 199.11.

Issued in Washington, DC, on November 23, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–30985 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 122299B]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Winter II Period

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

ACTION: Commercial quota harvest for Winter II period.

SUMMARY: NMFS announces that the scup commercial quota available in the Winter II period to the coastal states from Maine to North Carolina has been harvested. Commercial vessels may not land scup in the northeast region for the remainder of the 1999 Winter II quota period (through December 31, 1999). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing scup in these states.

DATES: DATES: Effective 0001 hours November 26, 1999, through 2400 hours December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods, based upon percentages of the annual quota. The Winter II commercial quota (November through December) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.120.

The initial total commercial quota for scup for the 1999 calendar year was set equal to 2,534,000 lb (1,149,403 kg)(63 FR 72203, December 31, 1998). The Winter II period quota, which is equal to 15.94 percent of the annual commercial quota (minus a discard estimate), was set at 403,920 lb (183,215 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period, and based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. NMFS is further required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Winter II period.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the scup is available. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 1999 Winter II period has been harvested and that the Winter II period for scup no longer has commercial quota available. Therefore, effective 0001 hours November 26, 1999, further landings of scup in coastal states from Maine through North Carolina by vessels holding Federal scup moratorium permits are prohibited through 2400 hours December 31, 1999.

The Winter I period for commercial scup harvest will open on January 1, 2000. Effective 0001 hours November 26, 1999, Federally permitted dealers are also advised that they may not purchase scup from Federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter II period (through December 31, 1999).

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: November 23, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–31065 Filed 11–24–99; 2:17 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 229
Tuesday, November 30, 1999

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AF83

2000 Crop Peanut National Poundage Quota for Quota Peanuts

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, as amended, (the 1938 Act) requires that the national peanut poundage quota for the 2000 crop be announced by December 15, 1999. This proposed rule suggests a national poundage quota figure in the range between 1,170,000 short tons (st) and 1,190,000 st.

DATES: Comments must be received by December 10, 1999, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays, in Room 5750–South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by 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: Commodity Loans and Purchases—10.051.

Executive Order 12998

This proposed rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither the Farm Service Agency (FSA) nor Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

This proposed amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Unfunded Federal Mandates

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (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 the UMRA.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 2000-crop peanut national poundage quota.

A. Determination of the Quota

Peanut producers voting in a mail referendum December 1 through 4, 1997, approved poundage quotas for the 1998 through 2002 marketing years (MY) by an affirmative vote of 94.8 percent. Therefore, as provided for in the 1938 Act, the Secretary is required to administer a peanut program in which marketings are governed through the use of federally-granted quota and in which price support is offered.

Section 358–1(a)(1) of the 1938 Act, as amended by the Agricultural Market Transition Act (the 1996 Act), requires that the national poundage quota for peanuts for each of the 1996 through 2002 MYs be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed use) and related uses. Under the 1996 amendments to the 1938 Act, seed use remains a quota use but, unlike in the past, the seed aspect of the quota is accounted for through the grant of a temporary seed quota to all producers. As a result, seed is no longer part of the basic quota calculation which will be codified through this determination. The MY for 2000-crop peanuts runs from August 1, 2000, through July 31, 2001.

The national poundage quota for MY 1999 was set at 1,180,000 st. This rule proposes that the national poundage quota for MY 2000 be set between 1,170,000 st and 1,190,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 2000–CROP PEANUTS WITH MARKETING LEVELS OF 97.6 PERCENT AND 99.3 PERCENT

Item	Farmer Stock Equivalent (Short tons)	
	99.3% of quota marketed	97.6% of quota marketed
Regular domestic food use	989,000	989,000

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 2000–CROP PEANUTS WITH MARKETING LEVELS OF 97.6 PERCENT AND 99.3 PERCENT—Continued

Item	Farmer Stock Equivalent (Short tons)	
	99.3% of quota marketed	97.6% of quota marketed
Related uses	.....	.....
Crushing residual	128,500	128,500
Shrinkage and other losses	44,000	44,000
Unused quota	8,500	28,500
Totals	1,170,000	1,190,000

The estimate of 2000 domestic food use was developed in two steps. First, normal commercial use was estimated based upon figures from the USDA Interagency Commodity Estimates Committee (ICEC) adjusted to take out peanut imports, peanut butter imports, and peanut butter exports (which are normally comprised of additional peanuts only). Then, farm sales and other direct marketings to consumers were added based upon differences between production data and Federal-State Inspection Service inspection data. Insofar as related uses are concerned, an added allowance is made for the normal crushing residual that cannot effectively be used for food use, and that amount has traditionally been about 12 percent, on a farmer stock basis, of the total of MY domestic production. An allowance for shrinkage and other losses is made to account for reduced kernel and other kernel losses during storage, using the customary factor of 4 percent of domestic food use. In addition, disaster transfers of poor quality peanuts are included as part of other losses. Finally, the unused quota allowance goes to those instances where the farmer cannot fulfill a quota either because of under-planting or because the farmer is unable to produce enough Segregation 1 peanuts to fill the full quota. Because of the program changes in the 1996 Act, which have been outlined in previous notices, there is now a greater incentive than in the past to fully market the quota and it is expected that, after discounting for quality problems, somewhere between 97.6 percent and 99.3 percent of the quota will be marketed.

In MY 1996 about 97.3 percent was marketed; in MY 1997 about 99.7 percent of quota was marketed; in MY 1998 about 98.0 percent of quota was marketed; and for MY 1999 between 94.0 percent and 98 percent of the quota is anticipated to be marketed. Also, it is anticipated that between 97.6 and 99.3 percent of the MY 2000 quota will be marketed.

The proposed 2000 quota range, as set forth above, reflects the uncertainty in domestic consumption of peanut products. Although a small increase in demand has resulted from new uses and from lower peanut support prices in recent years, Government Domestic Feeding and Child Nutrition Program purchases in MY 1998 decreased 32 percent from 38,053, 476 pounds in MY 1997 to 28,831,842 pounds in MY 1998. Also, peanut butter consumption, the major food use of peanuts, declined almost 2 percent during 1998. Overall demand may change little from the current level.

List of Subjects in 7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

Accordingly, it is proposed that 7 CFR part 729 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 paragraph (c) is revised to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years:

(1) The national poundage quota (excluding seed) for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota (excluding seed) for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota (excluding seed) for quota peanuts for marketing year 1998 is 1,167,000 short tons.

(4) The national poundage quota (excluding seed) for quota peanuts for marketing year 1999 is 1,180,000 short tons.

(5) The national poundage quota (excluding seed) for quota peanuts for marketing year 2000 will be set between 1,170,000 and 1,190,000 short tons.

* * * * *

Signed at Washington, DC, on November 24, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–31111 Filed 11–24–99; 3:33 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 97–093–2]

RIN 0579–AA90

Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to restrict the interstate movement of sheep and goats from States that do not follow effective flock management practices for scrapie. We also propose to require animal identification for sheep and goats moving interstate and to reinstate a scrapie indemnity program to compensate owners of certain animals destroyed due to scrapie. These changes would help prevent the interstate spread of scrapie, an infectious disease of sheep and goats.

DATES: Consideration will be given only to comments received on or before December 30, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–093–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comments refer to Docket No. 97–093–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235, (301) 734–7709.

SUPPLEMENTARY INFORMATION: Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats, a member of a class of diseases called transmissible spongiform encephalopathies (TSEs). Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease, and because there is no live-animal test for the disease that has been validated (demonstrated to be accurate by impartial research).

Scrapie is not a highly contagious disease; however, transmission to uninfected and susceptible animals can sometimes occur following exposure to small amounts of tissues from an infected animal. The exact conditions favorable to animal-to-animal transmission are not fully understood, though some factors that increase the risk are known (e.g., contact of a young animal with the afterbirth of an infected female animal). The scrapie agent moves from infected to susceptible animals by direct animal-to-animal contact, or indirect contact through contaminated premises and may enter through the gastrointestinal tract, open wounds, or other routes. Consequently, its spread appears to be both maternal (mother to offspring) and horizontal (direct contact between unrelated sheep).

There is no evidence that any human has ever contracted scrapie or any similar disease by eating lamb or mutton. However, it has been theorized that scrapie may have been spread to other animals when whole scrapie-positive animals have been rendered and used as animal feed. This is a prominent theory for the origin of bovine spongiform encephalopathy (BSE) in cattle in the United Kingdom. As a precautionary measure to prevent the possible spread of TSEs via ruminant feed in the United States, the U.S. Food and Drug Administration published a final rule on June 5, 1997 (62 FR 30935–30978) that prohibited the use of animal protein derived from most mammalian tissues in ruminant feed.

While diseases caused by TSEs do not frequently or easily cross species lines, there is reason to be concerned that TSEs infecting one species could at some point lead to diseases in other animal species or humans, as has been demonstrated with BSE in cattle in the United Kingdom. New variant Creutzfeldt Jakob Disease (vCJD) is a human neurological disease recently identified in the United Kingdom that is believed to have its origins in the BSE outbreak in cattle in the United Kingdom. The agent that causes vCJD is indistinguishable from the causative agent of BSE. As of September 21, 1999, 46 cases of vCJD had been identified in the United Kingdom and one in France. The exact means by which the victims were exposed to the agent is uncertain; it may have been through eating beef products that contained high risk materials (brain and spinal cord) from BSE-positive cattle or through some other exposure.

Based on the above facts, it is reasonable to conclude that control of scrapie in the United States, in addition to addressing a disease problem in sheep, would also reduce concerns about the apparently low but undefined risks that the scrapie agent could lead to diseases in other species.

There are nearly 8 million sheep and lambs in the United States. It is impossible to estimate with any accuracy how many of them are infected with scrapie. This is because the disease may go undiagnosed. Scrapie has a lengthy incubation period, which complicates epidemiological studies, and there has been no live-animal test to diagnose it. These factors have impeded surveillance programs for scrapie, requiring it to be identified by symptoms and postmortem examination. However, the following information can be used to develop a rough estimate of the number of sheep in the United States that may be infected with scrapie: (1) In a 1996 NAHMS report, 1.2 percent of participating producers reported that they had seen scrapie in their flock in the last 5 years; (2) The average flock size in the United States is 105 animals; (3) The number of flocks in the United States is 68,800; (4) In a flock that has had one case, the percent of animals that will come down with scrapie is highly variable. Based on this data, it is likely that at least 826 flocks are affected and that at least 86,730 sheep have been exposed to and may be infected with scrapie. It is likely that the number of exposed and potentially infected animals is significantly higher since owners are likely to under report disease because it is confused with another disease.

To control the spread of scrapie within the United States, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), administers regulations at 9 CFR part 79, which restrict the interstate movement of certain sheep and goats. APHIS also administers the Voluntary Scrapie Flock Certification Program (the VSFCP), described in regulations at 9 CFR part 54, and produces a program standards document entitled ''Program Standards—Voluntary Scrapie Flock Certification Program,'' which is available at http://www.aphis.usda.gov/vs/scrapie/umr. A hard-copy of the Program Standards may be obtained by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The regulations at 9 CFR parts 54 and 79 are referred to below as the scrapie regulations.

For over 40 years USDA has had programs to eradicate or reduce the incidence of scrapie in the United States. While comprehensive data on the incidence of scrapie has always been hard to assemble due to the nature of the disease and its diagnosis, these programs apparently have not resulted in a major reduction in the incidence of scrapie. A major reason for this result is that State programs for scrapie have varied tremendously in their resources and effectiveness, from State to State and over time. States where sheep are not a major agricultural commodity may not invest sufficient resources to identify infected flocks or reduce the incidence of scrapie within that State, and sheep with undiagnosed cases of scrapie could then easily move to other States, infecting new flocks. Therefore, we believe that to build an effective national scrapie program, the current regulations must be adjusted to recognize that sheep from States with minimal or nonexistent scrapie programs represent a higher risk than sheep from other States.

In an advance notice of proposed rulemaking (ANPR) published in the **Federal Register** on January 26, 1998 (63 FR 3671–3673, Docket No. 97–093–1), we solicited public comments to help us develop options for potential changes to the scrapie regulations. The primary issues on which we sought comment were:

- Should APHIS further restrict interstate movement of animals from States that do not consider scrapie a reportable disease or do not quarantine infected flocks or source flocks? Should APHIS define how a State must conduct a quarantine in order to avoid further

restrictions on interstate movement of animals from that State?

• Should APHIS restrict interstate movement of high-risk animals from flocks that are not infected flocks or are not source flocks, and if so, how?

• Should any of the definitions in the scrapie regulations be revised (e.g., the definitions of source flock, trace flock, and high-risk animal)?

• Should there be additional permit or official identification requirements for the interstate movement of any classes of sheep and goats to allow for a more effective national program for surveillance for scrapie and traceback of scrapie-positive animals?

• Should APHIS continue to provide the following information on the World Wide Web: The identity of scrapie infected flocks and source flocks designated under part 79, and the identity and certification status of flocks participating in the VSFCP?

We solicited comments concerning our ANPR for 60 days ending March 27, 1998. We received 27 comments by that date. The commenters were sheep producers, industry associations, State agencies, and individuals. The comments and data submitted were carefully reviewed, and helped us develop this proposed rule.

Briefly, the three major changes we are proposing to the scrapie regulations are:

• Further restrictions on the interstate movement of sheep and goats from States that do not consider scrapie a reportable disease or do not quarantine infected flocks or source flocks. We are also proposing standards describing how a State must conduct a quarantine in order to avoid further restrictions on interstate movement of animals.

• Additional official identification requirements for the interstate movement of sheep and goats to allow for a more effective national program for surveillance for scrapie and traceback of scrapie-positive animals. The proposed identification requirements are similar to current requirements for cattle and swine.

• Reinstatement of a scrapie indemnification program for sheep and goats that owners agree to destroy. The owners of destroyed high-risk animals and animals diagnosed as scrapie positive by an approved live-animal test would be eligible for indemnity payments.

State Quarantine Activities and Interstate Movement Restrictions

Many commenters supported the idea that States should have intrastate quarantines and controls on the movement of sheep and goats sufficient to prevent intrastate spread of scrapie from known sources, and that States lacking such quarantines and controls should have the interstate movement of their sheep and goats further restricted. These commenters expressed the opinion that the current regulations do not do enough to prevent the spread of scrapie from States with weak scrapie programs into States with more effective scrapie programs. Most of these commenters supported the idea that an adequate State program is one that considers scrapie to be a reportable disease, that quarantines scrapie infected and source flocks and maintains them under a flock plan, and that imposes intrastate movement restrictions equivalent to Federal interstate movement restrictions imposed under current part 79.

Commenters generally stated that if a State has or develops such an intrastate program, and APHIS determines the State program to be comparable in effectiveness to its interstate regulations in part 79, that State should not be subject to further interstate movement restrictions. However, a few commenters suggested that if a State implements a program of intrastate restrictions, that should be sufficient to avoid further interstate movement restrictions on sheep from that State, without an APHIS determination that the State program is comparable in effectiveness to the Federal program under part 79.

Commenters also generally stated that flocks participating in the VSFCP should not be subject to further interstate movement restrictions, even if they are in a State that does not have an adequate intrastate program as described above.

We believe that programs developed and implemented by States are essential to the control and eradication of scrapie, and we encourage varying approaches to these programs to meet individual State needs and to try and evaluate different control methods. However, we also believe APHIS should have a role in determining that each State program achieves a minimum level of effectiveness to serve national needs. Valid complaints in the past have noted that some State programs exist as little more than a name, and are ineffective. This introduces unacceptable hazards when sheep and goats from such States move in interstate commerce. Additionally, the creation of a uniform minimal standard on the national level would be consistent with the recommendations of international animal health organizations and the World Trade Organization, both of which recommend that a national authority establish minimum standards for programs affecting trade.

Therefore, we are proposing that if a State is to avoid the requirements described below under ''Additional Interstate Movement Restrictions for Sheep and Goats,'' the State program must be reviewed by APHIS and determined to be comparable to the Federal program contained in part 79. APHIS would conduct this review by evaluating the State statutes, regulations, and directives pertaining to animal health activities to determine whether the State has established authority to conduct a scrapie control program comparable to the Federal one, and would also examine reports and publications of the State animal health agency to determine whether the existing authorities are being exercised in the form of an effective program. The States would be required to submit a written statement containing this information and certifying that they are in compliance with this section.

Additional Interstate Movement Restrictions for Sheep and Goats

Most commenters supported the idea that APHIS should further restrict interstate movement of sheep and goats from States that do not consider scrapie a reportable disease, or that do not quarantine infected and source flocks. Most commenters also stated APHIS should set minimum criteria for how a State must conduct a quarantine. Four commenters opposed APHIS setting minimum criteria in this area because they were concerned that APHIS would dictate detailed command-and-control requirements to State programs, rather than minimum effectiveness criteria. This is not the intention of APHIS.

In this proposal, we describe two sets of interstate movement restrictions: One set for ''Consistent States'' and another set for ''Inconsistent States.'' Consistent States would be States that conduct an active State scrapie program which effectively enforces certain requirements to identify scrapie in flocks and control its spread. We propose to establish in the new § 79.6 the requirements a State would have to meet to be a Consistent State. These requirements include reporting and investigating any scrapie suspect animal, affected animal, or scrapie-positive animal; identifying and quarantining infected and source flocks; and individually identifying certain exposed animals and individually identifying and monitoring certain high-risk animals in all flocks, not just source or infected flocks. All States that are not Consistent States would be Inconsistent States. APHIS believes almost all States currently have the State legislative

authority and animal health infrastructure to qualify as Consistent States. However, this must be confirmed on a State-by-State basis through discussions between APHIS and State animal health authorities. Before this proposal is finalized, APHIS will develop and publish for comment a list of States that qualify as Consistent States. After finalizing the rule, APHIS will insert the list of ''Consistent States'' in § 79.1. From time to time, APHIS will amend the list when it is determined that States meet or do not meet the definition of Consistent State in § 79.1.

While this proposal does not require it, it may also be desirable to require all Consistent States to sign a compliance agreement with APHIS describing the State scrapie program operations; we would appreciate public comment on whether our regulations should require such an APHIS-State compliance agreement.

Such an agreement would provide evidence of the intent of a State to impose the requirements and provide the services necessary for it to be considered a Consistent State. The agreement could also describe cooperative activities between the State and APHIS to support the State scrapie regulatory activities. This agreement would be similar to, or could be made a part of, the cooperative agreement or memorandum of understanding that some States have signed with APHIS to cooperate in a number of animal disease control programs, including the VSFCP (see § 54.13). Under part 54, some States may have already signed a cooperative agreement with APHIS that describes the respective roles of APHIS and State personnel in implementing the VSFCP. Such agreements also specify the financial, material, and personnel resources to be committed by the State and APHIS and assign specific activities to APHIS or State personnel.

APHIS considered adding one other requirement to the standard for a State to qualify as a Consistent State. The proposed requirement states that Consistent States must report and investigate any scrapie suspect animal, affected animal, or scrapie-positive animal, but it does not specify any particular level of effectiveness in these investigations, nor does it require that States be able, in their investigation, to trace back a scrapie-positive animal to its flock of birth, if it was born in that State, and otherwise to its State of origin. When an animal that has moved through several flocks is identified as scrapie-positive, e.g., at slaughter, it greatly aids the scrapie control program when the animal can be traced back to its flock of birth. This is not always possible to do with the records and identification required by current State programs. However, it might significantly increase the burden on States to upgrade their programs to the point where any animal sold for slaughter, breeding, or other purposes can be traced back to its flock of birth. Therefore, we would appreciate receiving comments on whether the standard for declaring a State to be a Consistent State should include a requirement that the State's scrapie control program must be able to trace any animal from a flock in that State back to its flock of birth, if it was born in that State, and otherwise to its State of origin, and whether provisions for monitoring and when available live-animal testing of such flocks should be required.

The interstate movement restrictions proposed for Consistent States are similar to the regulations in current part 79, except that they include additional identification requirements and would restrict the interstate movement of high-risk animals and prohibit the interstate movement of scrapie positive, affected, and suspect animals (except when they are moved for destruction or research under conditions approved by the Administrator). The restrictions proposed for Inconsistent States are stricter, and are designed to minimize several areas of risk associated with the indeterminate scrapie status of sheep and goats from these States. Sheep and goats from Inconsistent States would be subject to stricter movement conditions to minimize their contact with other animals, and stricter identification requirements to aid traceback from any scrapie outbreak that may be associated with the animals. Also, sheep and goats from Inconsistent States could not move interstate for breeding purposes unless they are enrolled in the VSFCP or an equivalent APHIS-recognized State flock certification program. An equivalent APHIS-recognized State flock certification program does not equate to a Consistent State. It is possible, though unlikely, that a State might not institute the Statewide controls that would qualify it as a Consistent State—investigation and identification of all suspect and high-risk animals, quarantine of all source and infected flocks, etc.—but would have a program providing VSFCP-like standards for particular individual flocks within the State whose owners request it.

The following chart describes the proposed interstate movement conditions.

INTERSTATE MOVEMENT GENERAL RESTRICTIONS FOR SHEEP AND GOATS

Type of interstate movement	Moved from INCONSISTENT State	Moved from CONSISTENT State
Sale or other movement of breeding animals, show animals or any other animal not specifically addressed below:		
High-risk animal, scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited*.
Non-high risk animal from an infected or source flock.	Prohibited*	Prohibited*.
Other animal	Flock must be enrolled in the Complete Monitored category of the Scrapie Flock Certification Program or equivalent APHIS-recognized program and have certificate.	Individual animal ID and certificate.
Sale or other movement directly to slaughter or through slaughter channels to slaughter of animals under 6 months of age:		
Scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited*.

INTERSTATE MOVEMENT GENERAL RESTRICTIONS FOR SHEEP AND GOATS—Continued

Type of interstate movement	Moved from INCONSISTENT State	Moved from CONSISTENT State
High-risk animals and animals from infected or source flock.	Individual animal ID and permit, or sealed conveyance and permit (no individual ID) when moving directly to slaughter, or a permit (no individual ID) and an indelible ''S'' mark on the left jaw.	Individual animal ID and permit, or sealed conveyance and permit (no individual ID) when moving directly to slaughter, or a permit (no individual ID) and an indelible ''S'' mark on the left jaw.
Other animal	Premises ID** and certificate	None.
Sale or other movement directly to slaughter or through slaughter channels to slaughter of animals over 6 months of age, or animals of any age to feedlots for later movement to slaughter:		
Scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited*.
High-risk animals and animals from infected or source flock.	Individual animal ID and permit	Individual animal ID and permit.
Other exposed animals	Individual animal ID and permit	Individual animal ID.
Other animals over 1 year of age	Individual animal ID and certificate	Individual animal ID.
Other animals between 6 months and 1 year of age, or animals under 6 months of age moving to feedlots for later movement to slaughter.	Individual animal ID and certificate	Premises ID**.
Movement of animals for grazing or other management purposes without change of ownership		
Scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited*.
High-risk animal or animal from infected or source flock.	Prohibited*	Prohibited*.
Exposed animals	Individual animal ID and certificate	Premises ID.
Other animal	Premises ID and certificate	None.

*Animals prohibited movement may be moved interstate only if they are moving interstate for destruction or research approved by the Administrator.

**Premises ID is not required for slaughter animals if the animals are kept as a group on the same premises on which they were born and are not commingled with animals from another premises at any time, including throughout the slaughter process, or, if they are commingled during the slaughter process, they are officially identified on arrival at the slaughter facility such that any animal can be traced back to its flock of origin.

Note: A CONSISTENT STATE is one whose intrastate identification, quarantine and movement restrictions for infected and source flocks and high-risk animals are consistent with the APHIS standards for State scrapie programs.

As summarized in the above chart, there are different interstate movement conditions depending on the State's scrapie program status, age of the animal moved, and on whether the animal is moved for slaughter or for other purposes. The movement conditions vary with the risk of spreading scrapie by the movement, and range from no requirements for animals of no known risk moved to slaughter from a State with a strong scrapie program, through severe requirements for animals of known risk moving from Inconsistent States, to outright prohibition of movement for the highest risk categories. The requirements employed to control risk in the middle range include premises identification (ID), individual animal ID, certificates, permits, and sealed conveyances. The meanings of these terms are discussed below under ''Changes to Definitions in Parts 54 and 79.''

The interstate movement of all scrapie-positive animals, suspect animals, and affected animals is prohibited unless the Administrator approves their movement for destruction or research. Uncontrolled movement of these animals always poses a risk that they may come in contact with other sheep and goats and spread scrapie to these other animals. Therefore, when the Administrator approves movement for destruction or research, the animals must be moved and maintained under conditions to prevent the spread of scrapie.

The interstate movement of high-risk animals and animals from infected or source flocks is subject to various restrictions that depend on the age and source of the animal and the purpose of the movement. High-risk animals and animals from infected or source flocks are prohibited movement unless they are moving to slaughter or moving in slaughter channels. Such animals of any age may be moved to a feedlot for later slaughter if they have individual animal ID and a permit. High-risk animals and animals from infected or source flocks may move directly to slaughter if they are over 6 months old and have individual animal ID and a permit. The purpose of the permit is to trace the movement of each lot of animals, and the purpose of the individual ID is to make it easy to ensure that individual animals are not diverted out of slaughter channels, e.g., by becoming mixed with other animals at feedlots prior to slaughter.

High-risk animals and animals from infected or source flocks animals under 6 months of age may be moved directly to slaughter if they meet one of three conditions: (1) Individual animal ID and a permit; (2) A sealed conveyance (no animal ID) and a permit; or (3) A permit and an indelible ''S'' mark on the jaw, in lieu of animal ID. These additional options are provided for animals under 6 months of age due to the large volume of lambs shipped to slaughter, and because it is often impractical or uneconomical to individually identify younger lambs.

Animals that are not in the categories described above (i.e., they are not scrapie-positive animals, suspect animals, affected animals, or high-risk animals) may move interstate to slaughter under conditions that vary depending on their age, and whether they are moving from a Consistent or

Inconsistent State. Generally, the older the animal moving to slaughter, the more requirements apply, because older animals may have had more opportunities to move from one flock to another and thereby increase their exposure to scrapie. The program is more likely to need records that allow the older animals to be traced back to earlier premises. While it would usually be possible to trace the movement of an animal from flock to flock in a Consistent State based on flock records, individual animal ID makes this task easier for animals over 1 year of age, which have a longer history than lambs and may have had several owners. Also, it is currently impossible to diagnose scrapie in animals under 6 months of age, by either a live-animal test or necropsy, so there is no opportunity to identify a scrapie-positive animal under 6 months of age and trace it back to its origin. Therefore, individual animal ID is seldom required for animals under 6 months of age; it is only required when the point of the identification is not traceback, but to ensure individual animals are not commingled with animals from other lots (e.g., when they are sent to a feedlot en route to slaughter).

When animals that are not scrapie-positive animals, suspect animals, affected animals, or high-risk animals move from a Consistent State, the animals may move with no requirements if they are under 6 months of age and are moving to slaughter. However, if such animals under 6 months of age are moving from an Inconsistent State to slaughter, they require a premises ID and a certificate. When they are over 6 months of age but less than 1 year of age, such animals may move from a Consistent State to slaughter, or to a feedlot, with only a premises ID; but if they are moving from an Inconsistent State, they require individual animal ID and a certificate. In this case the individual animal ID is required for animals from Inconsistent States because it is sometimes possible to diagnose scrapie in an animal between 6 months to 1 year of age, and tracing these animals back to origin in an Inconsistent State is not possible with only a premises ID because Inconsistent States would not require records that would allow the animal to be traced back farther than the premises from which the animal was shipped to slaughter. When they are over 1 year of age, such animals may move from a Consistent State to slaughter, or to a feedlot, only if they have individual animal ID; but if they are moving from an Inconsistent State, they require both individual animal ID and a certificate. The higher requirements for animals from Inconsistent States are largely due to the fact that Consistent States impose significant restrictions on movements between flocks within the State but Inconsistent States do not, so our regulations must use certificates and individual animal ID more extensively for Inconsistent States to increase the probability of successful tracebacks.

The proposed requirements also address interstate movement for purposes other than slaughter. Animals that are not scrapie-positive animals, suspect animals, affected animals, high-risk animals, or animals from infected or source flocks may move interstate from a Consistent State for grazing or other management purposes, without change of ownership, with no requirements (unless the animal is an exposed animal as defined in the regulations, in which case a premises ID is required). Such animals moving interstate from an Inconsistent State must have a premises ID and certificate, unless they are exposed animals, in which case individual animal ID and a certificate is required.

Indemnification Program

We are also proposing to reinstate an indemnification program to compensate the owners for destruction of high-risk animals, animals diagnosed scrapie-positive by an approved live-animal test, affected animals, suspect animals (if the postmortem indicates them to be scrapie-positive), and other groups of animals when the Administrator determines that their destruction will contribute to the eradication of scrapie. We believe indemnification is necessary to contribute to scrapie control, mainly by providing the economic incentive to remove scrapie-positive and high-risk animals from flocks and reduce the number of flocks under quarantine. This economic incentive, combined with advances in diagnostic techniques that allow faster and more accurate identification of scrapie-positive animals, should contribute substantially to reducing the incidence of scrapie in the United States.

The types of animals proposed as eligible for indemnity are animals diagnosed with scrapie, or known to be closely associated with animals diagnosed with scrapie under conditions where they could contract the disease. These animals could potentially cause many new cases of scrapie, and, therefore, we believe paying indemnity to destroy them is in the interest of effective scrapie control.

The indemnity payments would be $150 for registered animals and $50 for other animals. As of January 1, 1999, the national average sale price of a sheep was $88; as of January 1, 1998, it was $102. These average sale prices reflect the sale of millions of slaughter sheep and a few thousand valuable registered breeding sheep. The average price for registered breeding sheep is in the range of $300, with some selling for thousands of dollars. Therefore, if sale prices persist in the range experienced in the past 2 years, the average owners of both slaughter and registered sheep who accept indemnity for their animals rather than selling them would recover about half the market value of the animals.

The indemnity amounts of $150 and $50 represent an effort to provide an indemnity that will be attractive, while also stretching available indemnity funds to ultimately remove as large a number of diseased animals as possible. The indemnity amounts are not so high, compared to fair market value, as to provide a perverse incentive, *i.e.,* to encourage flock owners to expose animals to scrapie to obtain a higher price. The indemnity amounts were decided based on our past experience with industry participation in scrapie indemnity programs, and the $150 and $50 amounts are the same indemnities used in our previous scrapie indemnity program which expired in 1996, at which time the national average sale price of a sheep was $87.

We considered whether it would be appropriate to pay a lower indemnity, either for all eligible animals or for those that test positive for scrapie on a future live-animal test, in view of the economic fact that sheep infected with scrapie really have little or no economic value. However, we believe that reducing the indemnities below the proposed values would encourage owners to hide the presence of scrapie and thus hurt the effectiveness of the scrapie control program. This view is supported by the experience of the British Government in controlling BSE. When the British Government increased the indemnity for BSE-infected cattle from 50 percent of market value to 100 percent, the number of reported BSE cases increased by 73 percent.[1]

It should be noted that if this proposal is adopted, the total number of animals that can be indemnified each year and the total amount of indemnity funds expended will be limited by the amount of program funding appropriated for that purpose. We invite comments on the total amount of indemnity that should be needed, and on whether the payment amounts are appropriate.

[1] Food Microbiology (1990) 7:253–279.

In deciding to propose this indemnity program, we examined alternatives to determine whether the same funds could be expended on other activities to control scrapie and achieve a greater reduction in the disease. Two activities that could produce substantial reductions in scrapie are development of a live-animal test and education of sheep producers and veterinarians to recognize and control scrapie. However current and planned funds for both of these initiatives appear to be at a level that will produce optimal results, and we do not believe diverting indemnity funds to them would accelerate their progress. Instead, an indemnity program would complement use of a live-animal test and education programs. The three approaches together will be needed to successfully control scrapie.

Another alternative we considered, under the assumption that a live-animal test for scrapie will soon be available, was to impose a large-scale, mandatory live-animal testing requirement of all animals moved interstate for other than slaughter purposes. For this approach to be effective, we would need to condemn and destroy any animals that tested positive, to ensure they do not come in contact with and infect other animals in the future. This alternative was rejected because an approved live-animal test is not currently available. Once a live-animal test has been approved and fully evaluated, this option will be reconsidered.

We also considered prohibiting the movement in interstate commerce for any purpose of any animal that was considered to be at high risk of being scrapie infected. This was rejected because: (1) There is no evidence that scrapie is a threat to public health; (2) Scrapie-infected animals moving to slaughter pose little risk of spreading the disease; and (3) Given the past history of scrapie indemnity funding, it is likely that we would be unable to indemnify all of these animals causing a significant economic hardship on owners of high-risk sheep. To mitigate the remote risk that these animals pose when moving in slaughter channels, we have proposed to indemnify and destroy them whenever possible. Finally, we considered restricting these animals without compensation. This option was rejected for the reasons discussed under indemnification.

Live-Animal Testing

While no live-animal test for scrapie has yet been approved, several varieties of live-animal tests show promise, and we anticipate the availability of a live-animal test in the near future. Therefore, this proposed rule includes reference to live-animal tests as a means to identify scrapie-positive animals and affected animals, without specifying the exact protocols of the live-animal tests. As discussed below, the definitions for *live-animal screening test* (used to identify affected animals) and *scrapie-positive animal* state that the tests must use protocols approved by the Administrator and must be performed by laboratories approved by the Administrator. Once developed, the Administrator will initiate rulemaking in the **Federal Register** to publish these protocols or incorporate them by reference.

The availability of a validated live-animal test will significantly affect the nature of the scrapie control program. Such a test would make it possible to identify confirmed infected live animals for destruction, reducing the need to destroy large groups or entire flocks of suspect animals in order to control the spread of scrapie.

Changes to Definitions in Parts 54 and 79

Three definitions would be removed because they are no longer needed for the proposed regulations (*bloodline animal*, because this category has not been used since termination of an earlier indemnity program; *department*, because we refer instead in this proposal to APHIS; and trace flock, because its definition has been absorbed by the new definition of *source flock* discussed below). Nine other definitions would be amended (*affected animal, destroyed, exposed animal, flock, flock plan, high-risk animal, infected flock, scrapie-positive animal,* and *source flock*). Some of these changes would be made to adapt the regulations to the probability that a validated live-animal test for scrapie may be available in the near future. The definition of *destroyed* would be changed to remove movement to slaughter as a means of destruction. Animals to be destroyed would have to be euthanized, and the carcasses disposed of by means authorized by the Administrator. Animals for which an indemnity is paid under the regulations must be destroyed, rather than sent to slaughter, for two reasons. First, any movement of animals eligible for indemnity represents a potential risk of spreading scrapie, and we do not want to encourage movement of these animals to slaughter when we have the alternative of destroying them on their home premises and disposing of the carcasses safely. Second, if animals eligible for indemnity are slaughtered, this may result in the scrapie agent entering the animal food chain, and we want to avoid this. The Food and Drug Administration has published regulations (62 FR 30935–30978, June 5, 1997) requiring that ruminant feed must not contain animal protein derived from mammalian tissues, in order to prevent the possible spread of transmissible spongiform encephalopathies, such as scrapie, to ruminants. However, sheep protein is still used for other nonruminant animal feed, such as zoo animal foods. Research has shown that a variety of species can conceivably contract some form of spongiform encephalopathy by oral inoculation with protein from a scrapie-positive animal. The wide distribution of meat byproducts from slaughter plants makes it likely that if indemnity animals were allowed to go to slaughter, some of their protein would be used in nonruminant animal feed. The risk that nonruminants could contract a transmissible spongiform encephalopathy from consuming animal feed containing protein from a scrapie-positive animal is extremely small. However, we propose to control this small risk by taking the opportunity presented by the indemnity program to order indemnity animals to be destroyed, rather than sent for slaughter. The Administrator will authorize disposal methods (often incineration or burial) that are consistent with local laws and conditions and that minimize the dispersal of possibly infectious material. The proposed definition of *destroyed* ties into the proposed *Procedures for destruction of animals* in § 54.7. These procedures include a requirement that carcasses may not be processed for animal food unless subjected to a treatment process approved by the Administrator and known to eliminate the agents of transmissible spongiform encephalopathies. This requirement would address the established risk that some species of animals conceivably could contract scrapie by consuming animal feed generated from scrapie-positive animals.

Exposed animal would be redefined as any animal that has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts, and any animal born in a flock after a scrapie-positive animal was born into that flock, if born before that flock completes the requirements of a flock plan. The earlier definition of this term also defined limited contacts, which would now be defined in a separate definition. The earlier definition also did not include animals that were born into a flock after the removal of a scrapie-positive animal born into that flock. We believe such animals should

be considered exposed because there is some risk that they may contract scrapie from objects or animals the earlier scrapie-positive animal came in contact with, unless this risk has been mitigated by the completion of a flock plan.

Because the definition of *flock plan* currently contains a large volume of procedures not appropriate for a definition, this definition would be shortened by expanding and moving some of its text to new § 54.14, ''Requirements for flock plans and post-exposure management monitoring plans.'' The definition of *Uniform methods and rules—voluntary scrapie flock certification* would be updated and renamed *Scrapie Flock Certification Program standards,* consistent with the program name change discussed elsewhere in this document. For the same reason, a definition would be added for the *Scrapie Flock Certification Program*.

The following new definitions for terms used in the proposed rule would also be added to part 54, part 79, or both:

Area veterinarian in charge would be defined as ''The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.'' This definition is needed to identify those veterinarians who perform certain duties under the regulations including processing of indemnification applications.

Certificate would be defined as ''An official document issued in accordance with § 79.5 of this part by an APHIS representative, State representative, or accredited veterinarian at the point of origin of an interstate movement of animals, which includes a statement that the animals were not exhibiting clinical signs associated with scrapie at the time of examination.'' A certificate is required by the regulations for interstate movement of certain animals.

Consistent State would be defined as ''A State which the Administrator has determined conducts an active State scrapie control program which either: (1) meets the requirements of § 79.6 of this part, or (2) effectively enforces a State designed plan that the Administrator determines is at least as effective in controlling scrapie as the requirements of § 79.6 of this part.'' This definition would be the basis for determining whether animals from a particular State qualify for the less restrictive, or more restrictive, interstate movement requirements proposed in § 79.3. When the list of Consistent States is developed, it will be added to this definition. Any State not listed would be an Inconsistent State.

Designated scrapie epidemiologist would be defined as ''An epidemiologist selected by the State animal health official and the area veterinarian in charge to reclassify animals already designated as high-risk, exposed, or affected with scrapie, based on epidemiologic investigation or the results of a live-animal test. The regional epidemiologist and the APHIS National Scrapie Program Coordinator must concur in the selection and appointment of the designated scrapie epidemiologist.'' Designated scrapie epidemiologists would operate under proposed § 79.4 to reclassify animals as necessary.

Electronic implant, one form of allowed animal identification, would be defined as ''Any radio frequency identification device approved for use in the scrapie program by the Administrator. The Administrator will approve an electronic implant after determining that it is tamper resistant, not harmful to the animal, and readable by equipment available to APHIS and State representatives.''

The definition of *flock* would be amended to clarify when more than one flock may be maintained on a single premises without being considered a single flock. This definition considers that flocks on a premises are separate if they never commingle, never share facilities and equipment, and have separate flock records and identification. To address questions raised by flock owners, this revised definition also states that changes in ownership of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock.

Individual animal identification would be defined as ''An electronic implant, flank tattoo, ear tattoo, or tamper-resistant ear tag approved by APHIS. In the case of goats, the form of identification may alternatively be a tail fold tattoo. The official identification must provide a unique identification number that is applied by the owner of the flock or his or her agent in accordance with instructions by an APHIS representative or State representative.''

Inconsistent State would be defined as ''Any State other than a Consistent State.''

Interstate commerce would be defined as ''Trade, traffic, transportation, or other commerce between a place in a State and any place outside of that State, or between points within a State but through any place outside that State.''

Limited contacts would be defined as ''Incidental contacts between animals off the flock's premises such as at fairs, shows, exhibitions and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment and surgical tools must be sterilized between animals for these contacts to be considered limited contacts. Limited contacts do not include any contact with an animal during, or up to 60 days after, lambing or kidding. Limited contacts do not include any activity where uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or transportation to other flocks for breeding, except as allowed by the Scrapie Flock Certification Program standards.'' This definition is needed to help distinguish between contacts that do not present a pronounced risk of spreading scrapie (e.g., casual contacts between animals at fairs or shows) and contacts that present a pronounced risk (e.g., contacts with animals during or within 60 days following lambing, when infectivity is high and infectious materials such as afterbirth are present).

Post-exposure management and monitoring plan would describe an agreement written jointly by the flock owner, an accredited veterinarian, and an APHIS or State representative in which each participant agrees to undertake certain actions to monitor for the occurrence or recurrence of scrapie in the flock for at least 5 years after the flock was exposed to a scrapie-positive animal, or contained a high-risk animal. Experience in monitoring flocks has shown that if scrapie recurs from a previous outbreak in a flock, its signs are likely to become evident within 5 years. This definition, like the definition of flock plan, would refer to new § 54.14, ''Requirements for flock plans and post-exposure management monitoring plans.'' Federally required post-exposure monitoring is necessary to guard against recurrence of scrapie, because flocks whose owners receive indemnity payments may or may not be subject to State quarantines, and even if they are subject to State quarantine there is great variation in the effectiveness of State quarantine procedures in detecting signs of scrapie in a timely manner. As discussed in proposed § 54.5, in order to receive indemnity an owner must agree to maintain their flock under a post-exposure monitoring management plan for 5 years after removal of the last high-risk or scrapie-positive animal. Based on the typical clinical progress of scrapie, we believe any renewed outbreak of

scrapie in the flock would show signs within 5 years.

Premises identification, one requirement of proposed § 79.3 for moving certain animals interstate, would be defined as ''An APHIS approved eartag, backtag, or tattoo bearing the premises identification number assigned by a State or Federal animal health official to the premises on which the sheep or goats originated, or a brand registered with an official brand registry.''

The definition of *scrapie-positive animal* would be updated by referring to additional laboratory techniques (western blotting, bioassay, fibril detection by electron microscopy) that have proven useful in confirming scrapie from tissue samples, by allowing confirmation of scrapie-positive status by ''any other test method approved by the Administrator,'' and by adding a footnote describing how the Administrator will approve laboratories to conduct tests for scrapie-positive animals.

The definition of *infected flock* would be changed to include any flock in which a scrapie-positive animal had lambed within the past 18 months, counted from the time the tissues used to diagnose the scrapie-positive animal were collected from the scrapie-positive animal. This change would be made as a result of evidence that placenta shed 15½ months prior to death may contain infectious agent. Since the progress of the disease and the level of infectivity can be expected to vary somewhat among individual animals, we set the lambing limit at 18 months rather than 15½ months to allow a margin of error, and because 18 months is an easier figure than 15½ months for planning and compliance activities of both regulators and sheep producers. Also, in the definitions for infected flock and source flock, we are dropping a reference limiting their application to cases where the scrapie-positive diagnosis was made ''after March 31, 1989.'' This date was added to the regulations in 1992 to cover a temporary situation where diagnoses employed one standard before 1989 and another afterwards. Due to the lifespan of sheep and goats, there are no more flock situations where a diagnosis prior to that date would be relevant or used, and so the date would be deleted as superfluous and confusing.

The current definition of *source flock* includes flocks in which at least two animals later diagnosed as scrapie-positive are born. Because we agree with comments that stated that the birth of a single animal later determined to be scrapie-positive indicates that a flock is a significant risk as a source of scrapie, we would change this definition to include flocks where a single animal later diagnosed as scrapie-positive is born.

The definition of *affected animal* would be changed to allow the use of a live-animal test as a screening test without affecting flock status. The designation ''affected animal'' could be used if a live-animal test is developed that proves to be less specific than the current tests used to classify an animal as a scrapie-positive animal as defined in § 54.1. The type of test that may be approved to identify affected animals is described in a new definition for *live-animal screening test*, which reads ''Any test for the diagnosis of scrapie in a live animal that is approved by the Administrator as usually reliable but not definitive for diagnosing scrapie, and that is conducted in a laboratory approved by the Administrator.'' This definition also includes a footnote describing how the Administrator will approve laboratories to conduct this test.

Genetics and DNA Testing Issues

Much current research addresses methods for identifying gene sequences in sheep that affect the animal's resistance or susceptibility to scrapie, or the length of the incubation period. As answers emerge from research, we will propose further changes to our scrapie programs to take advantage of new knowledge about the role of genetics in the disease-host interaction. In time, it may be possible to exempt certain breeds of sheep, or sheep that have been tested for particular codon sequences, from some program requirements because of their ''natural immunity.'' We are prepared to amend our regulations when specific, relevant genetic results are confirmed, but we do not believe any such changes to the regulations would be appropriate at the current time.

Change of Name—Voluntary Scrapie Flock Certification Program to Scrapie Flock Certification Program

We are proposing to change the name of the Voluntary Scrapie Flock Certification Program, described in 9 CFR part 54, to the Scrapie Flock Certification Program (SFCP). The purpose of the change is to increase acceptance of the program for export purposes. There has been some confusion and administrative delay in the acceptance by other national governments of health certificates and other documents issued for U.S. sheep and goats and sheep and goat products when these documents base their determination of health status on a ''voluntary'' program; the term is not used consistently in international commerce. In some uses it has implied that participants adhere to some standards part of the time, rather than meaning that participants voluntarily commit to following all standards the entire time they participate in a program. Removing the term ''voluntary'' will result in expedited processing of these documents, and a clearer understanding that this program is a valid determination of flock status that is monitored by the U.S. Government. There is no intent to change the voluntary nature of the program, as should be clear from the unchanged description of the nature of the program contained in § 54.10, ''Administration,'' and § 54.11, ''Participation.''

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is summarized below. We are inviting comments concerning potential effects. In particular, we are interested in determining whether sheep and goat producers would be affected positively or negatively by this rule, and whether any additional costs may result from this rule that are not discussed in this analysis.

Below is a summary of the economic analysis for the changes to the scrapie regulations proposed in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and the initial analysis of impacts on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document.

We are considering taking the actions described in this proposed rule in order to strengthen scrapie control programs on the national level, to reduce the losses that scrapie causes to the sheep and goat industries. This action is considered necessary because not all State scrapie control programs are effective in identifying animals that may be infected with scrapie and controlling

their movement in intrastate and interstate commerce in a manner that will prevent the further spread of scrapie. Statutory authorities including 21 U.S.C. 111, 114, 114a, and 134a–134h authorize the Department of Agriculture to conduct programs for the control of communicable animal diseases and to restrict the interstate movement of animals that may spread disease.

As alternatives to this action, APHIS considered a complete ban on interstate movement of sheep and goats from States that do not have effective scrapie control programs. We also considered adding stricter certification, recordkeeping, and animal identification requirements for all sheep and goats moving interstate, without regard to the effectiveness of individual State scrapie programs. We also considered setting up a system to employ a prospective live-animal test in mandatory testing of sheep and goats before they could be sold for any commercial purpose, with mandatory destruction and disposal of animals that fail the test. All of these alternatives would impose more costs and recordkeeping requirements than the proposed alternative, and we do not believe any of these alternatives would control scrapie more effectively than the selected alternative. A complete ban on movements from Inconsistent States would hurt the economies of those States, and while it would provide other States with some protection against infection from Inconsistent States, it would not eradicate the reservoirs of scrapie in those States. The alternative of stricter recordkeeping and identification for all interstate movements would not be effective as long as some of the information to be recorded is unknown or dubious, as can frequently happen when the animal originates in a State with a weak scrapie program. The alternative of mandatory testing and destruction of animals that fail was discussed earlier in this proposal, it is not a practical option because a live-animal test has not been validated and approved and also impractical at this time on economic grounds.

This rule would result in the expenditure of indemnity funds by APHIS to compensate the owners of certain animals destroyed to prevent the spread of scrapie. This would also encourage certain States to improve the effectiveness of their State scrapie programs, to avoid additional restrictions on the movement of sheep and goats from their States. Finally, because this rule allows certain interstate movements only if the flock is enrolled in the Scrapie Flock Certification Program or an equivalent State program, this rule would encourage producers to enroll in such programs and bear the resulting flock management and identification costs.

The budgetary effects on APHIS of this proposal would fall into three categories: A small increase in outlays for staff to work with States and producers as they adapt to the new scrapie program requirements, a new program for indemnity payments, and the cost of providing official eartags and backtags, all within available funds. The initial amount of indemnity payments (the first year) is estimated to be approximately $384,250, based on an estimated 3,074 animals eligible for indemnity in known scrapie-infected and source flocks, but may be more than that if producer response to the availability of indemnity results in new admissions of infection that reveal additional cases of scrapie. The amount of indemnity paid should decline in subsequent years, although if slaughter surveillance is initiated or if live-animal tests are approved and widely used, this decline may not occur for several years, depending on the number of scrapie-positive animals that are revealed by initial use of these tests. This indemnity program would be less costly than *some* previous indemnity programs since it focuses on eliminating individual infected and high-risk animals rather than entire flocks, a focus that should be aided in the near future by the availability of a validated live-animal test. If a live-animal test is accepted for official use, an increase in indemnity costs would be expected initially as new infected flocks are identified.

Some States would bear additional costs to improve their State scrapie programs so that the producers in their States could avoid additional interstate movement restrictions proposed for States without effective intrastate programs. However, we believe that most States already have effective intrastate programs that would qualify them as Consistent States and that all but two or three States have the necessary authority and infrastructure to run an effective intrastate program.

Overview of U.S. Sheep and Goat Industry Operations, Inventory and Trade

There were 7.822 million sheep and lambs in the United States based on 1997 Census of Agriculture reports. In the national inventory, 5.85 million were breeding sheep and lambs and the rest were market sheep, based on National Agricultural Statistics Service reports. Ewes, 1 year old or older, totaled 4.57 million during the same period.

Small farms, as shown in Table 1, accounted for over 99 percent of all the farms raising sheep and lambs, while farms considered to be large accounted for less than 0.3 percent. About 85 percent of the farms had an inventory of less than 100 animals and accounted for about 17 percent of the total inventory of sheep and lambs. On the other hand, sheep operations with an inventory of 5,000 sheep or more represented less than 0.3 percent of the farms but accounted for nearly 26 percent of the total inventory.

Table 1 Sheep and Lambs: Farms and Inventory by Size, 1997

Farm inventory	Number of farms	Farm share	Inventory share
1 to 24	35,584	0.54	0.045
25 to 99	20,461	0.31	0.123
100 to 299	6,010	0.09	0.123
300 to 999	2,429	0.04	0.158
1,000 to 2,499	820	0.01	0.160
2,500 to 4,999	297	0.005	0.128
5,000 or more	189	0.003	0.263
Total	65,790		

Source: USDA, *Census of Agriculture* 1997.

Of the total number of operations, about 60 percent were full owners, about 32 percent were part owners, and about 8 percent were tenants.

Sheep are produced in all parts of the United States, although stock levels vary from State to State. Ten States accounted for nearly 73 percent of the total inventory, mostly in western and central areas. Northern and southeastern States have the smallest sheep populations, accounting only for 5.2 percent of the total. About 3.805 million sheep were commercially slaughtered in 1997. Additionally, about 57,000 sheep were slaughtered on the farms, yielding a total of about 3.861 million sheep slaughtered in 1997. About 3.62 million slaughtered sheep were Federally inspected, of which 3.46 million were lambs and yearlings and about 211,000 were mature sheep.

There were about 1.99 million goats in the United States in 1997, of which 52 percent were goats other than Angora or milk goats, 41 percent were Angora goats and about 7 percent were milk goats. The State of Texas accounted for about 64.3 percent of the goat inventory. Other States where goats are raised include Arizona, California, Georgia, New Mexico, North Carolina, Oklahoma, and Tennessee. These States together represented another 14.2 percent of the U.S. goats holdings. An average holding was about 35 goats. All goat holdings were considered to be small.

During 1997 the United States produced about 267 million pounds of mutton, lamb and goat meat. It exported 6.4 million pounds and imported about 84 million pounds valued at $145 million. The United States exported 1,474,060 sheep and goats valued at $63 million in 1997, of which 1,457,144 went to Mexico. The United States imported 47,405 sheep and goats valued at $6.684 million in 1997, of which 46,991 were from Canada, 364 from New Zealand, 40 from Mexico, and 10 from Australia. The United States imported 83,472,084 pounds of sheep and goat meat valued at $145.174 million and exported 6,528,605 pounds of sheep and goat meat valued at $7.362 million in 1997. Most lamb and mutton imports came from Australia and New Zealand, countries recognized as being free from scrapie. The United States is a net importer of lamb and mutton.

Sheep and Goats Affected by Scrapie Interstate Movement Restrictions

At present, of the approximately 8 million sheep and 2 million goats in the United States,[2] over 90 percent belong to commercial flocks (operations rearing sheep for sale, mostly to be slaughtered). There are 14 States altogether with 72 flocks that were on the infected or source flock list as of June 6, 1999 (66 are scrapie infected flocks, 6 are scrapie source flocks). Also, 31 other flocks contained a scrapie-positive animal during FY 1998, but the implicated animals were destroyed and the flocks are therefore not infected or source flocks. Infected and source flocks are potential candidates for destruction and indemnity payments. Additionally, over the last 8 years (1990–1997), an annual average of 132 individual suspect scrapie cases have been reported, of which approximately 48.6 percent were determined to be scrapie-positive animals. However, it is likely that the number of reported cases will increase as the indemnity payments become available. There are about 1.932 million breeding sheep and lambs in the 14 States in which positive cases have occurred in FY 1998 or in which a source or infected flock exists. These animals represent approximately 33 percent of all breeding sheep and lambs in the United States and have a market value of about $185 million.

The average size of a flock in an operation in the 14 States was 86, with between 21 and 479 per operation. Approximately 82.5 percent of these sheep are marketed, in most cases across State lines. However, nearly 33 percent of the marketed sheep are lambs less than 6 months of age, and would be exempt from individual animal identification under the proposed rule.

Indemnity Costs for Animals Destroyed Due to Scrapie

The exact number of scrapie-positive and high-risk animals that would qualify for indemnity payments is not known. However, an estimate of the number of animals potentially eligible for indemnity would be 48.6 percent of the animals in an average scrapie infected or source flock (based on past field experience). There are currently 66 scrapie infected flocks and 6 scrapie source flocks. Additionally there were 64 other infected animals diagnosed in the past year that are no longer in flocks on the infected flock list, because the flock owners voluntarily destroyed the implicated animals. Thus, based on average flock size and the average percentage of scrapie-positive animals in infected and source flocks, the number that could be estimated to qualify for indemnity payments during the first year would be 3,074 animals (=(72×86×.0486+64)). This estimate implies that about 0.15 percent of the total number of breeding sheep and goats in the 14 States that could potentially move interstate would be designated as high-risk animals and be eligible for indemnity. The proportion of more expensive registered animals was 74.38 percent (8,199/11,023).[3] Assuming a 75 percent registered to 25 percent nonregistered animal composition, with a $150 and $50 per animal indemnity payments, the estimated indemnity expenditure would be about $384,250 (3.074×0.75×150+3,074×0.25×50). If the producer response to indemnity payment availability is positive, resulting in an increased number of indemnity requests, the expenditure would increase accordingly. However, even if a much larger number of animals were to be indemnified, the destruction of all known infected animals would greatly advance the goal of scrapie eradication, and could only be positive in terms of long-term reduced expenditure.

Costs to Producers and APHIS for Official Identification of Animals Moving Interstate

The animal identification that would be required by this proposed rule would result in additional costs. Of the approximately 8 million sheep and lambs and 2 million goats in the United States, about 82.5 percent are potentially interstate movers and of these about 33 percent are lambs less than 6 months of age, which would not require identification tags under the new rule. Currently, the cost of metal identification tags for cattle is about $0.15 per animal. Assuming the total number of sheep and goats that would need identification tags is 4.633 million, the tag cost would be approximately $695,000 (4,633,000×0.15) for identifying interstate movers. If the time it takes the owner to apply the tag (about 2 minutes per animal) is valued at $7.36 per hour (the average wage for livestock workers in April, 1999), this labor cost represents another $1.137 million. In some States, tags are provided by APHIS free to accredited veterinarians, while in others, they are purchased by accredited veterinarians through the State. Generally, wherever APHIS directly distributes tags they are free; where States distribute them, there may be no charge, a small processing fee, or a fee covering the full cost of the

[2] USDA, *Sheep and Goats*. Washington, DC: Agricultural Statistics Board, Februrary 1991.

[3] Based on the composition of 8,199 registered and 2,824 commercial animals as reported by APHIS personnel.

tags, depending on State regulations. If owners elect to use backtags, the costs would be less. Owners will incur the costs of applying identification. The impact on goat owners would be less, since about 72 percent of goats are the angora type, which are raised for their mohair and are less frequently moved interstate. Thus the total potential identification cost for goat owners would be in the range of $37,000.

International Trade Effects

The United States has limited foreign trade both in live sheep and goats and their products. Australia, a potential major importer of U.S. sheep for breeding purposes, is scrapie-free and prohibits imports of sheep from the United States. Australia allows imports of live goats from the United States only if they undergo a 3-year quarantine upon arrival. Canada and Mexico both allow the importation of U.S. sheep only if the sheep are from flocks enrolled in the Voluntary Scrapie Flock Certification Program or if USDA can certify the flock's scrapie status. In 1997 the total earnings from exports of live sheep, goats, and sheep and goat meat and meat products was approximately $65 million. The United States is a net exporter of live animals, while it is a net importer of mutton, lamb and goat meat. Both the sources of imports and destinations of exports are concentrated in a few countries. Scrapie-free animals, and to some extent their products, are likely to be highly valued in the domestic and international markets. U.S. breeding stock that can be certified scrapie-free is expected to be in high demand internationally. While scrapie-free status would do little to enhance domestic or export consumption of U.S. mutton and lamb, the lack of scrapie-free status could seriously reduce demand for these products if public fears about transmissible spongiform encephalopathies ever become associated with U.S. sheep products.

The U.S. competitiveness in the domestic and international markets depends upon its reputation for producing high quality animals and products. The actual product, as well as the purchasers' perception of quality, both contribute to continued market acceptance. Thus, efforts to eradicate scrapie and secure the health of U.S. sheep and goats will continue to serve the economic interests of the industry and nation. This proposed rule could give incentive for more rigorous efforts to find infection and proceed rapidly to eradicate infected animals in order to preserve a scrapie-free status.

This proposed rule should benefit U.S. producers in a number of ways, especially by avoiding a number of direct costs and market losses. Associations representing breeding sheep owners, slaughter sheep owners, and wool-production sheep owners have all submitted comments supporting the approach of this proposed rule and also stated their associations' opinion that the benefits of the program would greatly exceed the costs. Scrapie may cost the sheep industry as much as $20.1 million per year in direct losses ($10 million in lost breeding stock and embryo export sales, $3.95 million in disposal costs for offal, and $6.176 to divert offal from ruminant food chains and in loss of offal export markets. Scrapie also costs an unknown amount in lost potential international markets and lost flock productivity. Additionally, the sheep industry currently loses sales to drug companies because the U.S. Food and Drug Administration requires scrapie-free sources of sheep or goat materials for pharmaceutical or biological products implanted or injected in humans.

Therefore, adopting this proposal could make the U.S. sheep industry more competitive, particularly in live sheep and goat exports, since current trade shows that the value of live animal exports is almost four times that of the meat in the global market. This proposal also addresses consumer concerns about the presence of a transmissible spongiform encephalopathy in food. While there is no evidence that scrapie is a human health risk, there is a perception of risk. This perception might be playing a significant role in encouraging U.S. imports of over $170 million worth of lamb and mutton, since imported lamb sells at a higher price than domestic lamb and mutton.

In summary, this proposed rule would regulate the interstate movement of sheep and goats from States that do not follow effective flock management practices for scrapie. Interstate movement of sheep and goats is beneficial, as it reduces interstate price differences faced by consumers of livestock products, and allows producers to seek the best available prices for their products. The proposed rule would encourage States to carry out the necessary surveillance and quarantine activities quickly, thereby reducing the spread of the disease. The process outlined in the proposed rule would encourage these States to begin stringent surveillance procedures immediately to identify any additional infected flocks and help to realize the goal of eradicating scrapie from the United States. The proposed rule would also encourage flock owners to participate in State scrapie programs or the Federal Scrapie Flock Certification Program, contributing further to the control of scrapie. Apart from the cost of program activities by APHIS and State agencies, and expenditure of indemnity funds by APHIS, the cost of identifying animals for interstate movement is the primary cost imposed by this proposed rule. This cost will impose some burden upon owners, which will be passed along to those who are interested in buying these animals, possibly reducing interstate commerce in sheep and goats slightly.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading ''Paperwork Reduction Act.'' Executive Order 12612 and Federalism

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The provisions contained in this proposed rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

The Administrator has examined the federalism implications of the requirements in this proposal, i.e., different interstate movement requirements for sheep and goats depending on whether they are moving from a Consistent State or an Inconsistent State. The Administrator believes that this action adheres to Constitutional principles for the exercise of Federal power and is clearly authorized by statutory authorities delegated to APHIS.

This action would not absolutely impose any new compliance costs on State or local governments, but it is true that, if adopted, this rule would strongly encourage some States to expend additional funds to upgrade their State programs for disease control in sheep and goats. Owners of sheep and goats in States that do not fund their programs to an extent that allows them to qualify as Consistent States would face additional restrictions on the interstate movement of their sheep and goats.

As discussed above, this proposal was preceded by an advance notice of proposed rulemaking which sought comments from the public, industry, and State and local officials. That notice specifically requested comments addressing ''the alignment of Federal interstate movement restrictions with State standards.'' The comments that we received and considered when drafting

this proposal, including comments on State issues, are addressed above. Additionally, in drafting this proposal, APHIS had many discussions with officials of animal health agencies in affected States.

During these consultations, most States supported the proposal's intention to establish a system to certify that State programs for sheep and goats meet certain minimum standards, in order to provide a baseline of protection against the spread of disease when moving sheep and goats in interstate commerce. A very few officials commented that APHIS should accept any State animal health program without enforcing minimum standards. APHIS disagrees with this position because experience in animal health programs on a national level has shown that the absence of effective programs for scrapie in a few States can quickly cause animal disease problems and financial losses affecting many States as animals move in interstate commerce.

State and local governments have the opportunity to comment on this proposed rule, and we encourage them to submit comments on federalism concerns or any other issues. As this rulemaking continues, APHIS intends to continue active consultation with State animal health agencies and the elected officials of affected State and local governments.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–093–2. Please send a copy of your comments to: (1) Docket No. 97–093–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would revise various recordkeeping and notification requirements of APHIS scrapie regulations and the Voluntary Scrapie Flock Certification Program. The purpose of these requirements is primarily to prevent the uncontrolled interstate movement of animals that could spread scrapie, and to identify and certify flocks that are free of scrapie in order to prevent the disease from spreading.

Collecting this information necessitates the use of a number of information-gathering documents, including certificates and permits, that are critical to our ability to locate flocks infected with scrapie and to prevent the interstate spread of scrapie. The collection of this information is therefore crucial to the success of scrapie control. State animal health agencies would also have to submit descriptions of their scrapie program activities to assist APHIS in determining whether they qualify for Consistent State status.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.5049 hours per response.

Respondents: Flock owners, State animal health officials, accredited veterinarians, State and Federal veterinary medical officers, and State and Federal diagnostic laboratory personnel.

Estimated annual number of respondents: 1,180.

Estimated annual number of responses per respondent: 5.3610.

Estimated annual number of responses: 6,326.

Estimated total annual burden on respondents: 15,846 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 202 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. A few States may not qualify as Consistent States under this rule unless and until they choose to increase their expenditures on scrapie control programs, but based on knowledge of current State budgets and our experience with the costs involved in conducting sheep and goat disease programs, we estimate that the possible increases in expenditures by these States will fall far below $100 million. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

9 CFR Part 79

Animal diseases, Goats, Quarantine, Reporting and recordkeeping requirements, Scrapie, Sheep, Transportation.

Accordingly, we are proposing to revise 9 CFR parts 54 and 79 as follows:

PART 54—CONTROL OF SCRAPIE

Sec.

Authority: 21 U.S.C. 111, 114, 114a, and 134a–134h; 7 CAR 2.22, 2.80, and 371.2(d).

§ 54.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any employee of the United States Department of Agriculture authorized to act for the Administrator.

Affected animal. An animal for which a diagnosis of scrapie has been made by an APHIS or State representative based on the results of a live-animal screening test approved for this use by the Administrator. A live-animal screening test may be approved for this use without also being approved for the official diagnosis of a scrapie-positive animal.

Animal. A sheep or goat.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS in animal health activities who is authorized by the Administrator to perform the function involved.

Area veterinarian in charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

Breed association and registries. Organizations that maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

Commingled, commingling. Animals grouped together and having physical contact with each other, including contact through a fence, but not limited contacts. Commingling also includes sharing the same section in a transportation unit where there is any physical contact.

Destroyed. Euthanized by means other than slaughter, and the carcass disposed of, by means authorized by the Administrator.

Electronic implant. Any radio frequency identification implant device approved for use in the scrapie program by the Administrator. The Administrator will approve an electronic implant after determining that it is tamper resistant, not harmful to the animal, and readable by equipment available to APHIS and State representatives.

Exposed animal. Any animal that has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Any animal born in a flock after a scrapie-positive animal was born into that flock, if born before that flock completes the requirements of a flock plan.

Flock. All animals that are maintained on a single premises and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. More than one flock may be maintained on a single premises if:

(1) The flocks are enrolled as separate flocks in the SFCP, or an APHIS representative determines based upon examination of flock records that no animals have moved between the flocks;

(2) The flocks never commingle and are kept at least 30 feet apart at all times;

(3) The flocks have separate flock records and identification;

(4) The flocks have separate lambing facilities, including buildings and pastures, and a pasture or building used for lambing by one flock is not used by the other flock at any time;

(5) The flocks do not share equipment without cleaning and disinfection in accordance with the guidelines published in the Scrapie Flock Certification Program standards; and

(6) There is no interchange of animals between the flocks.

Flock plan. A written flock management agreement designed by the owner of a flock, an accredited veterinarian, and an APHIS representative or State representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in § 54.14 of this part.

High-risk animal. An animal that is:

(1) The progeny of a scrapie-positive dam;

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups; or

(3) Born in the same flock during the same lambing season that a scrapie-positive animal was born, or during any subsequent lambing season.

Infected flock. Any flock in which an APHIS representative or a State representative has determined an animal to be a scrapie-positive animal or in which an APHIS representative or a State representative has determined that a scrapie-positive animal had lambed within 18 months of the time at which the tissues used for diagnosis were collected from the scrapie-positive animal. A flock will no longer be considered an infected flock after it has completed the requirements of a flock plan.

Limited contacts. Incidental contacts between animals off the flock's premises such as at fairs, shows, exhibitions and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment and surgical tools must be sterilized between animals for these contacts to be considered limited contacts. Limited contacts do not include any contact, incidental or otherwise, with an animal during, or up to 60 days after, lambing or kidding.

Limited contacts do not include any activity where uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or transportation to other flocks for breeding, except as allowed by the Scrapie Flock Certification Program standards.

Live-animal screening test. Any test for the diagnosis of scrapie in a live animal that is approved by the Administrator as usually reliable but not definitive for diagnosing scrapie, and that is conducted in a laboratory approved by the Administrator.[1]

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Owner. A person, partnership, company, corporation, or any other legal entity who has legal or rightful title to animals, whether or not they are subject to a mortgage.

Post-exposure management and monitoring plan. A written agreement designed by the owner of a flock, an accredited veterinarian, and an APHIS representative or State representative in which each participant agrees to undertake actions specified in the agreement to monitor for the recurrence of scrapie in the flock for at least 5 years after the last high-risk or scrapie-positive animal is removed from the flock or to monitor for occurrence of scrapie for 5 years after the last exposure of the flock to a scrapie-positive animal, unless otherwise specified by an APHIS or state animal health official. As part of a post-exposure management and monitoring plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the plan. The plan must include the requirements in § 54.14 of this part.

Scrapie Flock Certification Program (SFCP). The cooperative Federal-State-industry voluntary program for the control of scrapie conducted in accordance with this subpart.

Scrapie Flock Certification Program standards. Cooperative procedures and standards adopted by APHIS and State scrapie certification boards for reducing the incidence and controlling the spread of scrapie through flock certification.[2]

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through:

(1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of scrapie;

(2) The use of protease-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the Administrator for use on that tissue;

(3) Bioassay;

(4) Scrapie associated fibrils (SAF) detected by electron microscopy; or

(5) Any other test method approved by the Administrator.[3]

Separate contemporary lambing groups. To be a separate contemporary lambing group, the group must be maintained separately such that the animals cannot come into physical contact with other lambs, kids, ewes or does or birth fluids or placenta from other ewes or does. This separate maintenance must preclude contact through a fence, during lambing and for 60 days following the date the last lamb or kid is born in a lambing season, and must preclude using the same lambing facility as other ewes or does, unless the lambing facility is cleaned and disinfected between lambings in accordance with the guidelines published in the Scrapie Flock Certification Program standards.

Source flock. A flock in which an APHIS representative or a State representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of 54 months or less. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

State. Each of the 50 States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision of a State, and who is authorized by the State or political subdivision to perform the function involved.

Suspect animal. A sheep or goat exhibiting any of the following possible signs of scrapie and that has been determined to be suspicious for scrapie by an accredited veterinarian, an APHIS representative, or a State representative: Weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, ''star gazing,'' head pressing, recumbency, or other signs of neurological disease or chronic wasting. A suspect animal will no longer be a suspect animal upon determination by an APHIS representative or a State representative that it no longer exhibits such signs, or that the signs are not caused by scrapie.

Subpart A—Scrapie Indemnification Program

§ 54.3 Animals eligible for indemnity payments.

(a) Indemnity may be paid for an animal only after the owner of the animal has applied for indemnification and been approved in accordance with 54.4 of this part. Indemnity may be paid only for the following:

(1) Destruction of high-risk animals;

[1] The names and addresses of laboratories approved by the Administrator to conduct live-animal screening tests will be published in the Notices Section of the **Federal Register**. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) Follows standard test protocols; (c) Meets check test proficiency requirements; and (d) Will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

[2] Individual copies of the Scrapie Flock Certification Program standards may be obtained on the World Wide Web at URL http://www.aphis.usda.gov/vs/scrapie, or from the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235.

[3] The names and addresses of laboratories approved by the Administrator to conduct tests are published in the Notices Section of the **Federal Register**. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) Follows standard test protocols; (c) Meets check test proficiency requirements; and (d) Will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

(2) Destruction of animals based on an epidemiologic investigation, when the Administrator determines that the destruction of these animals will contribute to the eradication of scrapie;

(3) Destruction of live scrapie-positive animals;

(4) Destruction of affected animals; and

(5) Destruction of suspect animals that are subsequently determined to be scrapie-positive animals.

(b) No indemnity will be paid for an animal if the owner of the animal fails to provide APHIS, within 30 days of request, with animal registration certificates, sale and movement records, or other records requested in accordance with § 54.5 of this part. No indemnity will be paid until the premises, including all structures, holding facilities, conveyances, and materials contaminated because of occupation or use by the depopulated animals, have been properly cleaned and disinfected in accordance with the guidelines published in the Scrapie Flock Certification Program standards. Premises or portions of premises may be exempted from such cleaning and disinfecting requirements if the APHIS or State representative determines that the exempted buildings, holding facilities, conveyances, or other materials on the premises do not require cleaning and disinfection to prevent the spread of scrapie.

§ 54.4 Application by owners for indemnity payments.

(a) Normally, an application for indemnification will be initiated by an APHIS or State representative who is working with the owner of a flock that has already been determined to be an infected flock or source flock, or that is already under a State quarantine. In such cases, the flock owner will confirm information about the flock's eligibility for indemnity that is contained in the application submitted by the APHIS or State representative. However, an owner of a flock that has or has not been determined to be an infected flock or source flock, and is not under a State quarantine, may apply directly to receive indemnification by submitting to the Administrator a written request containing the following information:

(1) Name, address, and social security number of the flock owner;

(2) Number and breed(s) of animals in the flock, including a current inventory;

(3) Location of flock premises;

(4) Reasons the owner believes animals in his or her flock may be eligible for indemnification, including any diagnosis of scrapie made for animals in the flock; any signs of scrapie observed in the flock by the owner; and any movement of animals into the flock from flocks infected with or exposed to scrapie;

(5) A copy of the registration papers issued in the name of the owner for any registered animals in the flock. If the registration papers are unavailable or if the animals are less than 1 year old and are not registered at the time the claim for indemnity is submitted, the area veterinarian in charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers; and

(6) Signed release letters addressed to any sheep or goat registry associations that maintain records of the owner's sheep or goats, requesting the associations to release to APHIS all records maintained by the association on sheep or goats currently or formerly owned by the applicant.

(b) APHIS will evaluate each application to determine whether the owner's flock contains animals eligible for indemnity in accordance with 54.3 of this part.

§ 54.5 Certification by owners.

Before any indemnity is paid to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review upon request by an APHIS representative all bills of sale, pedigree registration certificates, and other records regarding movement of animals into and from the flock;

(b) If the owner maintains any flock after the payment of indemnity or acquires a new flock that is housed on the same premises within 5 years after the last high-risk or scrapie-positive animal is removed, the owner will maintain the flock in accordance with a post-exposure management and monitoring plan;

(c) If the animal for which indemnity is paid is subject to any mortgage, the owner consents to the payment of the indemnity, up to the value of the mortgage, to the person(s) holding the mortgage.

§ 54.6 Amount of indemnity payments.

Indemnity paid in accordance with 54.3 of this part will be $150 for each registered animal destroyed and $50 for each unregistered animal destroyed.

§ 54.7 Procedures for destruction of animals.

(a) Animals for which indemnification is sought must be destroyed on the premises where held, pastured, or penned at the time indemnity is approved, unless the APHIS representative involved approves in advance of destruction moving the animals to another location for destruction.

(b) The carcasses of animals destroyed in accordance with this section are authorized by the Administrator to be buried, incinerated, or disposed of by other methods in accordance with local, State, or Federal law. The carcasses must not be processed for animal food, unless subjected to a treatment process approved by the Administrator and known to eliminate the agents of transmissible spongiform encephalopathies. The carcasses may not be processed for human food.

(c) The destruction of animals and disposition of their carcasses in accordance with this part must be monitored by an APHIS representative who will prepare and transmit to the Administrator a report identifying the animals and showing their disposition.

(d) APHIS will not be responsible for any costs or charges for the destruction and disposal of animals in accordance with this part.

Subpart B—Scrapie Flock Certification Program

§ 54.10 Administration.

The Scrapie Flock Certification Program is a cooperative effort between APHIS; members of the sheep and goat industry, including owners of flocks, slaughtering and rendering establishments, and breed associations and registries; accredited veterinarians; and State governments. APHIS coordinates with State scrapie certification boards and State animal health agencies to encourage flock owners to reduce the incidence of scrapie by voluntarily complying with the Scrapie Flock Certification Program standards.

§ 54.11 Participation.

Any owner of a sheep or goat flock may apply to enter the Scrapie Flock Certification Program by sending a written request to a State scrapie certification board or to the Administrator. A notice containing a current list of flocks participating in the Scrapie Flock Certification Program, and the certification status of each flock, may be obtained from the APHIS website at URL http://www.aphis.usda.gov/vs/scrapie, and may also be obtained by writing to the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1235.

(Approved by the Office of Management and Budget under control number 0579–0101)

§ 54.12 State scrapie certification boards.

An area veterinarian in charge, after consulting with a State representative and industry representatives, may appoint a State scrapie certification board for the purpose of coordinating activities for the Scrapie Flock Certification Program, including making decisions to admit flocks to the Scrapie Flock Certification Program and to change flock status in accordance with the Scrapie Flock Certification Program standards. No more than one State scrapie certification board may be formed in each State. Each State scrapie certification board shall include as members the area veterinarian in charge, one or more State representatives, one or more accredited veterinarians, and one or more owners of flocks, and, at the discretion of the area veterinarian in charge, may include other members.

§ 54.13 Cooperative agreements with States.

APHIS may execute a cooperative agreement with the animal health agency of any State to cooperatively administer the Scrapie Flock Certification Program within that State. These cooperative agreements will describe the respective roles of APHIS and State personnel in implementing the Scrapie Flock Certification Program standards and other scrapie control measures. The agreement may specify the financial, material, and personnel resources to be committed to the Scrapie Flock Certification Program and other scrapie control measures by APHIS and the State; assign specific Scrapie Flock Certification Program activities and other activities related to the control of scrapie within a State to APHIS or State personnel; establish schedules for APHIS representatives or State representatives to visit participating flocks; establish procedures for maintaining and sharing Scrapie Flock Certification Program records specified in the Scrapie Flock Certification Program standards, and specify other responsibilities of State representatives and APHIS representatives in support of the Scrapie Flock Certification Program and the State scrapie control program.

(Approved by the Office of Management and Budget under control number 0579–0101)

§ 54.14 Requirements for flock plans and post-exposure management and monitoring plans.

(a) The owner of the flock or his or her agent must identify all animals 1 year of age or over within the flock. All animals less than 1 year of age must be identified when a change of ownership occurs, with the exception of those animals under 6 months of age moving within slaughter channels that must be identified in accordance with § 79.2 of this chapter. The form of identification must be an electronic implant, flank tattoo, ear tattoo, or tamper-resistant ear tag approved by APHIS. In the case of goats, the form of identification may alternatively be a tail fold tattoo. The official identification must provide a unique identification number that is applied by the owner of the flock or his or her agent.

(b) Upon request of an APHIS or State representative, the owner of the flock or his or her agent must have an accredited veterinarian collect and submit tissues from animals for scrapie diagnostic purposes to a laboratory designated by an APHIS or State representative.

(c) The owner of the flock or his or her agent, upon request, must make animals in the flock and the records required to be kept as a part of these plans available for inspection by APHIS representatives and State representatives.

(d) The owner of the flock or his or her agent must meet requirements found necessary by the APHIS representative or State representative to monitor for scrapie and to prevent the recurrence of scrapie in the flock. These other requirements may include, but are not limited to: Utilization of an approved live-animal test, segregated lambing, cleaning and disinfection of lambing facilities, and/or education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and to control the spread of scrapie.

(e) The owner of the flock or his or her agent must immediately report to a State representative, APHIS representative, or an accredited veterinarian any animals in the flock exhibiting the following: Weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, ''star gazing'', head pressing, recumbency, or other signs of neurological disease or chronic wasting illness. Such animals must not be removed from the flock without written permission of an APHIS representative or State representative.

(f) *Requirements for flock plans only:*

(1) An epidemiologic investigation must be conducted to identify high-risk and exposed animals that currently reside in the flock or that previously resided in the flock, and all high-risk animals, scrapie-positive animals, affected animals, and suspect animals must be removed from the flock. The animals must be removed by euthanization and disposal of the carcasses by burial, incineration, or other methods in accordance with State or Federal law, or, in the case of high-risk animals, by movement to slaughter (slaughtered animals are not eligible for indemnity) in accordance with the provisions of part 79 of this chapter, or upon request in individual cases by another means determined by the Administrator to be sufficient to prevent the spread of scrapie;

(2) The premises of a flock under a flock plan must be cleaned and disinfected in accordance with the guidelines published in the Scrapie Flock Certification Program standards;

(3) The owner of the flock, or his or her agent, must request breed associations and registries, livestock markets, and packers to disclose records to APHIS representatives or State representatives, to be used to identify source flocks and trace exposed animals, including high-risk animals; and

(4) The flock owner must agree to conduct post-exposure management and monitoring.

(g) *Requirements for post-exposure management and monitoring plans only:* The plan will require that an APHIS representative or State representative inspect the flock and flock records at least once every 12 months. The owner of the flock or his or her agent must maintain, and keep for a minimum of 5 years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock:

(1) Any identifying marks or tags present on the animal including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo tamper resistant ear tag, or, in the case of goats, it may be a tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain;

(2) Sex, breed, sire, dam, and offspring of the animal;

(3) Date of acquisition and previous flock, if the animal was not born in the flock; and

(4) Disposition of the animal, including the date and cause of death, if known, or date of removal from the flock and name and address of the person to whom the animal was transferred.

PART 79—SCRAPIE IN SHEEP AND GOATS

Sec.
79.1 *Definitions.*
79.2 *Identification of sheep and goats in interstate commerce.*
79.3 *General restrictions.*
79.4 *Designation of scrapie-positive animals, affected animals, high-risk animals, exposed animals, suspect animals, source flocks, and infected flocks; notice to owners.*
79.5 *Issuance of certificates.*
79.6 *Standards for State programs to qualify as Consistent States.*

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 79.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any employee of the United States Department of Agriculture authorized to act for the Administrator.

Affected animal. An animal for which a diagnosis of scrapie has been made by an APHIS or State representative based on the results of a live-animal screening test approved for this use by the Administrator. A live-animal screening test may be approved for this use without also being approved for the diagnosis of a scrapie-positive animal.

Animal. A sheep or goat.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS in animal health activities who is authorized by the Administrator to perform the function involved.

Area veterinarian in charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

Breed association and registries. Organizations that maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

Certificate. An official document issued in accordance with § 79.5 of this part by an APHIS representative, State representative, or accredited veterinarian at the point of origin of an interstate movement of animals, which includes a statement that the animals were not exhibiting clinical signs associated with scrapie at the time of examination.

Commingled, commingling. Animals grouped together and having physical contact with each other, including contact through a fence, but not limited contacts. Commingling also includes sharing the same section in a transportation unit where there is physical contact.

Consistent State. A State that the Administrator has determined conducts an active State scrapie control program that either:

(1) Meets the requirements of § 79.6 of this part; or

(2) Effectively enforces a State designed plan that the Administrator determines is at least as effective in controlling scrapie as the requirements of § 79.6 of this part.

Designated scrapie epidemiologist. An epidemiologist selected by the State animal health official and the area veterinarian in charge to reclassify animals already designated as high-risk, exposed, or affected with scrapie, based on epidemiologic investigation or the results of a live-animal test. The regional epidemiologist and the APHIS National Scrapie Program Coordinator must concur in the selection and appointment of the designated scrapie epidemiologist.

Electronic implant. Any radio frequency identification implant device approved for use in the scrapie program by the Administrator. The Administrator will approve an electronic implant after determining that it is tamper resistant, not harmful to the animal, and readable by equipment available to APHIS and State representatives.

Exposed animal. Any animal that has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Any animal born in a flock after a scrapie-positive animal was born into that flock, if born before that flock completes the requirements of a flock plan.

Flock. All animals that are maintained on a single premises and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. More than one flock may be maintained on a single premises if:

(1) The flocks are enrolled as separate flocks in the SFCP, or an APHIS representative determines based upon examination of flock records that no animals have moved between the flocks;

(2) The flocks never commingle and are kept at least 30 feet apart at all times;

(3) The flocks have separate flock records and identification;

(4) The flocks have separate lambing facilities, including buildings and pastures, and a pasture or building used for lambing by one flock is not used by the other flock at any time;

(5) The flocks do not share equipment without cleaning and disinfection in accordance with the guidelines published in the Scrapie Flock Certification Program standards; and

(6) There is no interchange of animals between the flocks.

Flock plan. A written flock management agreement designed by the owner of a flock, an accredited veterinarian, and an APHIS representative or State representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in § 54.14 of this chapter.

High-risk animal. An animal that is:

(1) The progeny of a scrapie-positive dam;

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups; or

(3) Born in the same flock during the same lambing season that a scrapie-positive animal was born, or during any subsequent lambing season.

Inconsistent State. Any State other than a Consistent State.

Infected flock. Any flock in which an APHIS representative or a State representative has determined an animal to be a scrapie-positive animal or in which an APHIS representative or a State representative has determined that a scrapie-positive animal had lambed within 18 months of the time at which the tissues used for diagnosis were collected from the scrapie-positive animal. A flock will no longer be considered an infected flock after it has completed the requirements of a flock plan.

Interstate commerce. Trade, traffic, transportation, or other commerce between a place in a State and any place

outside of that State, or between points within a State but through any place outside that State.

Limited contacts. Incidental contacts between animals off the flock's premises such as at fairs, shows, exhibitions and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment and surgical tools must be sterilized between animals for these contacts to be considered limited contacts. Limited contacts do not include any contact, incidental or otherwise, with an animal during, or up to 60 days after, lambing or kidding. Limited contacts do not include any activity where uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or transportation to other flocks for breeding, except as allowed by the Scrapie Flock Certification Program standards.

Live-animal screening test. Any test for the diagnosis of scrapie in a live animal that is approved by the Administrator as usually reliable but not definitive for diagnosing scrapie, and that is conducted in a laboratory approved by the Administrator.[1]

Owner. A person, partnership, company, corporation, or any other legal entity who has legal or rightful title to animals, whether or not they are subject to a mortgage.

Permit. An official document issued in connection with the interstate movement of animals (VS Form 1–27 or a State form that contains the same information) that is issued by an APHIS representative, State representative, or an accredited veterinarian authorized to sign such permits. A new permit is required for each change in destination for an animal. A permit lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, whether the animals are from an infected flock or a source flock, transportation vehicle license number or other identification number, and seal number (if a seal is required). A permit also lists all official identification on the animals covered, including the official eartag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, United States Department of Agriculture backtag (when applied serially, only the beginning and the ending numbers need be recorded), individual animal registered breed association registration number, or any other form of official identification present on the animal.

Premises identification. An APHIS approved eartag, backtag, or tattoo bearing the premises identification number assigned by a State or Federal animal health official to the premises on which the sheep or goats originated, or a brand registered with an official brand registry.

Scrapie Flock Certification Program (SFCP). The cooperative Federal-State-industry voluntary program for the control of scrapie conducted in accordance with 9 CAR part 54, subpart B.

Scrapie Flock Certification Program standards. Cooperative procedures and standards adopted by APHIS and State Scrapie Certification Boards for reducing the incidence and controlling the spread of scrapie through flock certification.[2]

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through:

(1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of scrapie;

(2) By the use of protease-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the Administrator for use on that tissue;

(3) Bioassay;

(4) Scrapie associated fibrils (SAF) detected by electron microscopy; or

(5) Another test method approved by the Administrator.

Separate contemporary lambing groups. To be a separate contemporary lambing group, the group must be maintained separately such that the animals cannot come into physical contact with other lambs, kids, ewes or does or birth fluids or placenta from other ewes or does. This separate maintenance must preclude contact through a fence, during lambing and for 60 days following the date the last lamb or kid is born in a lambing season, and must preclude using the same lambing facility as other ewes or does, unless the lambing facility is cleaned and disinfected between lambings in accordance with the guidelines published in Scrapie Flock Certification Program standards.

Source flock. A flock in which an APHIS representative or a State representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of 54 months or less. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

State. Each of the 50 States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision of a State, and who is authorized by the State or political subdivision to perform the function involved.

Suspect animal. A sheep or goat exhibiting any of the following possible signs of scrapie and that has been determined to be suspicious for scrapie by an accredited veterinarian, an APHIS representative, or a State representative: Weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, ''star gazing,'' head pressing, recumbency, or other signs of neurological disease or chronic wasting. A suspect animal will no longer be a suspect animal upon determination by an APHIS representative or a State representative that it no longer exhibits such signs, or that the signs are not caused by scrapie.

(Approved by the Office of Management and Budget under control number 0579–0101)

[1] The names and addresses of laboratories approved by the Administrator to conduct live-animal screening tests will be published in the Notices Section of the **Federal Register.** A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) follows standard test protocols; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

[2] Individual copies of the Program Standards may be obtained on the World Wide Web at URL http://www.aphis.usda.gov/vs, or from the Animal and Plant Health Inspection service, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235.

§ 79.2 Identification of sheep and goats in interstate commerce.

(a) No sheep or goat that is required to be individually identified by § 79.3 of this part may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless each sheep or goat is identified in accordance with this section.

(1) The sheep or goat must be identified at whichever of the following comes first:

(i) The point of first commingling of the sheep or goats in interstate commerce with sheep or goats from any other source;

(ii) Upon unloading of the sheep or goats in interstate commerce at any livestock market;

(iii) Upon transfer of ownership of the sheep or goats in interstate commerce; or

(iv) Upon arrival of the sheep or goats in interstate commerce at their final destination.

(2) The sheep or goats must be identified by one of the following means of identification, and must remain so identified while they are in interstate commerce:

(i) Electronic implants for animals required to be identified by the SFCP, when used in a flock participating in the SFCP;

(ii) Official eartags, including tags approved for use in the SFCP, when used on any sheep or goat;

(iii) United States Department of Agriculture backtags, when used on sheep or goats moving to slaughter;

(iv) Official sheep or goat tattoos, when used on sheep or goats participating in the SFCP; or

(v) Official registry tattoos that have been recorded in the book of record of a sheep or goat registry association.

(3) Each person who buys or sells, for his or her own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles sheep or goats in interstate commerce is responsible for the identification of the sheep or goats as provided by this section.

(b) Serial numbers of United States Department of Agriculture backtags and official sheep and goat tattoos will be assigned to each person who applies to the State animal health official or the area veterinarian in charge for the State in which that person maintains his or her place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or State or Federal representative who requests official eartags from the State animal health official or the area veterinarian in charge, whoever is responsible for issuing official eartags in that State. Premises identification numbers will be assigned to participants in the SFCP by the State animal health official or the area veterinarian in charge, whoever is responsible for assigning premises codes in that State. Persons assigned serial numbers of United States Department of Agriculture backtags, official sheep and goat tattoos, and official eartags must:

(1) Record the following information on a document:

(i) All serial numbers applied to the sheep or goat;

(ii) Any other serial numbers and approved identification appearing on the sheep or goat;

(iii) The street address, including the city and State, or the township, county, and State, of the premises where the approved means of identification was applied; and

(iv) The telephone number, if available, of the person who owns or possesses the sheep or goat;

(2) Maintain these records for 5 years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, and presentation of his or her official credentials.

(c) Each person who buys or sells, for his or her own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles sheep or goats in interstate commerce must keep records relating to the transfer of ownership, shipment, or handling of the sheep or goats, such as yarding receipts, sale tickets, invoices, and waybills.

(1) The records must include:

(i) If individual animal identification is required, all serial numbers and other approved means of identification appearing on the sheep or goat; and

(ii) The street address, including city and State, or the township, county, and State, and the telephone number, if available, of the person from whom the sheep or goats were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain the records for at least 5 years after the person has sold or otherwise disposed of the sheep or goat to another person, and for such further period as the Administrator may require by written notice to the person, for purposes of any investigation or action involving the sheep or goat identified in the records. The person must make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(d) No person may remove or tamper with any approved means of identification required to be on sheep or goats pursuant to this section while the animals are in interstate commerce, and at the time of slaughter animal identification must be maintained throughout postmortem inspection in accordance with regulations of the Food Safety Inspection Service in chapter III of this title.

(e) Written requests for approval of sheep or goat identification devices and markings not listed in paragraph (b) of this section should be sent to the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235. If the Administrator determines that the devices and markings will provide a means of tracing sheep and goats in interstate commerce, a proposal will be published in the **Federal Register** to add the devices and markings to the list of approved means of sheep and goat identification.

§ 79.3 General restrictions.

The following prohibitions and movement conditions apply to the interstate movement of sheep and goats, and no sheep or goat may move interstate except in compliance with them.

INTERSTATE MOVEMENT GENERAL RESTRICTIONS FOR SHEEP AND GOATS

Type of interstate movement	Moved from INCONSISTENT State	Moved from CONSISTENT State
(a) Sale or other movement of breeding animals, show animals or any other animal not specifically addressed below:		
(1) High-risk animal, scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited.*
(2) Non-high risk animal from an infected or source flock.	Prohibited*	Prohibited.*
(3) Other animal	Flock must be enrolled in the Complete Monitored category of the Scrapie Flock Certification Program or equivalent APHIS-recognized program and have certificate.	Individual animal ID and certificate.
(b) Sale or other movement directly to slaughter, or through slaughter channels to slaughter, of animals under 6 months of age:		
(1) Scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited.*
(2) High-risk animals and animals from infected or source flock.	Individual animal ID and permit or sealed conveyance and permit when moving directly to slaughter, or a permit and an indelible''S'' mark on the left jaw.	Individual animal ID and permit or sealed conveyance and permit when moving directly to slaughter, or a permit and an indelible ''S'' mark on the left jaw.
(3) Other animal	Premises ID** and certificate	None.
(c) Sale or other movement directly to slaughter, or through slaughter channels to slaughter, of animals over 6 months of age, or animals of any age to feedlots for later movement to slaughter:		
(1) Scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited.*
(2) High-risk animals and animals from infected or source flock.	Individual animal ID and permit	Individual animal ID and permit.
(3) Other exposed animals	Individual animal ID and permit	Individual animal ID.
(4) Other animals over 1 year of age	Individual animal ID and certificate	Individual animal ID.
(5) Other animals between 6 months and 1 year of age, or animals under 6 months of age moving to feedlots for later movement to slaughter.	Individual animal ID and certificate	Premises ID.**
(d) Movement of animals for grazing or other management purposes without change of ownership:		
(1) Scrapie positive, suspect, or affected animal.	Prohibited*	Prohibited.*
(2) High-risk animal or animal from infected or source flock.	Prohibited*	Prohibited.*
(3) Exposed animals	Individual animal ID and certificate	Premises ID.
(4) Other animal	Premises ID and certificate	None.

*Animals prohibited movement may be moved interstate only if they are moving interstate for destruction or research as approved by the Administrator.

**Premises ID is not required for slaughter animals if the animals are kept as a group on the same premises on which they were born and are not commingled with animals from another premises at any time, including throughout the slaughter process, or, if they are commingled during the slaughter process, they are officially identified on arrival at the slaughter facility such that any animal can be traced back to its flock of origin.

Note: A CONSISTENT STATE is one whose intrastate identification, quarantine and movement restrictions for infected and source flocks and high-risk animals are consistent with the APHIS standards for State scrapie programs.

§ 79.4 Designation of scrapie-positive animals, affected animals, high-risk animals, exposed animals, suspect animals, source flocks, and infected flocks; notice to owners.

(a) *Designation.* An APHIS representative or State representative will designate an animal to be a scrapie-positive animal, affected animal, high-risk animal, exposed animal, or suspect animal after determining that the animal meets the criteria of the relevant definition in § 79.1 of this part. An APHIS representative or State representative will designate a flock to be a source flock after reviewing sale, movement, and breeding records that indicate the flock meets the definition of a source flock in § 79.1 of this part. An APHIS representative or State representative will designate a flock to be an infected flock after determining that the flock meets the definition of an infected flock in § 79.1 of this part.

(b) *Reclassification.* A designated scrapie epidemiologist may reclassify an exposed animal by removing that designation after completing an epidemiologic investigation and determining that the exposure was limited to a scrapie-positive male animal that was not born in the flock (the scrapie-positive animal must have individual animal identification traceable to the flock of origin), and was not housed in lambing facilities or commingled with lambs while in the flock. A designated scrapie epidemiologist may reclassify an animal designated a high-risk animal as an exposed animal after receiving negative results from an approved live-animal test.

(c) *Notice to owner.* As soon as possible after making such a determination, an APHIS representative or State representative will attempt to notify the owner(s) of the flock(s) in

writing that their flock contained or contains a scrapie-positive animal, an affected animal, a suspect animal, a high-risk animal or an exposed animal, or that the flock is an infected flock, or source flock. The notice will include a description of the interstate movement restrictions and identification requirements contained in this part.

§ 79.5 Issuance of certificates.

(a) Certificates are required as specified by § 79.3 of this part for certain interstate movements of animals. A certificate must show the official ear tag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, individual animal registered breed association registration number, and any other official individual identification of each animal to be moved; the number of animals covered by the certificate; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. Ownership brands or other premises identification may be used in place of individual animal identification on certificates for sheep and goats moved interstate when premises identification is required under this part, provided the ownership brands are registered with the official brand recording agency. Except as provided in paragraphs (b) and (c) of this section, all of the information required by this paragraph must be typed or written on the certificate.

(b) As an alternative to typing or writing individual animal identification on a certificate, another document may be used to provide this information, but only under the following conditions:

(1) The document must be a State form or APHIS form that requires individual identification of animals;

(2) A legible copy of the document must be stapled to the original and each copy of the certificate;

(3) Each copy of the document must identify each animal to be moved with the certificate, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be typed or written in ink in the identification column on the original and each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and

(ii) Either the serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

(c) As an alternative to typing or writing ownership brands on a certificate, an official brand inspection certificate may be used to provide this information, but only under the following conditions:

(1) A legible copy of the official brand inspection certificate must be stapled to the original and each copy of the certificate;

(2) Each copy of the official brand inspection certificate must show the ownership brand of each animal to be moved with the certificate, but any other ownership brands, and any unused space for recording ownership brands, must be crossed out in ink; and

(3) The following information must be typed or written in ink in the official identification column on the original and each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the attached document; and

(ii) Either the serial number on the official brand inspection certificate or, if the official brand inspection certificate is not imprinted with a serial number, both the name of the person who prepared the official brand inspection certificate and the date it was signed.

§ 79.6 Standards for State programs to qualify as Consistent States.

(a) In reviewing a State for Consistent State status, the Administrator will evaluate the State statutes, regulations and directives pertaining to animal health activities, reports and publications of the State animal health agency, and a written statement from the State animal health agency describing State scrapie control activities and certifying that these activities meet the requirements of this section. In determining whether a State is a Consistent State, the Administrator will consider whether the State's scrapie control program:

(1) Requires the reporting of and investigation of any suspect animal, affected animal, or scrapie-positive animal;

(2) Requires the official permanent individual identification of any live scrapie-positive, affected, or suspect animal of any age, and of any exposed animal, including high-risk animals, 1 year of age or over and any exposed animals less than 1 year of age when a change of ownership occurs, except those animals under 6 months of age moving within slaughter channels in accordance with this part (whether or not the exposed animal resides in a source or infected flock);

(3) Effectively enforces quarantines of all source and infected flocks;

(4) Effectively enforces quarantines of all high-risk, affected, suspect, and scrapie-positive animals throughout their lives unless moved in accordance with this part;

(5) If an affected, suspect or scrapie-positive animal dies or is destroyed, requires that tissues be submitted for diagnostic testing to a laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part and that the carcass be completely destroyed; and

(6) Releases quarantines of these flocks only upon completion of a flock plan and agreement by the owner to participate in a post-exposure monitoring and management plan as defined in part 54 of this chapter.

(b) [Reserved]

Done in Washington, DC, this 23rd day of November 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–31087 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–34–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: The NCUA proposes to revise its share insurance regulations with respect to living trusts, joint revocable trusts, IRA accounts, public unit accounts, guardian accounts and the application of local law to share insurance determinations. NCUA also proposes to revise the substance and format of the Appendix to part 745. These proposals, which parallel the Federal Deposit Insurance Corporation's (FDIC's) insurance rules, are intended to maintain parity between NCUA's and FDIC's insurance programs and to prevent confusion in understanding and applying the share insurance rules.

DATES: NCUA welcomes comments on these proposals. Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union

Administration, 1775 Duke Street, Alexandria, VA 22314–3428. You may also fax comments to (703) 518–6319 or e-mail comments to boardmail@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with NCUA's regulatory review process, NCUA staff has identified part 745 as one of the regulations in need of updating, clarification and simplification. On March 23, 1999, the Board of Directors of the FDIC adopted deposit insurance rule changes regarding joint accounts and revocable trust accounts. 64 FR 15653 (April 1, 1999). The NCUA Board adopted similar changes on April 15, 1999. 64 FR 19685 (April 22, 1999). At that time, NCUA was aware that additional changes to part 745 were necessary and would be forthcoming, but believed that it was important to implement the amendments immediately regarding joint accounts and revocable trust accounts. NCUA has completed a more comprehensive review of part 745 and reviewed the comments submitted in connection with the joint accounts and revocable trust accounts rule changes. NCUA is now proposing additional amendments to improve part 745.

B. Proposed Amendments

Living Trust Accounts

A living trust is a formal trust that an owner creates and retains control over during his or her lifetime. NCUA intends to treat a revocable trust account that is held in connection with a living trust in the same manner it treats all other revocable trust accounts, if the living trust otherwise meets all requirements that pertain to revocable trust accounts. Living trusts that include conditions that could prevent a beneficiary from acquiring a vested and non-contingent interest in the account funds upon the owner's death, however, would not be entitled to insurance coverage under this section. NCUA will consider the grantor of a living trust as the owner of the funds in the account during that person's life. The owner must be a member of the credit union or otherwise eligible to open the account and qualify for insurance.

Joint Revocable Trust Accounts

Joint revocable trust accounts are revocable trust accounts, as described in § 745.4 of NCUA's regulations, that are established by more than one owner and held for the benefit of others. NCUA proposes to provide separate insurance coverage for qualifying accounts of this kind.

Application of State or Local Law To Share Insurance Determinations

In the interest of maintaining uniform national rules and consistent share insurance determinations, NCUA proposes to clarify the degree of control that state or local law has on share insurance determinations. NCUA regulations presently do not state as clearly as they could that the provisions of part 745 control over state or local law in determining share insurance coverage. Section 745.2(a) currently provides that, to the extent local law enters into a share insurance determination, the law of the jurisdiction in which the insured credit union's principal office is located will govern. This should be understood to mean that where an insured credit union has offices in multiple jurisdictions, the local law of the jurisdiction in which the insured credit union's principal office is located will control over the local law of the other jurisdictions where the insured credit union may have branch offices or service facilities. This is no way effects the supremacy of federal law. Generally, state law is used to determine property interests in an account and may be used to determine the extent of coverage available to particular individuals based on those rights. However, state law will not extend coverage beyond that provided under the Federal Credit Union Act or part 745.

Individual Retirement Accounts (IRAs)

NCUA proposes to specify that Roth IRAs and Education IRAs are included among member accounts eligible for share insurance. These accounts were first made available to consumers on January 1, 1998. Although both are colloquially known as IRA accounts, only the Roth IRA will be treated the same as a traditional IRA for share insurance purposes under § 745.9–2 of NCUA's regulations. Education IRAs, for share insurance purposes, will be treated as irrevocable trust accounts under § 745.9–1 of NCUA's regulations.

Public Unit Accounts

NCUA proposes to liberalize its share insurance coverage for some kinds of public unit accounts. Currently, public funds invested by an official custodian of funds of: (1) the United States; (2) any state of the United States or any county, municipality, or political subdivision thereof; (3) the District of Columbia; (4) specified territories or possessions of the United States and (5) tribal funds of any Indian tribe are generally separately insured up to $100,000. For share insurance purposes, NCUA proposes to distinguish share draft accounts from share certificate and regular share accounts in this context. The result will be to provide insurance coverage up to $100,000 for share draft accounts and up to an additional $100,000 for share certificate and regular share accounts. This more liberal coverage will only be available when an official custodian establishes public unit accounts in an authorized, federally-insured credit union that is located within the jurisdiction from which the custodian's authority is derived. Accounts established outside of that jurisdiction will be limited to the current $100,000 limit without regard to whether the funds are held in share draft accounts or share certificate and regular share accounts.

Guardian Accounts

Currently, funds held in the name of a guardian, custodian or conservator for the benefit of a ward or minor are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward or minor. FDIC, however, treats these accounts as agency or nominee accounts and does not provide separate insurance coverage. Rather, FDIC adds the guardian account together with the individual accounts of the beneficiary of the guardian account and insures that aggregate up to $100,000. NCUA proposes to treat these accounts in a manner consistent with FDIC's treatment. This will result in a reduction in insurance coverage.

Appendix to part 745

The Appendix to part 745 provides examples that illustrate the application of share insurance coverage. NCUA proposes to enhance the usefulness of the Appendix by incorporating additional information and examples and putting it into an easy to read question-and-answer format. The Appendix is not expected to answer every share insurance question that could conceivably be asked. Rather, its function is to address and clarify the most common insurance coverage issues in a simple and manageable format. NCUA intends to continue to update the Appendix periodically as circumstances arise necessitating further clarification.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets.

The NCUA has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The reasons for this determination are that the proposed changes to the share insurance regulations will not increase the premiums paid by credit unions nor will the proposed changes impose any additional requirements on insured credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: ''Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope.'' The proposed rule will not have a 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. NCUA has determined that this rule does not constitute a significant regulatory action for purposes of the executive order.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive, if implemented as proposed. We also encourage comments that address any other share insurance issues we have not discussed here.

List of Subjects in 12 CFR Part 745

Credit unions, Pension plans, Share insurance, Trustee.

By the National Credit Union Administration Board, on November 18, 1999.

Becky Baker,

Secretary of the Board.

For the reasons stated above, it is proposed that 12 CFR part 745 be amended as follows:

PART 745—SHARE INSURANCE AND APPENDIX

1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

2. Section 745.2(a) is amended by revising the last sentence to read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

(a)* * * While the provisions of this part govern in determining share insurance coverage, to the extent local law enters into a share insurance determination, the local law of the jurisdiction in which the insured credit union's principal office is located will control over the local law of other jurisdictions where the insured credit union has offices or service facilities.

* * * * *

3. Section 745.3 is amended by revising paragraph (b) to read as follows:

§ 745.3 Single ownership accounts.

* * * * *

(b) Funds held by a guardian, custodian, or conservator for the benefit of a ward or for the benefit of a minor under a Uniform Gifts to Minors Act or Uniform Transfer to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator will, for purposes of this part, be deemed to be accounts held by agents or nominees and will be insured in accordance with paragraph (a)(2) of this section.

4. Section 745.4 is amended by adding paragraphs (e) and (f) to read as follows:

§ 745.4 Revocable trust accounts.

* * * * *

(e) *Living trusts.* Insurance treatment under this section also applies to revocable trust accounts held in connection with a so-called ''living trust,'' meaning a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the share account held in connection with the living trust may be eligible for share insurance under this section, assuming compliance with all the provisions of this part. If the living trust includes a defeating contingency that relates to a beneficiary's interest in the trust assets, then insurance coverage under this section will not be provided. For purposes of this section, a defeating contingency is defined as a condition that would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the share account upon the owner's death.

(f) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner held for the benefit of each qualifying beneficiary will be separately insured up to $100,000. Those interests will be deemed equal unless otherwise stated in the share account records of the federally-insured credit union. Interests held for non-qualifying beneficiaries will be added to the individual accounts of the owners. Where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, the account will not be insured according to the provisions of this section, but will instead be insured in accordance with the joint account provisions of § 745.8.

5. Section 745.9–1 is amended by adding paragraph (c) to read as follows:

§ 745.9–1 Trust accounts.

* * * * *

(c) This section applies to trust interests created in Education IRAs established in connection with § 530 of the Internal Revenue Code (26 U.S.C. 530).

6. Section 745.9–2(a) is revised to read as follows:

§ 745.9–2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under § 401(d) (Keogh account), § 408(a) (IRA) and § 408A (Roth IRA) of the Internal Revenue Code (26 U.S.C. 401(d), 408(a) and 408A) will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to $100,000. A Keogh account will be separately insured from an IRA account, Roth IRA account or, where applicable, aggregated IRA and Roth IRA accounts.

* * * * *

7. Section 745.10 is amended by revising paragraphs (a)(1) through (a)(5) and (b), and adding a second sentence to paragraph (c) to read as follows:

§ 745.10 Public unit accounts.

(a) * * *

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same state will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(5) Each official custodian of tribal funds of any Indian tribe (as defined in Section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally-insured credit union will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(b) Each official custodian referred to in paragraphs (a)(2), (3), and (4) of this section lawfully investing such funds in share accounts in a federally-insured credit union outside of their respective jurisdictions shall be separately insured up to $100,000 in the aggregate for all such accounts regardless of whether they are share draft, share certificate or regular share accounts.

(c) * * * Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any investment of such funds in an account in a federally-insured credit union will be deemed to be a share account established by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the share account will be separately insured up to $100,000.

* * * * *

8. The introductory text to the Appendix to part 745 is amended by adding a heading to read as follows:

APPENDIX TO PART 745—EXAMPLES OF INSURANCE COVERAGE AFFORDED ACCOUNTS IN CREDIT UNIONS INSURED BY THE NATIONAL CREDIT UNION INSURANCE FUND

What is the Purpose of This Appendix?

* * * * *

9. Part A of the Appendix to part 745 is amended by revising the heading of Part A, the introductory paragraph and Examples 5 and 6 to read as follows:

A. How are Single Ownership Accounts Insured?

All funds owned by an individual member or, in a community property state, by the husband-wife community of which the individual is a member and invested in one or more individual accounts are added together and insured to the $100,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds, in the name of the member's agent or nominee, or in a custodial loan account on behalf of the member as a borrower (§§ 745.3(a)(1), (2) and (3)). For this purpose, funds held by a guardian, custodian or conservator for the benefit of a ward or minor shall be treated as an agent or nominee account.

* * * * *

Example 5

Question: Member C, a minor, maintains an individual account of $750. C's grandfather makes a gift to him of $100,000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gift to Minors Act. C's father, also a member, maintains an individual account of $100,000. What is the insurance coverage?

Answer: C's individual account and the custodial account held for him by his father are added together and insured to the $100,000 maximum, leaving $750 uninsured. The individual account held by C's father is separately insured up to the $100,000 maximum (§§ 745.3(a)(1), (a)(2) and b).

Example 6

Question: Member G, a court-appointed guardian, invests $100,000, which belongs to member W, his ward, in a properly designated custodial account. W and G each maintain $25,000 in individual accounts. What is the insurance coverage?

Answer: W's individual account and the guardianship account in G's name are added together and insured to the $100,000 maximum leaving $25,000 uninsured. G's individual account is separately insured to the $100,000 maximum (§§ 745.3(a)(1), (a)(2) and (b)).

* * * * *

10. Part B of the Appendix to part 745 is amended by revising the heading of Part B and adding Example 4 to read as follows:

B. How are Revocable Trust Accounts Insured?

* * * * *

Example 4

Question: Member H invests $200,000 in a revocable trust account held in connection with a living trust with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds would normally be insured under the rules governing revocable trust accounts up to $100,000 as to each beneficiary (§ 745.4(b)). However, because this account is held in connection with a living trust whose named beneficiaries are qualifying beneficiaries under § 745.4, it must be scrutinized to determine whether the account complies with all other provisions of this part and whether the living trust contains any defeating contingencies. Assuming there are no defeating contingencies and that the account complies with all other requirements of this part, then it will be treated as any other revocable trust. In this instance, it will be insured up to $100,000 as to each beneficiary (§ 745.4(e)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

11. Part C of the Appendix to part 745 is amended by revising the heading of Part C to read as follows:

C. How are Accounts Held by Executors or Administrators Insured?

* * * * *

12. Part D of the Appendix to part 745 is amended by revising the heading of Part D to read as follows:

D. How are Accounts Held by a Corporation, Partnership or Unincorporated Association Insured?

13. Part E of the Appendix to part 745 is amended by revising the heading of

Part E, the first introductory paragraph and Examples 4 through 7 and adding new Example 9 to read as follows:

E. How are Public Unit Accounts Insured?

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the account holder. All funds belonging to a public unit and invested by the same custodian in a federally-insured credit union are categorized as either share draft accounts or share certificate and regular share accounts. If these accounts are invested in a federally-insured credit union located in the jurisdiction from which the official custodian derives his authority, then the share draft accounts will be insured separately from the share certificate and regular share accounts. Under this circumstance, all share draft accounts are added together and insured to the $100,000 maximum and all share certificate and regular share accounts are also added together and separately insured up to the $100,000 maximum. If, however, these accounts are invested in a federally-insured credit union located outside of the jurisdiction from which the official custodian derives his authority, then insurance coverage is limited to $100,000 for all accounts regardless of whether they are share draft, share certificate or regular share accounts. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured. If the same person is custodian of funds for more than one public unit, he is separately insured with respect to the funds of each unit held by him in properly designated accounts. The maximum coverage for an official custodian of funds of the United States would be $100,000.

* * * * *

Example 4

Question: A city treasurer invests city funds in each of the following accounts: ''General Operating Account,'' ''School Transportation Fund,'' ''Local Maintenance Fund,'' and ''Payroll Fund.'' Each account is available to the custodian upon demand. By administrative direction, the city treasurer has allocated the funds for the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to $100,000. Because the allocation of the city's funds is not by statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of $100,000 is not afforded to each account (§§ 745.1(d) and 745.10(a)(2)).

Example 5

Question: A, the custodian of retirement funds of a military exchange, invests $1,000,000 in an account in an insured credit union. The military exchange, a non-appropriated fund instrumentality of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§ 745.10(a)(1)).

Example 6

Question: A is the custodian of the County's employee retirement funds. He deposits $1,000,000 in retirement funds in an account in an insured credit union. The ''beneficiaries'' of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§ 745.10(a)(2)).

Example 7

Question: A county treasurer establishes the following share draft accounts in an insured credit union each with $100,000:

''General Operating Fund''
''County Roads Department Fund''
''County Water District Fund''
''County Public Improvement District Fund''
''County Emergency Fund''

What is the insurance coverage?

Answer: The ''County Roads Department,'' ''County Water District'' and ''County Public Improvement District'' accounts would each be separately insured to $100,000 if the funds in each such account have been allocated by law for the exclusive use of a separate county department or subdivision expressly authorized by State statute. Funds in the ''General Operating'' and ''Emergency Fund'' accounts would be added together and insured in the aggregate to $100,000, if such funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§ 745.1(d) and 745.10(a)(2)).

* * * * *

Example 9

Question: A, an official custodian of funds of a state of the United States, lawfully invests $250,000 of state funds in a federally-insured credit union located in the state from which he derives his authority as an official custodian. What is the insurance coverage?

Answer: If A invested the entire $250,000 in a share draft account, then $100,000 would be insured and $150,000 would be uninsured. If A invested $125,000 in share draft accounts and another $125,000 in share certificate and regular share accounts, then A would be insured for $100,000 for the share draft accounts and $100,000 for the share certificate and regular share accounts leaving $50,000 uninsured (§ 745.10(a)(2)). If A had invested the $250,000 in a federally-insured credit union located outside the state from which he derives his authority as an official custodian, then $100,000 would be insured for all accounts regardless of whether they were share draft, share certificate or regular share accounts, leaving $150,000 uninsured (§ 745.10(b)).

14. Part F of the Appendix to part 745 is amended by revising the heading of Part F to read as follows:

F. How are Joint Accounts Insured?

* * * * *

15. Part G of the Appendix to part 745 is amended by revising the heading of Part G and the second sentence of the seventh introductory paragraph to read as follows:

G. How are Trust Accounts and Retirement Accounts Insured?

* * * Although credit unions may serve as trustees or custodians for self-directed IRA, Roth IRA and Keogh accounts, once the funds in those accounts are taken out of the credit union, they are no longer insured.

* * * * *

[FR Doc. 99–30694 Filed 11–29–99; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–11 Series Airplanes, and KC–10A (Military) 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 McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes. This proposal would require installation of thrust reverser interlocks on certain airplanes, inspections of the thrust reverser systems to detect discrepancies on certain other airplanes, and corrective actions, if necessary. This proposal is prompted by a determination that the current thrust reverser systems do not adequately preclude unwanted deployment of a thrust reverser. The actions specified by the proposed AD are intended to prevent unwanted deployment of a thrust reverser, which

could result in reduced controllability of the airplane.

DATES: Comments must be received by January 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–108–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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

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–108–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–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Boeing recently completed an update of the System Safety Analysis (SSA) for McDonnell Douglas Model DC–10 and MD–11 series airplanes. This SSA identified a number of latent (hidden) failures that could contribute to unwanted deployment of a thrust reverser in flight. Based on this SAA, the FAA has determined that the thrust reverser systems on all McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes, do not adequately preclude unwanted deployment of a thrust reverser. This condition, if not corrected, could result in unwanted deployment of a thrust reverser, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 78–40, Revision 1, dated July 24, 1979, which describes procedures for installation of thrust reverser interlocks on certain Model DC–10–10, –30, and –40 series airplanes. This installation includes installing two relays on the forward relay panel and revising associated wiring.

The FAA also has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–78A056, Revision 2, dated February 18, 1999. This service bulletin describes procedures for repetitive detailed visual inspections, functional checks, and torque checks of the thrust reverser systems and the thrust reverser interlocks of certain Model DC–10 series airplanes and KC–10A (military) airplanes powered by General Electric engines. These inspections and checks are intended to detect discrepancies [i.e., below minimum torque required to overcome the pneumatic drive motor (PDM) disc brake; cuts, tears, or missing sections of the translating cowl seals; dents, cracks, holes, or loose fasteners on the Dagmar fairing or aft frame; improper alignment of the feedback rod; hidden faults in the translating cowl auto re-stow system; a failed over pressure shutoff valve (OPSOV); and improper operation of the fan reverser actuation system].

McDonnell Douglas Alert Service Bulletin DC10–78A056, Revision 2, dated February 18, 1999, references Middle River Aircraft Systems (MRAS) Service Bulletins (S/B) 78–3001, Revision 2, dated December 18, 1997, and S/B 78–2004, Revision 1, dated December 18, 1997, as additional sources of service information for accomplishment of the inspections and corrective actions. The corrective actions include replacement of the discrepant parts or deactivation of the thrust reversers.

The FAA also has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 1, dated February 18, 1999. This service bulletin describes procedures for repetitive detailed visual inspections, functional checks, and torque checks of the thrust reverser systems on certain Model DC–10–40 series airplanes powered by Pratt & Whitney engines. These inspections and checks are intended to detect discrepancies (i.e., damaged or improperly functioning stow latch hooks; cuts, gouges, or holes in the pneumatic seal/bullnose seal; improper functioning of the pneumatic drive unit (PDU) position locking retention feature; improper installation or improper operation of the system wiring, switches, or indicator lights; damage to the fan reverser flexshafts, actuators, or translating sleeve tracks or sliders; improper function of the in-flight interlock system; and improper operation of the thrust reverser power source, translating sleeve, throttle interlocks, or cockpit indicators). The alert service bulletin specifies that corrective actions for discrepancies found during these actions are to be accomplished in accordance with normal maintenance practices.

The FAA also has reviewed and approved McDonnell Douglas MD–11 Certification Maintenance Requirements (CMR), Revision P, dated April 5, 1999, which, among other things, describes procedures for repetitive inspections and tests for all MD–11 thrust reverser systems. The procedures include inspection of the cone brake within the Center Drive Unit (CDU) to detect slipping or a failed CDU brake; and functional tests of the two position microswitches on the CDU and their associated wiring to detect failed open

switches or open wire runs. These procedures also include inspection of the aerodynamic seal between the reverser translating sleeves and the main reverser structure to detect damage to the aerodynamic seal or its interface surface on the reverser structure; and functional tests of the thrust reverser In-Flight Lockout System (IFLS) to detect failure of the flight control computer (FCC), radio altimeter input to the FCC, main landing gear wheel speed input to the FCC, ground sensing system, or wiring that causes an on-ground status in the IFLS while the aircraft is airborne. These procedures also include inspections to detect failed open pressure switches on the hydraulic control unit, failed stow position microswitches, or failed locking mechanisms. In addition, the procedures include testing of the thrust reverser pressurization system to detect an uncommanded pressurized thrust reverser system and/or a failed thrust reverser pressure switch, as applicable. Corrective actions for discrepancies found during these actions are to be accomplished in accordance with normal maintenance practices.

The FAA also has reviewed and approved MRAS Alert Service Bulletin CF6–80C2D1F SB 78A1082, dated August 25, 1999. This service bulletin describes procedures for a pressure differential inspection of the directional pilot valves (DPV) on the thrust reverser systems to detect a partially open solenoid or failed O-ring, and corrective actions, if necessary. The corrective actions include replacement of a discrepant DPV with a DPV that has been inspected, or deactivation of the thrust reverser. In lieu of accomplishing the inspection, this service bulletin also describes procedures for replacement of a DPV with a DPV that has been inspected.

The FAA also has reviewed and approved documents which describe corrective actions for the discrepancies specified above, as applicable:

- Chapter 78 of McDonnell Douglas DC–10 Aircraft Maintenance Manual (AMM);
- Chapter 78 of McDonnell Douglas DC–10 Turn Around Fault Isolation Manual (TAFIM);
- Chapter 78 of General Electric Shop Manual;
- MRAS Service Bulletin 78–2004, Revision 1, dated December 18, 1997;
- MRAS Service Bulletin 78–3001 Revision 2, dated December 18, 1997;
- McDonnell Douglas Alert Service Bulletin DC10–78A056, dated January 1, 1998, Revision 1, dated June 4, 1998, or Revision 2, dated February 18, 1999;
- McDonnell Douglas Alert Service Bulletin DC10–78A057, dated November 30, 1998, or Revision 1, dated February 18, 1999;
- Chapters 71 and 78 of McDonnell Douglas MD–11 Aircraft Maintenance Manual; and
- Chapter 78 of McDonnell Douglas MD–11 Fault Isolation Manual (FIM).

Accomplishment of the actions specified in the service bulletins, CMR, and Master Minimum Equipment Lists (MMEL) is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although McDonnell Douglas DC–10 Service Bulletin 78–40, Revision 1, dated July 24, 1979, recommends accomplishing the modification at the ''operator's convenience'', the FAA has determined that this would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification (less than 10 hours). In light of all of these factors, the FAA finds a compliance time of within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Additionally, operators should note that the applicability of paragraphs (b) and (c) of the proposed AD differs from the effectivity listing specified in McDonnell Douglas DC–10 Service Bulletin 78–40, Revision 1, dated July 24, 1979. Some of the airplanes that are listed in McDonnell Douglas DC–10 Service Bulletin 78–40, Revision 1, dated July 24, 1979, have been removed from service. Therefore, those airplanes are not included in the applicability of paragraphs (b) and (c) of the proposed AD.

Interim Action

For all Model DC–10 series airplanes, this is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 259 Model DC–10–10, -30, and -40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet that are listed in McDonnell Douglas DC–10 Service Bulletin 78–40, Revision 1, dated July 24, 1979. The FAA estimates that 135 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions related to this service bulletin, and that the average labor rate is $60 per work hour. The required parts would be obtained from the operator's stock. Based on these figures, the cost impact of this portion of the proposed AD on U.S. operators is estimated to be $81,000, or $600 per airplane.

There are approximately 359 Model DC–10–10, -15, -30, and -40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet that are listed in McDonnell Douglas Alert Service Bulletin DC10–78A056, Revision 2, dated February 18, 1999. The FAA estimates that 187 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions related to this service bulletin, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this portion of the proposed AD on U.S. operators is estimated to be $56,100, or $300 per airplane, per inspection cycle.

There are approximately 41 Model DC–10–40 series airplanes of the affected design in the worldwide fleet that are listed in McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 1, dated February 18, 1999. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 31 work hours per airplane to accomplish the proposed actions related to this service bulletin, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this portion of the proposed AD on U.S. operators is

estimated to be $40,920, or $1,860 per airplane, per inspection cycle.

There are approximately 165 Model MD–11 airplanes of the affected design in the worldwide fleet that are equipped with General Electric engines. The FAA estimates that 86 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this portion of the proposed AD on U.S. operators is estimated to be $30,960, or $360 per airplane, per inspection cycle.

There are approximately 19 Model MD–11 airplanes of the affected design in the worldwide fleet that are equipped with Pratt & Whitney engines. The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 31 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this portion of the proposed AD on U.S. operators is estimated to be $9,300, or $1,860 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 99–NM–108–AD.

Applicability: All Model DC–10 series airplanes, MD–11 series airplanes, and KC–10A (military) 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 (j) 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 unwanted deployment of the thrust reverser, which could result in reduced controllability of the airplane, accomplish the following:

Modification of Certain Model DC–10 Series Airplanes

(a) For Model DC–10–10, –30, and –40 series airplanes listed in McDonnell Douglas DC–10 Service Bulletin 78–40, Revision 1, dated July 24, 1979: Within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, install a thrust reverser interlock (in-flight lockout) by installing two relays on the forward relay panel and revising the associated wiring, in accordance with the service bulletin. The requirements of this paragraph must be accomplished prior to or in conjunction with the requirements of paragraph (b) or (c) of this AD, as applicable.

Inspection of Model DC–10 Airplanes Powered by General Electric Engines

(b) For DC–10–10, –15, –30, and –40 series airplanes listed in McDonnell Douglas Alert Service Bulletin DC10–78A056, Revision 2, dated February 18, 1999: Within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, perform a detailed visual inspection, functional check, and torque checks of the thrust reverser system and the thrust reverser interlocks to detect discrepancies [i.e., below minimum torque required to overcome the pneumatic drive motor (PDM) disc brake; cuts, tears, or missing sections of the translating cowl seals; dents, cracks, holes, or loose fasteners on the Dagmar fairing or aft frame; improper alignment of the feedback rod; hidden faults in the translating cowl auto re-stow system; a failed over pressure shutoff valve (OPSOV); and improper operation of the fan reverser actuation system], in accordance with the service bulletin. Repeat the inspections at intervals not to exceed 6,000 flight hours or 18 months, 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.''

Note 3: Inspection of the thrust reverser system accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin DC10–78A056, dated January 19, 1998, or Revision 1, dated June 4, 1998, is considered acceptable for compliance with the initial inspections required by paragraph (b) of this AD.

Note 4: McDonnell Douglas Alert Service Bulletin DC10–78A056, Revision 2, dated February 18, 1999, references Middle River Aircraft Systems (MRAS) Service Bulletin (S/B) 78–3001, Revision 2, dated December 18, 1997, and MRAS S/B 78–2004, Revision 1, dated December 18, 1997, as additional sources of service information for accomplishment of the inspections and corrective actions.

Inspection of Model DC–10–40 Series Airplanes Powered by Pratt & Whitney Engines

(c) For Model DC–10–40 series airplanes listed in McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 01, dated February 18, 1999: Within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, perform a detailed visual inspection, functional check, and torque checks of the thrust reverser system to detect discrepancies [i.e. damaged or improperly functioning stow latch hooks; cuts, gouges, and holes in the pneumatic seal/bullnose seal; improper functioning of the PDU position locking retention feature; improper installation or improper operation of the system wiring, switches, or indicator lights; damage to the fan reverser flexshafts,

actuators, translating sleeve tracks, or sliders; improper function of the in-flight interlock system; and improper operation of the thrust reverser power source, translating sleeve, throttle interlocks, or cockpit indicators], in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs first.

Note 5: Inspection of the thrust reverser system in accordance with McDonnell Douglas Alert Service Bulletin DC10–78A057, dated November 30, 1998, accomplished prior to the effective date of this AD, is considered acceptable for initial compliance with the applicable action specified in paragraph (c) of this AD.

Inspection of Model MD–11 Series Airplanes Powered by General Electric Engines

(d) For Model MD–11 series airplanes equipped with General Electric engines: Perform a detailed visual inspection and functional check of the two position microswitches on the Center Drive Unit (CDU) and their associated wiring to detect failed open switches or open wire runs, and the aerodynamic seal between the reverser translating sleeves and the main reverser structure to detect damage to the aerodynamic seal or its interface surface on the reverser structure; and perform an inspection to determine the torque value of the cone brake within the CDU to detect slipping or a failed CDU brake. These inspections and functional check shall be done in accordance with pages 17 and 18 of the McDonnell Douglas MD–11 Certification Maintenance Requirements (CMR), Revision P, dated April 5, 1999; at the times specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the modification (i.e., translating cowl double P-seal configuration) specified in Lockheed Martin/Middle River Aircraft Systems (MRAS) Service Bulletin 78A1005, dated March 29, 1995; Revision 1, dated June 6, 1996; Revision 2, dated October 18, 1996; Revision 3, dated August 18, 1997; or Revision 4, dated December 21, 1998; has been accomplished: Inspect within 7,000 flight hours after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 7,000 flight hours.

(2) For airplanes on which the modification (i.e., translating cowl double P-seal configuration) specified in MRAS Service Bulletin 78A1005, dated March 29, 1995; Revision 1, dated June 6, 1996; Revision 2, dated October 18, 1996; Revision 3, dated August 18, 1997; or Revision 4, dated December 21, 1998; has not been accomplished: Inspect within 2,000 flight hours after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 2,000 flight hours.

(e) For Model MD–11 series airplanes equipped with General Electric engines, without an Electronic Control Unit (ECU), part number 1519M91P06, installed: Within 2,000 flight hours after the effective date of this AD, test the thrust reverser pressurization system to detect an uncommanded pressurized thrust reverser system and/or a failed thrust reverser pressure switch, as applicable, in accordance with pages 52 and 53 of the McDonnell Douglas MD–11 CMR, Revision P, dated April 5, 1999. Repeat the inspections thereafter at intervals not to exceed 2,000 flight hours.

(f) For Model MD–11 series airplanes equipped with General Electric engines: Within 7,000 flight hours after the effective date of this AD, inspect the thrust reverser In-Flight Lockout System (IFLS) to detect failure of the flight control computer (FCC), radio altimeter input to the FCC, main landing gear wheel speed input to the FCC, ground sensing system, or wiring that causes an on-ground status in the IFLS while the aircraft is airborne, in accordance with page 54 of the McDonnell Douglas MD–11 Certification Maintenance Requirements (CMR), Revision P, dated April 5, 1999. Repeat the inspections thereafter at intervals not to exceed 7,000 flight hours.

(g) For Model MD–11 series airplanes equipped with General Electric engines: Within 600 flight hours after the effective date of this AD, accomplish the actions specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD in accordance with MRAS Alert Service Bulletin CF6–80C2D1F SB 78A1082, dated August 25, 1999.

(1) Perform a pressure differential inspection of the directional pilot valves (DPV) to detect a partially open solenoid or failed O-ring. If any partially open solenoid or failed O-ring is detected, prior to further flight, replace the discrepant DPV with a DPV that has been inspected in accordance with this paragraph. Repeat the inspection thereafter at intervals not to exceed 2,000 flight hours. Or

(2) Replace the DPV with a DPV that has been inspected in accordance with paragraph (g)(1) of this AD. Repeat the replacement thereafter at intervals not to exceed 2,000 flight hours. Or

(3) Deactivate the thrust reverser in accordance with the MD–11 Master Minimum Equipment List, and reactivate the thrust only after accomplishing the actions specified in paragraph (g)(1) or (g)(2) of this AD.

Inspection of Model MD–11 Series Airplanes Powered by Pratt & Whitney Engines

(h) For MD–11 series airplanes equipped with Pratt & Whitney engines: Within 7,000 flight hours after the effective date of this AD, perform a detailed visual inspection and functional checks, as applicable, of the thrust reverser system and the thrust reverser In-Flight Lockout System to detect failed open pressure switches on the hydraulic control unit, to detect failed stow position microswitches, or failed locking mechanisms; and failure of the FCC, radio altimeter input to the FCC, main landing gear wheel speed input to the FCC, ground sensing system, or wiring that causes an on-ground status in the IFLS while the aircraft is airborne, in accordance with pages 19, 20, and 54 of the McDonnell Douglas MD–11 Certification Maintenance Requirements CMR, Revision P, dated April 5, 1999. Repeat the inspections thereafter at intervals not to exceed 7,000 flight hours.

Corrective Actions

(i) If any discrepancy is detected during any inspection required by this AD, prior to further flight, accomplish the actions specified in either paragraph (i)(1) or (i)(2) of this AD.

(1) Perform applicable corrective action in accordance with the following service documents:

- Chapter 78 of McDonnell Douglas DC–10 Aircraft Maintenance Manual;
- Chapter 78 of McDonnell Douglas DC–10 Turn Around Fault Isolation Manual; Chapter 78 of General Electric Shop Manual;
- MRAS Service Bulletin 78–2004, Revision 1, dated December 18, 1997;
- MRAS Service Bulletin 78–3001 Revision 2, dated December 18, 1997;
- McDonnell Douglas Alert Service Bulletin DC10–78A056, dated January 1, 1998, Revision 1, dated June 4, 1998, or Revision 2, dated February 18, 1999;
- McDonnell Douglas Alert Service Bulletin DC10–78A057, dated November 30, 1998, or Revision 1, dated February 18, 1999;
- Chapters 71 and 78 of McDonnell Douglas MD–11 Aircraft Maintenance Manual;
- Chapter 78 of McDonnell Douglas MD–11 Fault Isolation Manual; or
- A method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Deactivate the thrust reverser in accordance with the DC–10 Master Minimum Equipment List or the MD–11 Master Minimum Equipment List, as applicable.

Alternative Methods of Compliance

(j) 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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(k) 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 23, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31072 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 991122312–9312–01]

RIN 0694–XX12

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), foreign policy controls expire one year after imposition unless they are extended. The EAA requires a report to Congress whenever foreign policy-based export controls are extended. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls and requesting comments on such controls. Foreign Policy controls need to be extended in January 2000.

DATES: Comments must be received by December 30, 1999.

ADDRESSES: Written comments (three copies) should be sent to Frank Ruggiero, Regulatory Policy Division (Room 2096), Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196. Copies of the current Annual Foreign Policy Report to the Congress are available at our website: www.bxa.doc.gov and copies may also be requested by calling the Office of Strategic Trade.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to: high performance computers (§ 742.12); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, and 746.7); and, Libya (§§ 744.8 and 746.4). Attention is also given in this context to the controls on nuclear-related commodities and technology (§ 744.2 and § 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

In January 1999, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in industry information relating to the following:

1. Information on the effect of foreign policy controls on sales of U.S. products to third countries (*i.e.,* those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy controls.

2. Information on controls maintained by U.S. trade partners (*i.e.,* to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations)?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy controls on overall trade, either for individual firms or for individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy controls on trade.

9. Information on the use of foreign policy controls on targeted countries, entities, or individuals.

BXA is also interested in comments relating generally to the extension or revision of existing foreign policy controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 6883, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from the BXA Freedom of Information Officer at the above address or by calling (202) 482–0500.

Dated: November 23, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–31061 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 99N–2497]

Citizen Petitions; Actions That Can be Requested by Petition; Denials, Withdrawals, and Referrals for Other Administrative Action

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations pertaining to citizen petitions. The proposal would cover citizen petition requests to issue, amend, or revoke a regulation; requests to amend or revoke an order that FDA has issued or published; or any other action specifically authorized by another FDA regulation. The document further clarifies that persons who wish to contact the agency on matters outside these three types of actions would still be able to do so through informal means, such as letters and telephone calls. In addition the proposal would also revise certain content requirements for citizen petitions and would permit FDA to refer petitions for other administrative action, seek clarification of a petitioner's requests, withdraw certain petitions, and combine petitions. These changes are intended to improve the citizen petition mechanism.

DATES: Submit written comments by February 28, 2000. Submit written comments on the information collection provisions by December 30, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, ATTN: Wendy Taylor, Desk Officer for FDA

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

There are several mechanisms which can be used to contact FDA on a particular matter or issue. These mechanisms can be informal, such as calling the agency, sending a fax or electronic mail, writing a letter (see § 10.65(a) (21 CFR 10.65(a))), or requesting a meeting (see, e.g., § 10.65(b) and (c)). They may also be more formal, such as requesting a public hearing (see, e.g., 21 CFR 12.20) or submitting a citizen petition (see § 10.30 (21 CFR 10.30)).

Many persons use citizen petitions under § 10.30 to contact FDA on a diverse range of issues. The issues can be very specific, such as detailed scientific concerns about a particular product's safety or bioequivalence, but occasionally pertain to matters outside FDA's jurisdiction or to matters that would require legislative, rather than regulatory, relief. This results in a large number of citizen petitions filed at FDA. As of April 1999, several hundred citizen petitions have been filed and remain pending.

In many instances, it is readily apparent that citizen petitions may not be the best or most efficient mechanism for addressing the underlying subject or issue. For example, FDA often receives petitions requesting prompt or immediate action, yet each petition, after being filed and assigned to the appropriate office or center, must compete against other agency priorities, including other citizen petitions filed earlier. In contrast, a telephone call, letter, or a request for a meeting, while lacking the formal processing associated with citizen petitions, is usually an easier, faster, and more efficient way to discuss the same issue with the agency.

Reviewing and responding to these petitions can also be, and often is, a resource-intensive and time-consuming task because FDA must research the petition's subject, examine scientific, medical, legal, and sometimes economic issues, and coordinate internal agency review and clearance of the petition response. In many instances, FDA must issue a tentative response stating that the agency is unable to reach a decision on the petition within the 180-day response period established in FDA's regulations.

Questions have also arisen whether a citizen petition can be used for improper purposes, such as delaying competition (see, e.g., Noah, L., ''Sham Petitioning as a Threat to the Integrity of the Regulatory Process,'' 74 N. *Carolina L. Rev.* 1 (1995) (also noting that the Federal Trade Commission, in 1993, had concerns that petitions were being submitted to FDA for anticompetitive reasons)) or delaying agency action. Some petitioners have submitted multiple citizen petitions concerning the same subject or product

with each petition containing one or few requests, while others have submitted several citizen petitions on the same subject or product over an extended time period. These petitions drain FDA resources both repeatedly and inefficiently because they commit FDA to multiple reviews and responses rather than having FDA consider and respond to all issues at one time.

Recently, the Office of the Inspector General (OIG) in the Department of Health and Human Services reviewed FDA's citizen petitions process to assess the agency's effectiveness in handling citizen petitions and to identify ways that the process can be improved. The OIG noted that FDA had examined various options for reducing the citizen petition backlog and suggested that those options be thoroughly discussed within the agency and ''implemented where practical.''

This proposed rule contains several of those options and is intended to facilitate and to improve interactions between FDA and interested persons. The proposed rule would clarify the types of requests that may be the subject of a citizen petition and increase FDA's flexibility in responding to or taking action in response to a citizen petition.

FDA emphasizes that the proposed rule is not intended to and does not reduce or curtail access to or discussions with the agency. For example, FDA's regulations provide for meetings and correspondence (see, e.g., § 10.65), and other FDA regulations provide for meetings under certain situations (see, e.g., 21 CFR 314.102 (communication between FDA and persons who have submitted new drug application or abbreviated new drug application (ANDA))). Informal avenues of communication, such as telephone calls, faxes, and electronic mail, also exist. These avenues of communication can be faster and more efficient methods for discussing issues or addressing concerns than citizen petitions.

In addition to this rule, FDA has taken, or is exploring, various administrative approaches to reduce its citizen petition backlog and improve its handling of citizen petitions. These actions have included contacting petitioners whose requests are of long standing to determine whether they still want FDA to take action on their petitions and revising delegations of authority so that certain FDA centers may issue a greater range of petition responses. FDA is also considering options for improving managerial and oversight responsibility for citizen petitions to ensure that the citizen petition process is efficient and effective.

II. Description of the Proposed Rule

Under FDA's existing regulations, any person may submit a citizen petition to the agency requesting that the Commissioner of Food and Drugs (the Commissioner): (1) Issue, amend, or revoke a regulation; (2) issue, amend, or revoke an order; or (3) take or refrain from taking any other form of administrative action (§ 10.30(a) and (b)). The regulations also direct the agency to issue a response to a citizen petition within 180 days after receiving a petition (§ 10.30(e)(2)). (For petitions requesting permission to submit an ANDA for certain drugs, the response period is 90 days (see § 10.30(e)(4)).) The response can either approve the petition, deny the petition, or provide a tentative response, indicating why the agency has been unable to reach a decision on the petition (§ 10.30(e)(2)).

A. Proposed § 10.30(b)

1. Actions That May be Requested in a Citizen Petition

The proposed rule would amend the citizen petition requirements at § 10.30(b) and its description of the actions that may be requested in a citizen petition. Under the proposal, a citizen petition could request that the agency: (1) Issue, amend, or revoke a regulation; (2) amend or revoke an order that the agency has issued or published; or (3) take an action as specifically authorized by another FDA regulation.

The proposal would not alter a person's ability to petition the agency for the issuance, amendment, or revocation of a regulation. The Administrative Procedure Act (5 U.S.C. 553(e)) expressly provides for such petitions, and the proposal would preserve a person's ability to petition for rulemaking.

The proposal would, however, require that the requested regulation pertain to a subject that is appropriately and ordinarily addressed by regulation rather than other administrative action. For example, a petition that sought to amend the format and content requirements for an ANDA may be within the proposed rule because the requested change would be applicable to all ANDA's. However, a petition that sought a regulation directly or indirectly prohibiting the approval of a particular generic drug product, declaring a particular generic product to be unsafe, ineffective, or not bioequivalent, or prohibiting a class of generic drug products would, in most cases, not fall within the proposed rule because FDA generally does not issue regulations to prohibit the approval of individual generic drug products.

FDA considered, but did not include in this proposed rule, a requirement that petitioners show why the requested rulemaking or action is within FDA's legal authority. The existing regulations require a petitioner to provide the factual and legal grounds on which the petitioner relies, but despite this requirement, the agency sometimes receives petitions requesting actions that are beyond FDA's legal authority or actions that are a matter of State law. For example, a petition requesting that FDA, under its existing statutory authority for drug products, regulate a particular class of drugs products would be appropriate, whereas a petition requesting that FDA require firms to observe certain employment practices (a matter that is generally not within FDA's legal authority) would not. Consequently, the agency contemplated various ways to have would-be petitioners request only those actions that fall under FDA's authority, but without requiring petitioners to provide a detailed or exhaustive legal analysis or to retain legal services to draft arguments on FDA's legal authority. The agency invites comments on how a rule might ask petitioners to ensure that their requested actions are within FDA's legal authority without making those petitioners do a detailed or exhaustive legal analysis.

For citizen petitions concerning agency orders, the proposal would amend § 10.30(b) to limit citizen petitions to requests that FDA amend or revoke an order that FDA has issued. In other words, a citizen petition could not be used to request that FDA amend pending FDA orders or issue future FDA orders. This change will enable FDA to focus its resources on addressing substantive issues or controversies, rather than devote resources to speculating about future orders or to addressing subjects which may not be an agency priority or present any significant public health issues.

The proposal would also require the citizen petition to be based on more than unsupported claims, allegations, or general descriptions of positions or arguments. Although the existing regulation requires petitioners to provide a full statement of the factual grounds on which the petitioner relies, some petitions contain little or no evidence or support or rely on obsolete, irrelevant, or erroneous information. Thus, the proposal would deter the submission of frivolous or unsupported petitions and petitions which simply disagree with an agency decision regardless of the scientific evidence or legal authority supporting that decision, the importance of the public health

policies supporting that decision, or the petitioner's lack of sound scientific evidence or legal authority to support its request.

FDA is aware that the proposed change would remove a person's ability to petition FDA to issue an order or to affect a pending order and that some may object to this proposed change on the ground that persons should be able to present arguments and evidence to FDA before it makes a decision. Again, the agency emphasizes that the proposal does not prevent a person from contacting FDA nor does it curtail access to the agency. Persons who desire to present information to FDA would be able to do so through letters, electronic mail, meetings, discussions, and other avenues of communication. If FDA receives important information before it makes a decision, it will make appropriate use of that information. For example, if a person submitted information to FDA to argue that a particular test should be conducted before FDA approves a specific product, the agency may consider that information during its review of the product's application and consult the applicant and others on the issue. The fact that the information may not have been submitted in a citizen petition does not make the information any less persuasive or mean that it will receive less attention from FDA. In short, the citizen petition mechanism is not the sole mechanism for contacting FDA, especially with respect to persons who wish to provide information to FDA before the agency decides on or takes a specific course of action.

The proposal would also change the third category of citizen petitions — petitions requesting that the Commissioner ''take or refrain from taking any other form of administrative action''–to petitions requesting that the Commissioner take an action ''as specifically provided by regulation'' and would require the petitioner to cite the regulation at issue. The reference to actions ''specifically provided by regulation'' is intended to reflect over 20 FDA regulations which expressly provide for or instruct interested persons to submit citizen petitions in order to achieve a particular result. For example, under 21 CFR 60.30(b), a person may file a citizen petition if that person wishes to challenge the regulatory review period determination for a particular product which is being considered for patent term extension. FDA's regulations permit persons to submit a citizen petition if they seek an exemption from the pregnancy nursing warning (21 CFR 201.63(d)). Under 21 CFR 861.38(b)(2), an interested person may petition to establish, amend, or revoke a performance standard. The proposed rule would continue to allow petitions under these and other FDA regulations that expressly refer to the citizen petitions process, but the proposal would no longer provide an unqualified ability to use the citizen petition process for ''any other form of administrative action.''

FDA reiterates that persons who wish to contact FDA on matters outside the three types of actions described in proposed § 10.30(b) would still be able to do so through other means, such as correspondence, electronic mail, telephone calls, etc., and FDA will respond to such correspondence and other communications promptly. The agency is simply reorganizing its citizen petition mechanism to make it more focused and responsive.

2. Certification Statement for Citizen Petitions

Currently, § 10.30(b) requires a petitioner to certify, to its best knowledge and belief, that the petition includes all information and views on which the petitioner relies and includes ''representative data and information known to the petitioner which are unfavorable to the petition.'' To complement the other proposed changes to § 10.30(b), FDA is proposing to revise the certification statement. The proposed revision would have petitioners certify that, to the petitioner's best knowledge and belief, its citizen petition ''includes all information and views on which the petition relies, that it is well grounded in fact and is warranted by existing laws or regulations, that it is not submitted for any improper purpose, such as to harass or to cause unnecessary delay, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.''

B. Proposed § 10.30(e)(2)(ii)—Denial of Citizen Petitions

To facilitate responses to citizen petitions and to promote more efficient use of agency resources, the proposed rule would amend § 10.30(e)(2)(ii) to state that FDA's denial of a citizen petition may be ''brief, as appropriate.'' This is intended to conserve FDA's resources by eliminating the need to conduct exhaustive or comprehensive analyses and responses to requests or issues that the agency has already decided earlier in a different administrative proceeding or action and to give FDA the flexibility to act quickly on petitions where detailed responses are unnecessary. For example, under the proposal, if the citizen petition asked the agency to amend a regulation in a particular way, and FDA considered and rejected the same comment or a similar comment when the agency was drafting the final regulation, and the citizen petition contained no new evidence warranting a change in FDA's earlier decision, the agency's denial letter might simply state that the agency considered the same matter during the rulemaking and that the petition did not provide any new information that would change FDA's earlier decision.

Other examples of where a brief response denying a petitioner's request may be appropriate include, but are not limited to:

1. A citizen petition that makes a request that is outside FDA's legal authority or is based on unsupported claims or allegations. This would complement the changes in proposed § 10.30(b).

2. A citizen petition that is substantially similar or identical, in terms of its requests or issues, to an earlier administrative proceeding or action, and the citizen petition has not identified any significant change in evidence, laws, or regulations that affect the previous administrative proceeding or action. For example, in the past, some petitioners have submitted the same or similar petitions after receiving an unfavorable response. In these situations, when there has been no change in evidence, laws, or regulations since FDA's earlier response, the agency's denial letter might simply say that the agency has previously considered the same or similar request and that the petition has provided no new information that would change the agency's earlier decision.

3. A citizen petition where the agency has determined that the petition does not implicate a significant public health issue, and the agency lacks the resources to provide a more detailed response or to take the action requested by the petitioner. This may occur, for example, where the petitioner requests a change in FDA's regulations that has no significant public health implications, such as amending or establishing common or usual names regulations or standards of identity, quantity, and fill of container regulations for foods or allowing the use of a different test or method or a different manufacturing standard when the difference has no significant public health advantage over the existing test, method, or standard. In the absence of a significant public health issue, and considering the intense demand on FDA's resources, the agency must allocate its resources carefully and

wisely, so brief denial of these types of citizen petitions would be appropriate.

4. A citizen petition where changes in fact, science, or law since the date on which the citizen petition was submitted have made the petition moot. For example, if a citizen petition requested a change to a regulation that has been rescinded or withdrawn, drafting a detailed response to the petitioner's requested change would not be an efficient use of agency resources. Thus, a brief denial for these petitions would be appropriate.

C. Proposed § 10.30(e)(4)—Referral and Withdrawal of Citizen Petitions and Consolidation of Multiple Petitions

Proposed § 10.30(e)(4)(i) would authorize FDA to take administrative action other than preparing a formal response to a citizen petition. This would occur when a citizen petition involves a subject that is being addressed in another administrative proceeding (such as an ongoing or future rulemaking) or presents issues or involves requests that can be addressed through correspondence, meetings, or other agency action. Under such circumstances, the proposed rule would permit, but not require, the agency to refer the petitioner's information to the other administrative proceeding or to refer the petitioner's information to the relevant FDA center for its consideration and any appropriate action. If FDA refers a citizen petition to another administrative proceeding, the citizen petition would remain filed in FDA's Dockets Management Branch, but the agency would place a note in the citizen petition's docket stating that the petitioner's information has been referred to another administrative proceeding and that the petition's docket is closed.

For example, FDA sometimes receives petitions on topics that are the subject of a pending FDA regulation. Under the proposed rule, FDA could refer the petition to the docket for the rulemaking where it would be treated as if it were a comment on the rule, and the petition's docket would contain a note referring to the rulemaking. Referring information to the appropriate administrative proceeding would be an efficient and practical mechanism for reviewing scientific or technical issues because it would ensure that the relevant FDA office considers the petitioner's information in conjunction with the data and information contained in the administrative proceeding (as opposed to allocating separate resources to the administrative proceeding and to the citizen petition or completing the administrative proceeding and citizen petition at different times).

As another example, some petitions raise substantive scientific issues and request that the agency not approve or rescind approval of a specific product. In these cases, it may be more appropriate for the agency to investigate the scientific issues or conduct a meeting to discuss those issues before deciding what regulatory action, if any, to take against the product. Thus, the proposed rule would preserve FDA's flexibility to develop the appropriate administrative response. This flexibility may be particularly valuable when, after reviewing the petitioner's request, the agency determines that the best solution is different from the one suggested by the petitioner.

Proposed § 10.30(e)(4)(ii) would permit the agency to seek clarification of a petitioner's requests. Occasionally, FDA receives citizen petitions that make vague or conflicting requests, but the existing regulations do not expressly permit FDA to request clarification from the petitioner. The proposal would remedy this by permitting FDA to seek clarification. The request for clarification would include a time period for providing the clarifying information to FDA. If the petitioner fails to provide the requested clarification to FDA within that time period, proposed § 10.30(e)(4)(ii) would permit the agency to consider the petition to be withdrawn.

Proposed § 10.30(e)(4)(iii) would permit FDA to consider a citizen petition to be withdrawn where the agency is aware that the petitioner no longer exists or the petitioner cannot be located, or where the petitioner has expressly stated that it does not seek a response to its petition. For example, if a firm submitted a citizen petition and subsequently went out of business, the proposal would permit FDA to consider the petition to be withdrawn. As another example, in rare cases, persons have submitted citizen petitions to protest a particular FDA action. These petitions state that they are submitted as a protest or for symbolic reasons and that no response is sought or expected. Nevertheless, existing regulations do not give FDA express authority to withdraw these petitions even though it is both illogical and a waste of agency resources to require FDA to develop and to issue petition responses when the petitioner no longer exists or when the petitioner seeks no response. The agency does not contemplate using this authority often.

Proposed § 10.30(e)(4)(iv) would apply where FDA has received multiple citizen petitions on the same subject or involving the same product or has received similar or identical citizen petitions from different parties. These citizen petitions, which sometimes contain only a single request and are submitted over an extended period of time, divert FDA resources repeatedly and, from FDA's perspective, inefficiently when the petitioner or petitioners could have easily submitted all requests in the same petition or when the petitioner submits essentially the same petition repeatedly. The proposal, therefore, would enable FDA to combine multiple citizen petitions on the same issue or product. The agency encourages potential petitioners to combine petitions and requests to the greatest extent practicable.

D. Conforming or Miscellaneous Amendments

Section 10.25(a) (21 CFR 10.25(a)) currently states how petitions can be used to initiate an administrative proceeding. Because proposed § 10.30 would redefine the types of actions that may be the subject of a citizen petition, the agency is proposing to revise § 10.25(a) to enable interested persons to request (rather than ''petition'' for) the initiation of an administrative proceeding. Such requests would be made when the desired administrative proceeding falls outside the scope of proposed § 10.30.

Because the proposed rule would permit the agency to refer and to withdraw citizen petitions under certain conditions, two conforming amendments to § 10.30(e)(1) and (e)(2) would be necessary. Currently, § 10.30(e)(1) states that the Commissioner shall ''rule upon'' each petition. Arguably, because a decision to withdraw a citizen petition does not necessarily involve a decision directly on the citizen petition's merits, FDA is proposing to amend § 10.30(e)(1) to state that the Commissioner shall ''act upon'' each citizen petition.

Similarly, § 10.30(e)(2) states that the Commissioner shall furnish a response to each petitioner within 180 days (except to persons who submitted suitability petitions, in which case the response time period is 90 days). Arguably, a decision to refer or withdraw a citizen petition under the proposed rule might not be considered a ''response,'' so FDA is proposing to amend § 10.30(e)(2) to state that, ''Except as provided in paragraphs (e)(4) and (e)(5) of this section * * *.''

The proposal would also revise § 10.30(b) to update the address for the Dockets Management Branch.

III. Legal Authority

When first issued over 20 years ago, FDA's citizen petition regulations were intended to reflect the right to petition the government and to reduce ''confusion and uncertainty on the part of those who wish to petition the agency on a particular matter, as well as on the part of those in the agency who have received various forms of requests and have been unable to determine how they should be handled'' (see 40 FR 40682 at 40686, September 3, 1975).

The right to petition, however, is not absolute; it does not include the right to speak to government officials (see *Welch* v. *Board of Education of Baltimore County*, 477 F. Supp. 959 (D. Md. 1979)), nor does it include the right to an oral hearing (see *Stengel* v. *City of Columbus, Ohio*, 737 F. Supp. 1457 (S.D. Ohio 1988)). Neither does the right to petition the government create an affirmative duty on the government to act or to investigate. See *Minnesota State Board for Community Colleges* v. *Knight*, 104 S. Ct. 1058, 1067 (1984); *Smith* v. *Arkansas State Highway Employees*, 441 U.S. 463, 465 (1979); *Gordon* v. *Heimann*, 514 F. Supp. 659 (N.D. Ga. 1980); *Town of Brookline* v. *Goldstein*, 447 N.E.2d 641, 646 (Mass. 1983).

In fact, court opinions indicate that agencies have broad discretion in establishing and applying rules for public participation in agency matters (see *Cities of Statesville, et al.* v. *Atomic Energy Commission*, 441 F. 2d 962 (D.C. Cir. 1969); *Pasco Terminals, Inc.* v. *United States*, 477 F. Supp. 201 (1979), aff'd 634 F. 2d 610)). Moreover, the Supreme Court has indicated that courts cannot require more than minimum procedural boundaries even if a proposed regulation would establish complex or technical factual issues or important public issues; in those instances, an agency is to decide whether additional procedures are needed. See *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 98 S. Ct. 1197, 1202 (1978).

Here, the proposed rule does not restrict access to or contact with the agency; it simply redefines the types of actions that may be the subject of ''citizen petitions'' under § 10.30 in order to make that formal administrative mechanism more responsive and efficient. Indeed, given that other FDA's regulations provide other means for contacting the agency (see, e.g., § 10.65(a) (regarding correspondence)), the citizen petition regulation at § 10.30 cannot and should not be viewed as being the sole or exclusive mechanism for ''petitioning'' FDA or as an exclusive mechanism for exercising a right to petition FDA.

Certain aspects of the proposed rule, such as the proposed provisions concerning brief denials, withdrawals, and referrals to other administrative action, would affect how citizen petitions are handled. However, as stated earlier, agencies have broad discretion in establishing and applying rules for public participation in administrative matters. The proposal furthers an important government interest–permitting the agency to concentrate its resources on agency priorities and statutory obligations instead of diverting those resources to, for example, citizen petitions that request actions outside FDA's authority, that repeat requests that the agency has already addressed, or that are submitted for symbolic purposes.

Furthermore, as court decisions readily indicate, the right to petition does not impose any duty on the government to take any specific action. Given this case precedent, it would be illogical to conclude that the right to petition demands that FDA continue to receive citizen petitions under § 10.30 requesting actions which FDA cannot legally perform or to have FDA decide how it might act on a particular issue in the future. The proposed rule preserves an individual's ability to submit a citizen petition to FDA for actions that FDA has taken and for actions that are within FDA's legal authority, as well as other types of actions specified in proposed § 10.30.

Persons who wish to contact or ''petition'' FDA on issues that are outside the scope of proposed § 10.30 would still be able to contact the agency, through letters, calls, or other means of communication. FDA emphasizes, again, that the proposed rule would not reduce public access to FDA; instead, it is intended to make the formal citizen petition process more efficient and more responsive.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(a) and (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.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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 new benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this proposed rule and determined that it is consistent with the regulatory philosophy and the principles identified in the Executive Order 12866 and these two statutes. Though this proposed rule is not economically significant, it has been determined by OMB that this proposed rule is a significant regulatory action.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact on small entities. The proposed rule would define the actions that may be the subject of a citizen petition and facilitate efficient resolution of citizen petitions. It would not preclude persons from using less formal means (such as letters) to contact the agency. In fact, because less formal means of communication lack the format and procedures associated with citizen petitions, the economic impact on small businesses should be reduced when compared against the existing citizen petition mechanism. Thus, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

This rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given

below in this section of the document with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Citizen Petitions; Actions That Can be Requested by Petition; Denials, Withdrawals, and Referrals for Other Administrative Action

Description: The proposed rule would specify the types of actions that could be requested through a citizen petition. The proposal would also revise the content requirements for citizen petitions and provide authority for the agency to refer petitions for other administrative action, seek clarification of a petitioner's requests, withdraw certain petitions, and combine petitions.

Description of Respondents: Businesses, trade organizations, public interest groups, and individuals.

The proposed rule would increase the estimated burden associated with the information collection requirements from 1,440 hours to 2,646 hours. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	189	1	189	14	2,646

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates in Table 1 reflect the reporting burden that would be attributable solely to the rule. FDA derived these estimates by examining its records to determine the average number of citizen petitions submitted to FDA and by decreasing the number of respondents by 30 percent. The agency calculated the percentage reduction in citizen petitions by reviewing all citizen petitions filed in a 6-month period in 1997 against the proposed rule's citizen petition criteria. The review suggested that the proposed rule would reduce the number of citizen petitions by over 30 percent, but the agency is adopting the 30 percent estimate as an initial estimate.

Additionally, FDA has revised the hours per response from 12 hours to 14 hours. The additional two hours reflect the proposed rule's changes to the content requirements for a citizen petition and the change to the certification statement. This additional amount of time may be overestimated because, under the existing citizen petition regulation, petitioners are already required to provide all relevant information and views and a certification as part of their petitions.

The agency has submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to send comments regarding information collection by December 30, 1999, to the Office of Information and Regulatory Affairs, OMB (address above).

Interested persons may, on or before February 28, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 10 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558; 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 236b, 264.

2. Section 10.25 is amended by revising paragraph (a) to read as follows:

§ 10.25 Initiation of administrative proceedings.

* * * * *

(a) An interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or request that the Commissioner take or refrain from taking any other form of administrative action. For petitions involving a regulation or order, the petition must be either:

(1) In the form specified in other applicable FDA regulations, e.g., the form for a color additive petition in § 71.1 of this chapter, for a food additive petition in § 171.1 of this chapter, for a new drug application in § 314.50 of this chapter, for a new animal drug application in § 514.1 of this chapter, or

(2) In the form for a citizen petition in § 10.30. For requests involving administrative action, the request may be made in any written form (e.g., letter, facsimile).

* * * * *

3. Section 10.30 is amended by revising paragraphs (b), (e)(1), the introductory text of paragraph (e)(2), paragraph (e)(2)(ii), by redesignating paragraph (e)(4) as (e)(5), and by adding a new paragraph (e)(4) to read as follows:

§ 10.30 Citizen petition.

* * * * *

(b) A petition (including attachments) shall be submitted in accordance with § 10.20 and in the following form:

(Date) _____

Dockets Management Branch (HFA–305), Food and Drug Administration, Department of Health and Human Services, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

CITIZEN PETITION

The undersigned submits this petition under ____ (relevant statutory sections, if known) of the ____ (Federal Food, Drug, and Cosmetic Act or the Public Health Service Act or any other statutory provision for which authority has been delegated to the

Commissioner of Food and Drugs under 21 CFR 5.10) to request that the Commissioner of Food and Drugs ____ (issue, amend, or revoke a regulation or amend or revoke an order that the agency has issued or published or take an action as specifically provided by regulation).

A. Action requested

((1) If the petition requests that the Commissioner issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests that the Commissioner amend or revoke an order, the date on which the order was issued or published, the exact wording and the citation for the existing order and, if the request is to amend an order, the exact wording requested for the amended order.)

((3) If the petition requests that the Commissioner take an action, and a petition is specifically required by regulation, a citation of the regulation and the specific action requested.)

B. Statement of grounds

(A full statement, in a well organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position. Additionally, for petitions requesting that FDA issue, amend, or revoke a regulation, the petition shall show why the requested regulation pertains to a subject that is appropriately addressed by regulation rather than other administrative action. For petitions requesting that FDA amend or revoke an order that was issued or published, the petition shall be based on more than unsupported claims, allegations, or general descriptions of positions or arguments.

C. Environmental impact

(A claim for categorical exclusion under §§ 25.30, 25.31, 25.32, 25.33, or § 25.34 of this chapter or an environmental assessment under § 25.40 of this chapter.)

D. Economic impact

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of the requested action on: (1) Cost (and price) increases to industry, government, and consumers; (2) productivity of wage earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

E. Certification

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, that it is well grounded in fact and is warranted by existing laws or regulations, that it is not submitted for any improper purpose, such as to harass or to cause unnecessary delay, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____

(Name of petitioner) _____

(Mailing address) _____

(Telephone number)_____

* * * * *

(e)(1) The Commissioner shall, in accordance with paragraph (e)(2) of this section, act upon each petition filed under paragraph (c) of this section, taking into consideration:

(i) Available agency resources for the category of subject matter;

(ii) The priority assigned to the petition considering both the category of subject matter involved and the overall work of the agency; and

(iii) Time requirements established by statute.

(2) Except as provided in paragraphs (e)(4) and (e)(5) of this section, the Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either:

* * * * *

(ii) Deny the petition; the denial may be brief, as appropriate; or

* * * * *

(4) The Commissioner may:

(i) Refer a petition for other administrative action instead of issuing a response. In such cases, the agency shall place a note in the docket for the petition stating that the petition has been referred for other administrative action and close the docket for the petition. FDA may refer a petition for other administrative action if the petition:

(A) Involves issues that are the subject of an ongoing or future administrative proceeding. In such cases, the agency may consider the issues raised by the petition as part of the administrative record for the administrative proceeding;

(B) Presents scientific or technical issues or data that are specific to a particular product or class of products;

(C) Requests a regulation on an issue that is not appropriately addressed by regulation;

(D) Does not involve a significant public health or consumer protection issue; or

(E) Involves a subject that is appropriately addressed by other administrative action.

(F) For petitions described in paragraphs (e)(4)(i)(B) through (e)(4)(i)(E) of this section, the agency may treat the petition as correspondence under § 10.65.

(ii) Request clarification if the petition presents vague or conflicting requests. If the petitioner does not respond to the request for clarification within a time specified by FDA, the petition may be considered withdrawn;

(iii) Consider the petition to be withdrawn if the petitioner no longer exists or cannot be located or the petitioner has stated that it does not seek a response from the agency; or

(iv) Combine petitions and supplements submitted by the same petitioner or by different petitioners if those petitions concern the same or similar subjects or products.

* * * * *

Dated: August 10, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–30957 Filed 11–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076—AD90

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: This notice reopens the comment period for submission of electronic access and filing of comments only for the proposed rule published at 64 FR 17574–17588, April 12, 1999, Acquisition of Title to Land in Trust. Due to circumstances beyond our control, a malfunction in the computer system prevented receipt of comments via the Internet after August 1, 1999. Comments submitted via the Internet between August 1, 1999 and November 12, 1999 were not received. Please resubmit your Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1076–AD90'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Office of Trust Responsibilities directly at (202) 208–5831.

DATES: Comments must be received on or before December 29, 1999.

ADDRESSES: Please resubmit your e-mail comments to: landcomments@bia.gov.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–4513, Main Interior Building, 1849 C Street, NW,

Washington, DC 20240; by telephone at (202) 208–5831; or by telefax at (202) 219–1065.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1999, the Bureau of Indian Affairs published a proposed rule, 64 FR 17574–17588, concerning the Acquisition of title to land in trust. The deadline for receipt of comments was July 12, 1999, which was extended to October 12, 1999 and extended again to November 12, 1999. The comment period is extended for an additional thirty days to allow additional time for receipt of e-mail comments on the proposed rule. Intranet comments must be received on or before December 29, 1999.

Dated: November 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–31036 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA72–7206C; A–1–FRL–6481–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program and Rate of Progress Emission Reduction Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplementary proposed rule.

SUMMARY: The EPA is providing additional information and reopening the comment period for two notices of proposed rulemaking to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These documents were published in the **Federal Register** on September 27, 1999. The first is a rulemaking action proposing approval of the Massachusetts motor vehicle inspection and maintenance (I/M) program (64 FR 51937), and the second is a rulemaking action proposing approval of the Massachusetts rate-of-progress plans for reducing the emissions of ozone precursors in the Springfield ozone nonattainment area (64 FR 51943). This document reopens the comment period on both of these rules and provides additional information on the I/M test to be used in Massachusetts and the timing of 15% and 9% rate-of-progress plan reductions. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before December 30, 1999. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of Massachusetts' submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: On March 27, 1997, the Commonwealth of Massachusetts submitted an inspection and maintenance plan under the provisions on the National Highway Systems Designation Act. On July 14, 1997, EPA published in the **Federal Register** (62 FR 37506) an Interim Final Rule conditionally approving the Commonwealth's I/M SIP. The notice conditioned approval on start-up of the program by November 15, 1997, which was based on a commitment made by the Commonwealth as part of the SIP submittal. That **Federal Register** notice also listed other elements of the I/M program for which the Commonwealth was required to submit additional information. By means of a November 14, 1997, letter, EPA notified Massachusetts that EPA was converting the conditional approval of the enhanced I/M SIP revision to a disapproval on November 15, 1997 due to the fact that the program was not starting on November 15, 1997. The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the CAA. Therefore, the Act's offset sanction applied beginning May 15, 1999 because Massachusetts still had no enhanced I/M program started or approved as part of its SIP.

I. Enhanced I/M SIP

In order to remedy the failure to start its enhanced I/M program in November 1997, Massachusetts submitted a revision to its SIP on May 14, 1999 for an enhanced I/M program to begin on October 1, 1999. The Commonwealth in fact commenced operation of the program on October 1, 1999. Although the Commonwealth commenced operation of the I/M program on October 1, 1999, there were routine start-up difficulties which required that DEP temper full enforcement of the program for two and one half months. During October, November and early December 1999, the Commonwealth is allowing drivers to obtain temporary stickers approving cars to operate for a year if a station in the program did not have fully operational test equipment ready when a driver came in for a test. In a November 15, 1999 letter to EPA, the Commonwealth has indicated that such temporary stickers will not be available starting December 15, 1999, and any car that must get tested will be required to find a station with operable testing equipment. This step ensures that the I/M program will meet EPA's definition of start-up and that the Commonwealth is fully enforcing an approvable I/M program as of December 15, 1999.

In the September 27, 1999 proposed approval of the I/M program (64 FR 51937), there were other elements of the I/M SIP which needed to be addressed prior to final action by EPA. These elements will be addressed by the contractor the Commonwealth has retained to implement the program and are listed as work elements of the contractor's scope of services. Since the focus of the contractor and the Commonwealth has been program start-up, these elements have not been addressed by the contractor to date. In response to EPA's September 27, 1999 proposed approval which describes the program elements Massachusetts must supplement, the Commonwealth submitted in a letter dated November 3, 1999 a schedule for submitting these elements from January to March 2000. As stated before, a November 15, 1999 letter informed EPA that the Commonwealth has taken steps that ensure the I/M program will be fully enforced starting December 15, 1999. Additional information submitted in support of the Commonwealth's I/M program is included in the contract with Keating Technologies signed January 28, 1999, Department of Environmental Protection (DEP) Regulations, chapter 310 CMR 60.02, and Registry of Motor Vehicles Regulations, chapter 540 CMR 4.00–4.09, and administrative items, including a description of the program being implemented and DEP's response to comments document dated May 14, 1999.

Starting on October 1, 1999, the Commonwealth began implementing a 31 second transient test utilizing the BAR 31 trace and NYTEST equipment. In the September 27, 1999 proposed

rulemaking, EPA inaccurately stated that the Commonwealth will use an IM240 test with NYTEST equipment and inaccurately implied that the test the Commonwealth was conducting should be allowed IM240 emission reduction credit. There is no data available at this time to assign the exact emission reduction credit for the combination of test type and equipment that the Commonwealth is implementing. Nevertheless, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates compliance with EPA's performance standard for a low enhanced program. EPA's analysis of these conservative assumptions is available in a technical support document in the docket for this action.

II. Massachusetts 15% and 9% Plans for the Springfield Nonattainment Area

On April 1, 1999, June 25, 1999, and September 9, 1999, the Commonwealth of Massachusetts submitted revisions to its 15% and 9% rate-of-progress plans for the Springfield serious ozone nonattainment area. These revisions contain a new start-up date for the Commonwealth's automobile I/M program (i.e., October 1, 1999), and revised emission reduction estimates for this program. In the September 27, 1999 **Federal Register**, EPA proposed approval of the rate-of-progress (ROP) emission reduction plans as revisions to the Commonwealth's SIP (64 FR 51943). As stated in the September 27, 1999 proposed rulemaking, the Commonwealth's ROP plans contain a demonstration that the amount of emission reductions required in its 15% and 9% plans pursuant to sections 182 (b)(1) and (c)(2) of the Federal Clean Air Act can be achieved despite lessening the emission reductions attributable to the I/M program because of its delayed start-up date. The Commonwealth achieved the required reductions in ozone precursors by November 15, 1999, primarily by changing the way that emission increases due to growth were determined, based on more accurate date of actual growth rates rather than earlier inflated projections. This demonstration was the basis of EPA's September 27, 1999 proposed approval.

As discussed above, however, emission tests under the enhanced I/M program were phased in over a two and one half month period in October, November and December, 1999. Also, EPA is using more conservative assumptions of the amount of credit derived from the combination of I/M test type and equipment that the Commonwealth is implementing. Therefore, it is no longer certain that the Commonwealth will achieve the emission reductions required of 15% and 9% plans by the November 15, 1999 evaluation date originally assumed. What is more certain is that the required reductions will be achieved sometime in early 2000 as more and more of the vehicles registered in Massachusetts are subject to more stringent emission testing under the Commonwealth's enhanced I/M program which started on October 1, 1999. Based on the volume of vehicles subject to emission testing each month, EPA believes the estimated reductions from I/M needed for the 15% and 9% plans will definitely be achieved and surpassed by the end of April 2000, prior to the next ozone season. EPA believes that these reductions are being achieved as expeditiously as practicable and that no other reasonable emissions control strategy would allow the Commonwealth or EPA to achieve these reductions sooner. In the future, Massachusetts will conduct necessary comparison testing to determine the appropriate emission reduction for SIP credit using the combination of the BAR 31 transient trace with NYTEST equipment. This will be important for purposes of approving the ozone attainment demonstration for the one-hour ozone standard submitted by the Commonwealth on July 27, 1998. In that submittal, the Commonwealth is relying on more substantial reductions from the enhanced I/M program it is implementing to show attainment with the one-hour ozone standard. When EPA acts on the attainment demonstration, we will evaluate whether Massachusetts has adequately demonstrated that the emission reduction credit it is claiming for its I/M program in that attainment demonstration is warranted for the combination of test type and equipment that the Commonwealth is implementing.

For a more detailed discussion of EPA's evaluation of when the emission reductions required of 15% and 9% plans will be achieved, the reader should refer to the Technical Support Document (TSD) entitled, ''Revised Technical Support Document for the Massachusetts 15% and 9% plans'' dated November 10, 1999. Copies of this TSD are available at the previously mentioned addresses.

III. EPA's Current Rulemaking Actions

On September 27, 1999, EPA proposed approval of the Massachusetts I/M SIP revision to meet the requirements of the federal I/M rule. In addition, on the same day EPA proposed approval of the Massachusetts rate-of-progress emission reduction plans which includes the 15% plan. These actions are tied together because in order for Massachusetts to meet the low enhanced performance standard for I/M, the 15% plan must be approvable. Elsewhere in today's **Federal Register**, EPA is publishing an Interim Final Determination that Massachusetts has taken the actions necessary to fully enforce an approvable I/M SIP as of December 15, 1999. This action will stay the imposition of sanctions starting December 15, 1999, until the SIP is either approved or partially disapproved. In the proposed rule for the Massachusetts I/M program, EPA proposed in the alternative to issue a limited approval/limited disapproval of the program if Massachusetts fails to start the program in a timely manner or fails to submit any of the program elements that the Contractor will provide under its scope of work. The limited disapproval would effectively withdraw the proposed approval. Withdrawal of the proposed approval would result in growth sanctions and highway sanctions going into effect immediately.

IV. Proposed Action

EPA is reproposing approval of both the Massachusetts inspection and maintenance program statewide and the rate of progress plans for the Springfield nonattainment area which were originally proposed for approval on September 27, 1999 (64 FR 51937, 64 FR 51943). EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

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.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 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 final 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 does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the 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 Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 15, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–30781 Filed 11–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–6481–9]

RIN 2060–AI76

Transportation Conformity Amendment: Deletion of Grace Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to delete a provision of the transportation conformity rule that was overturned by the U.S. Court of Appeals for the District of Columbia Circuit (*Sierra Club* v. *EPA, et al.,* 129 F.3d 137 (D.C. Cir. 1997)). In 1995, we amended the conformity rule so that new nonattainment areas would have a one-year grace period before transportation conformity began applying. In 1997, the court overturned this grace period. This action formally deletes the provision from the transportation conformity rule in compliance with the court ruling.

In addition, we discuss in this document some issues that were raised in a Petition for Reconsideration of the original transportation conformity rule (finalized November 24, 1993). We are not proposing any changes to the conformity rule in response to these issues.

We are required by a court settlement to finalize rulemaking on these issues by December 31, 1999. We agreed to this settlement in 1998 in response to litigation by the Environmental Defense Fund.

Transportation conformity is a Clean Air Act requirement for transportation plans, programs, and projects to conform to state air quality plans. Conformity to a state air quality plan means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national air quality standards.

Our transportation conformity rule establishes the criteria and procedures for determining whether or not transportation activities conform to the state air quality plan.

DATES: Written comments on this proposal must be submitted on or before December 30, 1999.

ADDRESSES: Interested parties may submit written comments in response to this rule (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A–99–35, 401 M Street, SW., Washington, DC 20460. (Those desiring notification of receipt of comments must include a self-addressed, stamped postcard).

Materials relevant to this rulemaking are in Public Docket A–99–35 at the above EPA address in room M–1500 Waterside Mall (ground floor). You may look at them from 8:00 a.m. to 5:30 p.m. on weekdays, except holidays. You may have to pay a reasonable fee for copying docket material.

The notice of proposed rulemaking is also available electronically from our web site. See **SUPPLEMENTARY INFORMATION** for information on accessing and downloading files.

FOR FURTHER INFORMATION CONTACT: Laura Voss, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, voss.laura@epa.gov. (734) 214–4858.

SUPPLEMENTARY INFORMATION: You can access and download files on your first call using a personal computer according to the following information:

Internet Web Sites

http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)

OR

http://www.epa.gov/OMSWWW/ (look in What's New or under the Conformity file area)

A version should be available today on any of the above-listed sites. Please note that you may see format changes due to differences in software.

Regulated Entities

Entities potentially regulated by the conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies.
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration and Federal Transit Administration).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of this preamble are listed in the following outline:

I. Background

In 1998, we entered into a settlement with the Environmental Defense Fund (EDF) in response to litigation. We agreed to finalize rulemaking by December 31, 1999, to repeal the grace period in 40 CFR 93.102(d) and respond to four issues identified in EDF's May 1994 Petition for Reconsideration of the original conformity rule.

Section 93.102(d) and the four issues from the petition for reconsideration are described below.

The original conformity rule was finalized on November 24, 1993 (58 FR 62188). We subsequently amended the rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780).

II. How Soon Does Conformity Apply to a New Nonattainment Area?

According to a November 4, 1997, court decision, conformity must apply as soon as we designate an area nonattainment. As a result, we are proposing to delete § 93.102(d) of the conformity rule. This section allowed newly designated nonattainment areas a one-year grace period before conformity starts applying.

We included this provision in our November 14, 1995, conformity amendments (60 FR 57179). However, the Sierra Club challenged it and the court overturned it.

Therefore, as soon as we designate your area as nonattainment, you must have a conforming transportation plan and transportation improvement program (TIP) in order to approve transportation projects. This plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment. You may have to delay approving projects until this is done.

Since designation is done through notice-and-comment rulemaking, you will be aware of pending designations at the time of proposal and will have the time until the final designation is effective to develop a conforming plan and TIP.

III. Issues From Petition for Reconsideration

On May 26, 1994, the Environmental Defense Fund, the Natural Resources Defense Council, and the Sierra Club Legal Defense Fund submitted to EPA a Petition for Reconsideration of the November 1993 conformity rule. We have already responded to most of the concerns raised in this petition through previous conformity amendments.

However, there are four outstanding issues which we agreed to reconsider and respond to through this rulemaking. As explained below, we have now reconsidered these issues. However, we are not proposing any changes to the existing conformity rule as a result of our reconsideration.

The full Petition for Reconsideration is in the docket for this proposal (see **ADDRESSES**).

A. Fiscal Constraint

1. What Is the Issue?

As described in issue 6 of the Petition for Reconsideration, the petitioners believe that we should have adopted our own regulatory language requiring transportation plans and TIPs to be fiscally constrained, rather than referencing the Department of Transportation's (DOT's) metropolitan planning regulations. These DOT regulations require fiscally constrained transportation plans and TIPs; that is, that the proposed projects in plans and TIPs must be consistent with already available or projected sources of revenue.

The petitioners are concerned that DOT could unilaterally modify its regulations. The petitioners believe that by referencing DOT's planning regulations, we have unlawfully delegated our rulemaking authority to DOT.

In addition, the petitioners object that DOT's metropolitan planning regulations do not properly implement the Intermodal Surface Transportation Efficiency Act's (ISTEA's) funding requirements for TIPs. ISTEA has since been reauthorized as the Transportation Equity Act for the 21st Century, or TEA–21.

2. What Is EPA's Response?

We believe that it is appropriate to refer to DOT's regulations on fiscal constraint for several reasons. First, the Clean Air Act does not direct us to issue regulations regarding fiscal constraint. Congress has given DOT the authority to create the regulations that implement ISTEA and TEA–21. Second, it would not be practical for our fiscal constraint requirements to be different from DOT's rules; in order to be effectively implemented and enforced, they need to be exactly the same.

Third, the conformity rule as a whole is based on DOT's transportation planning process as it is outlined in DOT's metropolitan planning regulations, including the rules for developing plans and TIPs. Although these planning regulations provide a foundation for the conformity rule, it is not necessary or appropriate for us to use the conformity rule to issue our own interpretation of ISTEA's planning requirements. Our reliance on DOT's fiscal constraint requirements is an illustration of this general principle. Therefore, EPA believes it is appropriate to defer to DOT's interpretation of the requirements for fiscal constraint as adopted in DOT's planning regulations.

Finally, we do not share the petitioners' concern that DOT will unilaterally change its regulations. EPA and DOT are federal partners in transportation and air quality planning. There are mechanisms to ensure federal coordination, and we are involved in DOT's drafting of the metropolitan planning regulations. Further, petitioners will have an opportunity to comment directly on any changes DOT may propose to their regulation on fiscal constraint through DOT's regulatory process.

B. Horizon Years for Hot-Spot Analyses

1. What Is the Issue?

In issue 9B of the Petition for Reconsideration, the petitioners state that we should require hot-spot analyses to examine the 20-year timeframe of the transportation plan.

The existing transportation conformity rule does not specify the horizon for hot-spot analyses.

2. What Are the Conformity Rule's Requirements About Hot Spots?

The rule requires carbon monoxide (CO) and particulate matter (PM–10) areas to demonstrate that transportation projects will not cause or contribute to new hot spots or increase the frequency or severity of existing hot spots. In some cases, CO nonattainment areas must demonstrate that they reduce localized CO violations. The conformity rule requires these demonstrations to be based on modeling procedures and assumptions that are decided through interagency consultation.

At the present time, quantitative PM–10 hot-spot analysis is not required. According to § 93.123(b)(4) of the conformity rule, quantitative PM–10 hot-spot analysis is not required until EPA releases modeling guidance on this subject. However, projects' impact on localized PM–10 violations must be qualitatively considered.

3. What Is EPA's Response?

In most areas, hot-spot analyses are done for the year of project completion. Areas decide whether they should examine other analysis years in the future. For example, some areas analyze the last year of the transportation plan (i.e., the twentieth year) or the tenth year after the project's date of completion.

We do not believe it is necessary to specify that hot-spot analyses must model the twentieth year of the transportation plan in all cases. We allow a considerable amount of flexibility for areas to decide through the interagency consultation process how to demonstrate that hot spots are not caused or worsened in any area. There is even an opportunity for qualitative demonstrations.

Because current emissions models show that CO emissions per vehicle are decreasing over time, it may be most conservative to analyze a year in the nearer term, rather than a year that is 20 years distant. Thus, it would not be appropriate for us to mandate that all hot-spot analyses must examine the twentieth year. Instead, we believe the horizon year of the hot-spot analysis should be decided through interagency

consultation, as appropriate to the individual area, on a case-by-case basis.

C. Assumptions Regarding Regional Distribution of Emissions

1. What Is the Issue?

As described in issue 12 of the Petition for Reconsideration, the petitioners believe that Metropolitan Planning Oganizations (MPOs) should be required to demonstrate that regional land use policies and the proposed transportation plan will achieve the same spatial distribution of motor vehicle emissions as was used in the state implementation plan (SIP) to demonstrate attainment.

We believe that the petitioners are in effect requesting that we should always require SIPs to establish subarea budgets, and that we should then require MPOs and DOT to show conformity to these subarea budgets. The petitioners request that we eliminate § 93.124(d) of the conformity rule, which states that when the SIP includes emissions estimates by subarea, these are not considered to be budgets for conformity purposes unless the SIP explicitly states that intent.

2. What Is EPA's Response?

We believe that the conformity rule's provisions should be retained. The Clean Air Act does not require subarea budgets. We have always interpreted the Clean Air Act to allow for a single budget for a nonattainment area for a given criteria pollutant or precursor, although states have the option to disaggregate the budget at their discretion (see our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, at 57 FR 13448, April 16, 1992).

If we were to compel states to include subarea budgets in their SIPs, it is not clear what level of disaggregation would be appropriate. Creating budgets for each grid cell used in the photochemical modeling would be impractical, because each grid cell is small. Grid cells can be as small as one square kilometer. The transportation plan and TIP would have to be apportioned into subareas, and the transportation model would have to be altered so it could produce estimates for each separate subarea.

We believe the costs of this requirement would generally outweigh the benefits. Where spatial distribution of emissions is very important to the attainment of the standards, states should specify subarea budgets in their SIPs as necessary to demonstrate attainment, according to the degree of disaggregation they deem appropriate. Where such subarea budgets are identified, all plans and TIPs would have to show conformity to each subarea budget. On the other hand, if subarea budgets are not necessary for attainment demonstration purposes, EPA believes that the conformity rule need not require them.

D. Credit for Delayed TCMs

1. What Is the Issue?

As described in issue 15 of the Petition for Reconsideration, the petitioners believe that where a transportation control measure (TCM) has been delayed beyond the scheduled implementation date(s) in the SIP, an area's conformity determination should not be allowed to take emissions reduction credit for the TCM until after the TCM has actually been brought into service. This would be more stringent than the current conformity rule, which prohibits emission reduction credit only until ''such time as implementation has been assured'' (see § 93.122(a)(2)).

2. What Is EPA's Response?

We believe that in general, it is appropriate for areas to take credit for measures even before they have been implemented, provided that there are good reasons to believe that the measures will be implemented on the anticipated schedule. The main purpose of conformity is to prospectively analyze the impacts of future transportation activities, whether their impacts are positive or negative.

The conformity rule has a number of provisions to ensure that areas analyze only those projects that are reasonably expected to occur. For example, we do not allow areas to take credit for TCMs on their original implementation schedule when they have already been delayed. We do not allow areas to take credit for regulatory measures until they have been adopted or committed to in a SIP.

However, the petitioners' suggestion would not allow for any prospective credit for any TCM that had been delayed at any point in its life. Although the petitioners' suggestion could perhaps provide an incentive to avoid TCM delays, we believe that the requirements for timely implementation of TCMs already serve that purpose.

We believe that the petitioners' suggestion would be punitive in nature and is not necessary to fulfill the requirements of Clean Air Act section 176(c). We do not see any reason to forbid areas to take credit for a TCM if all obstacles have been overcome and its implementation is assured, even if the project is not on its original implementation schedule.

Once implementation has been assured, emissions analyses could take credit for the TCM in the analysis years during which the TCM would actually be in service (under the revised schedule). Obviously, an area would not be allowed to take credit for the TCM according to its original schedule, unless the area could demonstrate how it was making up for the past delays.

The petitioners do point out that we have not defined what we mean by the phrase, ''such time as implementation has been assured.'' Although the interpretation of this phrase will vary from case to case, assurance of implementation would require at least the following: (a) Past obstacles to implementation of the TCM have been overcome; (b) state and local agencies are giving maximum priority to approval or funding of TCMs over other projects within their control; (c) funding for the TCM is identified and reasonably expected to be available; and (d) the legal or regulatory authority necessary to implement the TCM has been secured or appropriate commitments are in place.

Section 93.113 of the conformity rule requires that if TCMs in an approved SIP are behind schedule, the area must demonstrate that past obstacles to implementation of the TCM have been overcome and that the TCM is receiving maximum priority. This demonstration must be based on consultation among the federal, state, and local air and transportation agencies.

The preamble to the 1993 conformity rule (58 FR 62197, November 24, 1993) provides more explanation of these points, including guidance on what is considered ''maximum priority.''

We take this opportunity to also address some other questions that have arisen about timely TCM implementation. First, what does it mean for a TCM or other measure in the SIP to be ''delayed beyond the scheduled date(s)'' We consider a measure ''delayed'' if the current schedule for its implementation (for example, as described in the TIP) indicates that the upcoming scheduled dates in the SIP will be missed.

In other words, a measure can be considered delayed even before the implementation date is actually missed. If current projections indicate the project will miss scheduled implementation dates, it is considered delayed.

In addition, we would like to clarify that once a TCM has been implemented, this implementation must continue permanently unless the approved SIP specifically stipulates that

implementation will cease at a specific time.

IV. How Would this Action Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs in order to include the criteria and procedures for determining conformity.

If we approved your area's conformity SIP and it includes a provision for a one-year grace period (§ 93.102(d)), that provision cannot be implemented. This has been the case ever since the November 4, 1997, court decision, which found such provisions to be inconsistent with the Clean Air Act.

Future conformity SIP submissions may not include § 93.102(d). If your area has submitted a conformity SIP to us that contains this provision (and we have not yet approved the conformity SIP), we are not able to approve such a provision as part of the SIP.

V. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposal does not impose any new information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the agency to conduct a regulatory flexibility analysis of any significant impact a proposed rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities. The Regulatory Flexibility Act defines ''small governmental jurisdiction'' as the government of a city, county, town, school district or special district with a population of less than 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Furthermore, this proposal simply formalizes what the court has already decided as a legal matter, and which is already being implemented in practice.

This rule affects only those areas that are newly designated as nonattainment, and it simply applies conformity one year earlier than our previous rule had required. Therefore, this rule could require a limited number of areas to perform perhaps one additional transportation plan/TIP conformity determination each.

A 1992 DOT survey of metropolitan planning organizations (MPOs) found that most MPOs spend less than $50,000 per transportation plan/TIP conformity determination. The largest MPOs (serving a population over one million) spent up to $250,000. Thus, even if EPA were to designate 200 areas as nonattainment in one year and each one

incurred the maximum costs, the expenditures would not exceed $100 million.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. NTTAA

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

F. Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this regulation is required by statute. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

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

The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this regulation is required by statute. Furthermore, today's rule would not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Executive Orders on Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's Prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule

with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification form the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

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. The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this rule is codifying in regulation the statutory interpretation by the court that is currently in effect. Consequently, this rule itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: November 22, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 93.102 [Amended]

2. In § 93.102, paragraph (d) is removed.

[FR Doc. 99–30903 Filed 11–29–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 229
Tuesday, November 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Announcement of New Appointments to the Membership of the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Announcement of Appointments.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces the appointments by the Secretary of Agriculture to fill 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATE: Effective October 1, 1999.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others.

The Board was first appointed in September 1996 and one-third of the 30 members were appointed for a l, 2, and 3 year term, respectively. As a result of the staggered appointments, the terms for 10 of the 30 members expired September 30, 1999, and one member resigned which made a total of 11 vacancies to be filled. Secretary of Agriculture Dan Glickman made the following appointments effective October 1, 1999, to begin a 3-year term to the Advisory Board (listed by category of representation: Category B, Farm Cooperatives, David Harlow, Harlow Farms, Inc., Palouse, Washington; Category D, Plant Commodity Producers, Daniel M. Dooley (reappointed), Dooley and Herr, LLD, Visalia, California; Category G, National Aquaculture Associations, T. Michael Freeze (reappointed), Keo Fish Farm, Keo, Arkansas; Category J, National Food Science Organizations, Susan Kay Harlander, The Pillsbury Company, Minneapolis, Minnesota; Category L, National Nutritional Science Societies, Cutberto Garza, Cornell University, Ithaca, New York; Category M, Land-Grant Colleges and Universities—1862—Victor L. Lechtenberg (reappointed), Purdue University, West Lafayette, Indiana; Category R, Scientific Community not closely associated with Agriculture, William Scouten (reappointed), Utah State University, Logan, Utah; Category S, Transportation of Food and Agricultural Products (foreign and domestic), Emma Jean Cervantes, Farmer/Producer, La Mesa, NM; Category AA, An agency of USDA lacking Research Capabilities, Homer L. Wilkes, Natural Resources Conservation Service, Jackson, Mississippi; Category BB, Research agency of the Federal Government other than USDA, Mary Clutter (reappointed), National Science Foundation, Arlington, Virginia; and Category DD, National Organization directly concerned with REE, Marlyn Jorgensen, Jorg-Anna Farms, Inc., Garrison, Iowa.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC, this 2nd day of November 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–31079 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to AgriVir, LLC, of Washington, DC, an exclusive license to U.S. Patent No. 5,023,182 issued on June 11, 1991, entitled ''Novel Virus Composition to Protect Agricultural Commodities From Insects.'' Notice of Availability was published in the **Federal Register** on September 22, 1988.

DATES: Comments must be received on or before January 29, 2000.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, 5106 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as AgriVir, LLC, submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–31078 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Co-Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned inventions U.S. Patent Application No. 09/107,760 filed June 30, 1998, entitled ''A Method for Separating Elastomeric Particulates from Fibers'' and U.S. Patent Application No. 09/287,300 filed on April 7, 1999, entitled ''An Improved Method and Apparatus for Separating Elastomeric Particulates and Fibers from a Pulvertized Mixture'' are available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Akron Rubber Machinery, International, of Akron, Ohio; Continental Eagle Corporation of Prattville, Alabama, and Granutech-Saturn Systems Corporation of America of Grand Prairie, Texas, co-exclusive licenses to Serial Nos. 09/107,760 and 09/287,300.

DATES: Comments must be received on or before February 28, 2000.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Akron Rubber Machinery, International; Continental Eagle Corporation; and Granutech-Saturn Systems Corporation of America, have submitted a complete and sufficient application for a license. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–31077 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Revenue Coverage

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), since 1996 the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) has approved for reinsurance and subsidy the insurance of corn, grain sorghum, soybeans, cotton, rice, and spring wheat in select states and counties under the Crop Revenue Coverage (CRC) plan of insurance submitted by American Agrisurance (AmAg). This notice is intended to inform eligible producers and the private insurance industry of coverage changes for corn, grain sorghum, soybeans, cotton, rice, spring wheat, and durum wheat for the 2000 crop year.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Missouri, 64131, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with section 508(h) of the Act, the Board approved a program of insurance known as CRC, submitted by American Agrisurance, a managing general agency for Redland Insurance Company. All terms and conditions of the policy and all premium rates are determined by AmAg. FCIC does not have the authority to modify or waive any terms or conditions. FCIC only has the authority to approve or disapprove the terms and conditions submitted by AmAg.

The CRC program has been approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses in an amount authorized under section 508(e) of the Act. CRC is designed to protect producers against both price and yield losses.

AmAg has requested the following changes in the CRC program for corn, grain sorghum, soybeans, cotton, rice, and spring wheat for the 2000 crop year: (1) to expand the CRC program for corn into all counties in the states of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia where multiple peril crop insurance (MPCI) is available for corn; (2) to expand the CRC program for soybeans into all counties in the states of Colorado, Delaware, New Jersey, New York, Pennsylvania, and West Virginia where MPCI is available for soybeans; (3) to provide written agreements for CRC coverage on those crops approved for CRC in counties without a CRC actuarial table, provided an MPCI rate is made available from FCIC; (4) to provide written unit agreements for optional units formed across section lines or optional units from oversized sections; (5) to remove the 95 percent price percentage option; (6) allow AmAg to offer 80 and 85 percent coverage where RMA offers such coverage; (7) revise the CRC program for durum wheat to allow durum wheat coverage only in 15 counties in North Dakota; (8) use the Minneapolis Grain Exchange (MGE) durum wheat futures market price to determine base and harvest prices for spring durum wheat; and (9) require durum wheat producers who apply for CRC coverage to use their approved durum wheat actual production history (APH) yield or if the producer does not have a durum wheat APH yield, a wheat T-yield will be used to establish coverage.

FCIC herewith gives notice of the above stated changes for the 2000 crop year for CRC corn, grain sorghum, soybeans, cotton, rice, and spring wheat for use by private insurance companies.

The CRC policies, underwriting rules, and rate factors for 2000 spring crops will be released electronically to all reinsured companies through FCIC's Website.

Notice: The revised Basic Provisions, Crop Provisions, and Commodity Exchange Endorsements for the 2000 CRC spring crop programs of insurance are as follows:

Crop Revenue Coverage (CRC) Insurance Policy

(This is a continuous policy. Refer to section 3.)

This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the authority of section

508(h) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1508(h)). The provisions of the policy may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC or us. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. No state guarantee fund will be liable to pay the loss.

Throughout the policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to Insure: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in the policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

Basic Provisions

Terms and Conditions

1. Definitions

Abandon. Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions or as provided in section 7 by which you are required to submit your acreage report.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which show the revenue guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. Plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage.

Administrative fee. An amount you must pay for limited and additional coverage for each crop year as specified in section 8.

Agricultural commodity. All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

Another use, notice of. The written notice required when you wish to put acreage to another use (see section 15).

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us, or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart G. This yield is established for basic or optional units. The approved yield for each basic or optional unit comprising an enterprise unit is retained for premium and final guarantee purposes under an enterprise unit.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

Base price. The initial price determined in accordance with the Commodity Exchange Endorsement and used to calculate your premium and Minimum Guarantee.

CRC low price factor. A premium factor, as set forth in the actuarial documents, used to calculate the risk associated with a decrease in the Harvest Price relative to the Base Price.

CRC high price factor. A premium factor, as set forth in the actuarial documents, used to calculate the risk associated with an increase in the Harvest Price relative to the Base Price.

CRC rate. A premium rate, as set forth in the actuarial documents, used to calculate the risk associated with producing a level of production.

Calculated revenue—The production to count for the insured crop multiplied by the Harvest Price.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us, or terminated in accordance with the policy terms.

Claim for indemnity. A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the Harvest Price is released (see section 15).

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (see ''Policy''.)

Contract change date. The calendar date by which we make any policy changes available for inspection in the agent's office (see section 5).

County. Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

Coverage. The insurance provided by this policy, against insured loss of revenue by unit as shown on your summary of coverage.

Coverage begins, date. The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 12 of these Basic Provisions for specific provisions relating to prevented planting).

Crop provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested.

Damage. Injury, deterioration, or loss of revenue of the insured crop due to insured or uninsured causes.

Damage, notice of. A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 15).

Days. Calendar days.

Deductible. The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you elected a 65

percent coverage level, your deductible would be 35 percent (100% − 65%=35%).

Delinquent account. Any account you have with us in which premiums, and interest on those premiums, is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Earliest planting date. The earliest date established for planting the insured crop (see Special Provisions and section 14).

End of insurance period, date of. The date upon which your crop insurance coverage ceases for the crop year (see Crop Provisions and section 12).

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.).

Final guarantee. The number of dollars guaranteed per acre determined to be the higher of the Minimum Guarantee or the Harvest Guarantee, where:

(1) Minimum Guarantee—The approved yield per acre multiplied by the Base Price multiplied by the coverage level percentage you elect.

(2) Harvest Guarantee—The approved yield per acre multiplied by the Harvest Price, multiplied by the coverage level percentage you elect. If you elect enterprise unit coverage, the basic units or optional units comprising the enterprise unit will retain separate Final Guarantees.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full Final Guarantee.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA farm serial number. The number assigned to the farm by the local FSA office.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the Final Guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest Price. The final price determined in accordance with the Commodity Exchange Endorsement and used to calculate your Calculated Revenue and the Harvest Guarantee.

Insured. The named person shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the Final Guarantee on the irrigated acreage planted to the insured crop.

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Limited coverage. Plans of insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage, but less than 65 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage.

Limited resource farmer. A producer or operator of a farm:

(a) With an annual gross income of $20,000 or less derived from all sources, including income from a spouse or other members of the household, for each of the prior two years; or

(b) With less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000.

Loss, notice of. The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 15).

MPCI. Multiple peril crop insurance program, a program of insurance offered under the Act and implemented in 7 CFR chapter IV.

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed, plants, or trees have been placed appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Policy. The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, and the applicable regulations published in 7 CFR chapter IV.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed or plants will not be considered a valid reason for failure to replant.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured

cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 4). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us on an individual case basis.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the Final Guarantee.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Section (for the purposes of unit structure). A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss, or the beginning of harvest.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Substantial benefit interest. An interest held by any person of at least 10 percent in the applicant or insured.

Summary of coverage. Our statement to you, based upon your acreage report, specifying the insured crop and the Revenue Guarantee provided by unit.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'' above).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Unit.

(a) Basic unit—A unit established in accordance with section 2(a).

(b) Optional unit—A unit established from basic units in accordance with section 2(b).

(c) Enterprise unit—A unit established from basic units or optional units in accordance with section 2(c).

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud, or misrepresentation (see section 27).

Written Agreement. A document that alters designated terms of a policy as authorized under these Basic Provisions (see section 34).

2. Unit Structure

(a) Basic unit—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.) Land rented for cash, a fixed commodity payment, or a consideration other than a share in the insured crop, or proceeds from the sale of the insured crop, on such land will be considered as owned by the lessee (see definition of ''share'' above).

(b) Optional unit—Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 2(a) may be divided into optional units if, for each optional unit:

(1) You meet the following:

(i) You have records, that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your Final Guarantee;

(ii) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(iii) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason); and

(iv) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us.

(2) It meets one or more of the following, unless otherwise specified in the Crop Provisions or allowed by written agreement (Note: No written agreement is allowed for optional units created across section lines or in oversized sections if the acreage is located in a high risk area):

(i) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(ii) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the Final Guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

(3) If you do not comply fully with the provisions in this section, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they

were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined by us to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(c) Enterprise unit—A unit that consists of all insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. If you select and qualify for an enterprise unit, you will qualify for a premium discount based on the insured crop and number of acres in the enterprise unit. The following requirements must be met to qualify for an enterprise unit:

(1) The enterprise unit must contain 50 or more acres;

(2) The acreage that comprises the enterprise unit must also qualify:

(i) For two or more basic units of the same insured crop as defined in section 2(a) that are located in two or more separate sections, section equivalents or FSA farm serial numbers; or

(ii) For two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers as defined in section 2(b)(2)(i).

(3) These basic units or optional units that comprise the enterprise unit must each have insurable acreage of the same crop in the crop year insured;

(4) You must comply with all reporting requirements for the enterprise unit (You must maintain required production records on a basic or optional unit basis if you wish to change your unit structure for any subsequent crop year);

(5) The qualifying basic units or optional units may not be combined into an enterprise unit on any basis other than as described herein; and

(6) If you do not comply with the reporting provisions for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 4.

(d) Selection of unit structure—Basic, optional, or enterprise units will be determined when the acreage is reported but may be adjusted, combined, or separated to reflect the actual unit structure when adjusting a loss. If you select an enterprise unit structure, you must elect that option in writing by the earliest sales closing date for the insured crops. If you do not qualify for an enterprise unit when the acreage is reported, we will assign the basic unit structure.

All applicable unit structures must be stated on the acreage report for each crop year.

3. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy, or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage level, price percentage, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including administrative fees or premium, is not paid, or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

(1) For a policy with unpaid administrative fees or premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1999, and crop B, with a termination date of March 15, 2000, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1999, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 2000. If you enter an agreement to repay the debt on April 25, 2000, you can apply for insurance for crop A by the October 31, 2000, sales closing date and crop B by the March 15, 2001, sales closing date. If you fail to make a scheduled payment on November 1, 2000, you will be ineligible for crop insurance effective on November 1, 2000, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

(i) You are not eligible to participate in the Crop Revenue Coverage program if you have elected the MPCI Catastrophic Risk Protection Endorsement except if you execute a High Risk Land Exclusion Option for a Crop Revenue Coverage Policy, you may elect to insure the ''high risk land'' under an MPCI Catastrophic Risk Protection Endorsement, provided the Catastrophic Risk Protection Endorsement is obtained from us. If both policies are in force, the acreage of the crop covered under the Crop Revenue Coverage policy and the acreage covered under an MPCI Catastrophic Risk Protection Endorsement will be considered as separate crops for insurance purposes, including the payment of administrative fees.

4. Coverage Level, and Approved Yield for Determining Final Guarantee and Indemnity

(a) For each crop year, the Final Guarantee, coverage level, and price percentage at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

(b) You may select only one coverage level from among those offered by us for each insured crop. By written notice to us, you may change the coverage level for the following crop year not later than the sales closing date for the affected insured crop. If you do not change the coverage level for the succeeding crop year you will be assigned the same coverage level that was in effect the previous crop year.

(c) This policy is an alternative to the MPCI program and satisfies the requirements of section 508(b)(7) of the Act.

(d) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions.

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your Approved Yield for the purpose of determining your Final Guarantee for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you that state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(e) We may revise your Final Guarantee for any unit, and revise any indemnity paid based on that Final Guarantee, if we find that your production report under paragraph (d) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(f) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such a person to sign.

5. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, premium rates, and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

6. Liberalization

If we adopt any revision that broadens the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

7. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 7(a)(1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections 7(a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 7(g).

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the Final Guarantee on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

8. Annual Premium and Administrative Fees

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) The annual premium amount is determined by:

(1) Multiplying the Approved Yield times the coverage level, times the MPCI Base Premium Rate specified in the actuarial documents, and times the Base Price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the Approved Yield times the coverage level, times the CRC Rate Factor specified in the actuarial documents, and times the Low Price Factor specified in the actuarial documents;

(3) Multiplying the Approved Yield times the coverage level, times the MPCI Base Premium Rate specified in the actuarial documents, and times the High Price Factor specified in the actuarial documents;

(4) Adding sections 8(c)(1), (2), and (3); and

(5) Multiplying the result of section 8(c)(4) times the acres insured, times your share at the time coverage begins, and as applicable, times any High Risk Map Area Adjustment Factor; Rate Class Option Factor; CRC Option Factor; Yield Adjustment Surcharge; and/or CRC Enterprise Option Factor.

(d) To determine the amount of annual premium paid by you:

(1) Multiply the Approved Yield times the coverage level, times the MPCI Base Premium Rate specified in the applicable actuarial documents, times the MPCI Market Price Election, times the acres insured, times your share at the time coverage begins, and as applicable, times any High Risk Map Area Adjustment Factor; Rate Class Option Factor; CRC Option Factor; Yield Adjustment Surcharge; CRC Enterprise Option Factor; and times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy. The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents; and

(2) Subtract section 8(d)(1) from section 8(c)(5).

(e) In addition to the premium charged:

(1) If you elect limited coverage, you must pay an administrative fee each crop year of $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which you elected to obtain limited coverage.

(2) If you elect additional coverage, you must pay an administrative fee of $20 per crop for each crop year in which crop insurance coverage remains in effect.

(3) The administrative fee must be paid no later than the time that premium is due.

(4) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions.

(5) The administrative fee for limited coverage will be waived if you request it and you qualify as a limited resource farmer.

(6) The administrative fee for additional coverage is not subject to any limits and may not be waived.

(7) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

9. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates or Final Guarantee have been established;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain

unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

10. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.,* corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial tree, vine, or bush crop was grown on the acreage.

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage.

(2) That has been strip-mined, unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 9(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the USDA if we notify you of that restriction prior to the sales closing date.

11. Share Insured

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for BOTH a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) AND a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for EITHER a minimum payment OR a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

12. Insurance Period

(a) Except for prevented planting coverage (see section 18), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 3);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

13. Causes of Loss

The insurance provided is against only unavoidable loss of revenue directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable.

14. Replanting Payment

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable.)

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

15. Duties in the Event of Damage or Loss

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions;

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies; and

(5) Give us notice of your expected revenue loss not later than 45 days after the date the Harvest Price is released.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 15(b)(1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the date the Harvest Price is released. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by FCIC.

16. Production Included in Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be used to determine any indemnity due, unless otherwise specified in the policy.

(d) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by you as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from being planted will be based on a reduced Final Guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

17. Late Planting

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The Final Guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The Final Guarantee for each acre planted as specified in this subsection will be determined by multiplying the Final Guarantee that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage; and

(3) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due, and no indemnity will be paid).

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of ''planted acreage'' (*e.g.,* seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the Final Guarantee will be calculated in accordance with section 17(b)(1).

18. Prevented Planting.

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence;

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report; and

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have an MPCI Catastrophic Risk Protection Endorsement for any acreage of ''high risk land,'' the additional levels of prevented planting coverage will not be available for that acreage; and

(4) You may not increase your elected or assigned preventing planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 18(f)(4) or (5). The eligible acres for each insured crop will be determined in accordance with the following table:

Type of Crop	Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee.	Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee.
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for approved yield purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 18(e)(1)(i)(A).
(ii) The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.).	(B) The number of acres of the crop as determined in section 18(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 18(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 17(b).

(f) Regardless of the number of eligible acres determined in section 18(e), prevented planting coverage will not be provided for any acreage:

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years;

(2) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(3) For which the actuarial documents do not designate a premium rate unless a written agreement designates such premium rate;

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the Catastrophic Risk Protection Endorsement and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Endorsement and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage. (If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used);

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only). If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it;

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the Final Guarantee (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) Based on an irrigated practice Final Guarantee unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice Final Guarantee will be limited to the number of acres allowed for that practice under sections 18(e) and (f); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate insurance guarantees are available must be included in your approved yield database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on an approved yield) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 18(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 18(e) and (f).

(g) If you purchased a limited or additional coverage policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as ''high risk'' land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 18(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 18(e)(1), your prevented planting production guarantee, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (18(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

(i) The prevented planting payment for any eligible acreage within a basic or optional unit will be determined by:

(1) Multiplying the Final Guarantee for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(i)(1) by the number of eligible

prevented planting acres in the unit; and

(3) Multiplying the result of section 18(i)(2) by your share.

(j) The prevented planting payment for any eligible acreage within an enterprise unit will be determined by:

(1) Multiplying the Final Guarantee for each basic unit or optional unit within the enterprise unit, for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(j)(1) by the number of eligible prevented planting acres in each basic unit or optional unit within the enterprise unit;

(3) Multiplying the result of section 18(j)(2) by your share; and

(4) Total the results from section 18(j)(3).

19. Crops As Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access to Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

22. Other Insurance

(a) Other Like Insurance—You must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) Other Insurance Against Fire—If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of section 22(b), the amount of loss from fire will be the reduction in revenue of the insured crop on the unit involved determined pursuant to this policy.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provision (title XVII of the Food Security Act of 1985 (Pub. L. 99–198)) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see section 24(d)) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From a Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

32. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or, if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

33. Multiple Benefits

(a) If you are eligible to receive an indemnity under a limited or additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based on your production records and the higher of the Base Price or the Harvest Price available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

34. Written Agreements

Only rates of premium or unit division for this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 34(f);

(b) The application for a written agreement must contain the unit division or rate of premium that will be in effect if the written agreement rate is not approved;

(c) A written agreement may only be used to insure a CRC crop in a county without a CRC actuarial table if the

county without a CRC rate is adjacent to a county with a CRC actuarial table;

(d) If approved, the written agreement will specify the rate of premium or unit division that will be in effect;

(e) Each written agreement will only be valid for one crop year (If the written agreement is not specifically renewed the following year, the unit division will be in accordance the terms of the Basic Provisions and Crop Provisions, and the rates of premium for subsequent crop years will be the rates of premium specified in the actuarial document), or if no rate is specified the acreage will not be insurable; and

(f) An application for a written agreement submitted after the sales closing date may be approved if you demonstrate your physical inability to apply prior to the sales closing date, or it is submitted in accordance with any regulation which may be promulgated under 7 CFR 400, and after physical inspection of the acreage by us, if required, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Crop Revenue Coverage Insurance Policy

Coarse Grains Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Coarse grains. Corn, grain sorghum, and soybeans.

Grain sorghum. The crop defined as sorghum under the United States Grain Standards Act.

Harvest. Combining, threshing, or picking the insured crop for grain.

Local market price. The cash grain price per bushel for U.S. No. 2 yellow corn, U.S. No. 2 grain sorghum, or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade for yellow corn and grain sorghum, or U.S. No. 1 grade for soybeans. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein and oil, will not be considered.

Planted acreage. In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions or actuarial documents.

Prevented Planting Guarantee. The Prevented Planting Guarantee for such acreage will be that percentage of the Final Guarantee for timely planted acres as set forth in section 12.

Silage. A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

2. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of each crop in the county insured as grain under this policy will have the same coverage level and price percentage elections.

3. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
(a) For corn and grain sorghum:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28.
All other Texas counties and all other states	March 15.
(b) For soybeans:	
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

(a) In accordance with section 9 of the Basic Provisions, the crop insured will be each coarse grain crop you elect to insure for which premium rates and prices are provided by the actuarial documents (or by written agreement):

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area, including air seeded soybeans subject to our approval;

(3) That is not (unless allowed by the Special Provisions):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume; and

(4) Planted for harvest as grain.

(b) For corn only, in addition to the provisions of section 5(a), the corn crop insured will be all corn that is yellow dent or white corn, including mixed yellow and white, waxy, high-lysine corn, high-oil corn blends containing

mixtures of at least ninety percent high yielding yellow dent female plants with high-oil male pollinator plants, commercial varieties of high-protein hybrids, and excluding:

(1) High-amylose, high-oil except as defined in section 5(b), flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn.

(2) A variety of corn adapted for silage use when the corn is reported for insurance as grain.

(c) For grain sorghum only, in addition to the provisions of section 5(a), the grain sorghum crop insured will be all of the grain sorghum in the county:

(1) That is a combine-type hybrid grain sorghum (grown from hybrid seed); and

(2) That is not a dual-purpose type of grain sorghum (a type used for both grain and forage).

(d) For soybeans only, in addition to the provisions of section 5(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions under section 12 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) For corn:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington.	October 31.
(3) All other counties and states	December 10.
(b) For grain sorghum:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) All other Texas counties and all other states	December 10.
(c) For soybeans:	
All states	December 10.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A Harvest Price that is less than the Base Price.

9. Replanting Payments

(a) In accordance with section 14 of the Basic Provisions, replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the Minimum Guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the Minimum Guarantee or:

(1) For corn, 8 bushels multiplied by the Base Price, multiplied by your insured share;

(2) For grain sorghum, 7 bushels multiplied by the Base Price, multiplied by your insured share; and

(3) For soybeans, 3 bushels multiplied by the Base Price, multiplied by your insured share.

(c) When the crop is replanted using a practice that is uninsurable as an original planting, the Final Guarantee for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide, extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) In addition to the requirements of section 15 of the Basic Provisions, you must notify us before harvest begins if you intend to harvest corn acreage for silage.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit of coarse grains by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee;

(2) Subtracting the Calculated Revenue from the result of section 11(b)(1); and

(3) Multiplying the result of section 11(b)(2) by your share.

If the result of section 11(b)(3) is greater than zero, an indemnity will be paid. If the result of section 11(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle

your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;

(2) For each basic unit or optional unit in section 11(c)(1), compute the Calculated Revenue;

(3) Subtract each result in section 11(c)(2) from the respective result of section 11(c)(1); and

(4) Multiplying each result of section 11(c)(3) by your share; and

(5) Total the results of section 11(c)(4).

If the result of section 11(c)(5) is greater than zero, an indemnity will be paid. If the result of section 11(c)(5) is less than zero, no indemnity will be due.

(d) The total production in bushels to count from all insurable acreage for the crop on the unit will include:

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for the acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Planted for grain but harvested as silage, if you fail to give us notice before harvest begins;

(D) Damaged solely by uninsured causes; or

(E) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(e)); and

(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature coarse grain production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent for corn (If moisture exceeds 30 percent, production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent);

(ii) Fourteen percent for grain sorghum; and

(iii) Thirteen percent for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor;

(B) Grain sorghum not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except smut odor), or meets the special grade requirements for smutty grain sorghum; or

(C) Soybeans not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Coarse grain production that is eligible for quality adjustment, asspecified in sections 11(e)(2) and 11(e)(3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your Final Guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Coarse Grains (This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Coarse Grains crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Coarse Grains policy are determined.

(III) You may only select 100 percent of the Base Price and Harvest Price.

(IV) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of the contract specified in the Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(V) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by Cancellation Date as follows:

Corn (for Grain)—Chicago Board of Trade (CBOT)—Counties with a March 15 Cancellation Date

Base Price (CBOT)—The February harvest year's average daily settlement price for the harvest year's CBOT December corn futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (CBOT)—The November harvest year's average daily settlement price for the harvest year's CBOT December corn futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Harvest Price will be released as an actuarial document addendum by December 10 of the harvest year.

Corn (for Grain)—CBOT—Counties with a Cancellation Date prior to March 15

Base Price (CBOT)—The December pre-harvest year's average daily settlement price for the harvest year's CBOT September corn futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by January 10 of the harvest year.

Harvest Price (CBOT)—The August harvest year's average daily settlement price for the harvest year's CBOT September corn futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Grain Sorghum (for Grain)—CBOT—Counties with a March 15 Cancellation Date

Base Price (CBOT)—The Preliminary Grain Sorghum Base Price equals the February harvest year's average daily settlement price for the harvest year's CBOT December corn futures contract rounded to the nearest whole cent, multiplied times .95 and rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (CBOT)—The Preliminary Grain Sorghum Harvest Price equals the November harvest year's average daily settlement price for the harvest year's CBOT December corn futures contract rounded to the nearest whole cent, multiplied times .95 and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Harvest Price will be released as an actuarial document addendum by December 10 of the harvest year.

Grain Sorghum (for Grain)—CBOT—Counties with a Cancellation Date prior to March 15

Base Price (CBOT)—The Preliminary Grain Sorghum Base Price equals the December pre-harvest year's average daily settlement price for the harvest year's CBOT September corn futures contract rounded to the nearest whole cent, multiplied times .95 and rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by January 10 of the harvest year.

Harvest Price (CBOT)—The Preliminary Grain Sorghum Harvest Price equals the August harvest year's average daily settlement price for the harvest year's CBOT September corn futures contract rounded to the nearest whole cent, multiplied times .95 and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Soybeans—CBOT—Counties with a March 15 Cancellation Date

Base Price (CBOT)—The February harvest year's average daily settlement price for the harvest year's CBOT November soybean futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (CBOT)—The October harvest year's average daily settlement price for the harvest year's CBOT November soybean futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus three dollars ($3.00), or greater than the Base Price plus three dollars ($3.00). The Harvest Price will be released as an actuarial document addendum by November 10 of the harvest year.

Soybeans—CBOT—Counties with a Cancellation Date prior to March 15

Base Price (CBOT)—The December pre-harvest year's average daily settlement price for the harvest year's CBOT September soybean futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by January 10 of the harvest year.

Harvest Price (CBOT)—The August harvest year's average daily settlement price for the harvest year's CBOT September soybean futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus three dollars ($3.00), or greater than the Base Price plus three dollars ($3.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Crop Revenue Coverage Insurance Policy

Cotton Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Cotton. Varieties identified as American Upland Cotton.

Final Guarantee. In lieu of the definition contained in the Basic Provisions, the number of dollars guaranteed per acre is determined to be the higher of the Minimum Guarantee or the Harvest Guarantee, where:

(1) Minimum Guarantee—The Approved Yield per acre, multiplied by the applicable cotton yield conversion factor for non-irrigated skip-row planting patterns, multiplied by the Base Price multiplied by the coverage level percentage you elect.

(2) Harvest Guarantee—The Approved Yield per acre, multiplied by the applicable cotton yield conversion factor for non-irrigated skip-row planting patterns, multiplied by the Harvest Price, multiplied by the coverage level percentage you elect. If you elect enterprise unit coverage, the Basic Units or Optional Units comprising the enterprise unit will retain separate Final Guarantees.

Growth area. A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

Harvest. The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

Mature cotton. Cotton that can be harvested either manually or mechanically.

Planted acreage. In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions or actuarial documents. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

Prevented Planting Guarantee. The Prevented Planting Guarantee for such acreage will be that percentage of the Final Guarantee for timely planted acres as set forth in section 11.

Skip-row. A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by FSA.

2. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of cotton in the county insured as cotton under this policy will have the same coverage level and price percentage elections.

3. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial documents (or by written agreement):

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions:

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

(a) In lieu of section 12(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions under section 12 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(1) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(2) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(3) December 31 in all other states.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;
(c) Insects, but not damage due to insufficient or improper application of pest control measures;
(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption;
(h) Failure of the irrigation water supply, if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or
(i) A Harvest Price that is less than the Base Price.

9. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 15 of the Basic Provisions, in the event of damage or loss:
(1) The cotton stalks must remain intact for our inspection; and
(2) If you initially discover damage to the insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop in the field for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit.
(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss is given to us.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:
(1) For any optional unit, we will combine all optional units for which such production records were not provided; or
(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.
(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit by:
(1) Multiplying the insured acreage of the crop by the Final Guarantee;
(2) Subtracting the Calculated Revenue from the result of section 10(b)(1); and
(3) Multiplying the results of section 10(b)(2) by your share.
If the result of section 10(b)(3) is greater than zero, an indemnity will be paid. If the result of section 10(b)(3) is less than zero, no indemnity will be due.
(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:
(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;
(2) For each basic unit or optional unit in section 10(c)(1), compute the Calculated Revenue;
(3) Subtract each result in section 10(c)(2) from the respective result of section 10(c)(1); and
(4) Multiplying each result of section 10(c)(3) by your share; and
(5) Total the results of section 10(c)(4).
If the result of section 10(c)(5) is greater than zero, an indemnity will be paid. If the result of section 10(c)(5) is less than zero, no indemnity will be due.
(d) The total production (in pounds) to count from all insurable acreage on the unit will include:
(1) All appraised production as follows:
(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for the acreage:
(A) That is abandoned;
(B) Put to another use without our consent;
(C) Damaged solely by uninsured causes;
(D) For which you fail to provide records of production that are acceptable to us; or
(E) On which the cotton stalks are destroyed, in violation of section 9;
(ii) Production lost due to uninsured causes;
(iii) Unharvested production (mature unharvested production of white cotton may be adjusted for quality deficiencies in accordance with section 10(e)); and
(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:
(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or
(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and
(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.
(e) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Unless otherwise provided by the Special Provisions, such production to count will be reduced if the price quotation for cotton of like quality (price quotation ''A'') for the applicable growth area is less than 75 percent of price quotation ''B''. Price quotation ''B'' is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations ''A'' and ''B'' will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If not available on the date the last bale was classed, the price quotations will be determined on the date the last bale from the unit was delivered to the warehouse, as shown on the insured's account summary obtained from the gin. If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of production eligible for such adjustment by the factor derived from dividing price quotation ''A'' by price quotation ''B''.
(f) Colored cotton lint will not be eligible for quality adjustment.

11. Prevented Planting

(a) In addition to the provisions contained in section 18 of the Basic Provisions, your prevented planting Final Guarantee will be based on your approved yield without adjustment for skip-row planting patterns.
(b) Your prevented planting coverage will be 50 percent of your Final Guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Cotton (This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Cotton crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Cotton policy are determined.

(III) You may only select 100 percent of the Base Price and Harvest Price.

(IV) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling all the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of the contract specified in the Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(V) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by Cancellation Date as follows:

Cotton—New York Cotton Exchange (NYCE)—Counties with a February 28 or March 15 Cancellation Date

Base Price (NYCE)—The January 15 to February 14 harvest year's average daily settlement price for the harvest year's NYCE December cotton futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by February 20 of the harvest year.

Harvest Price (NYCE)—The November harvest year's average daily settlement price for the harvest year's NYCE December cotton futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus seventy cents ($0.70), or greater than the Base Price plus seventy cents ($0.70). The Harvest Price will be released as an actuarial document addendum by December 10 of the harvest year.

Cotton—NYCE—Counties with a January 15 Cancellation Date

Base Price (NYCE)—The December pre-harvest year's average daily settlement price for the harvest year's NYCE October cotton futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by January 10 of the harvest year.

Harvest Price (NYCE)—The September harvest year's average daily settlement price for the harvest year's NYCE October cotton futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus seventy cents ($0.70), or greater than the Base Price plus seventy cents ($0.70). The Harvest Price will be released as an actuarial document addendum by October 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Crop Revenue Coverage Insurance Policy

Rice Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) The Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) The Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Average Daily Settlement Price. Refer to the definition contained in the Commodity Exchange Endorsement—Rice.

Flood irrigation. An irrigated practice commonly used for rice production whereby the planted acreage is intentionally covered with water that is maintained at a uniform and shallow depth throughout the growing season.

Harvest. Combining or threshing the rice for grain. A crop that is swathed prior to combining is not considered harvested.

Local market price. The cash price per pound for the U.S. No. 3 grade of rough rice offered by buyers in the area in which you normally market rice. Factors not associated with grading under the United States Standards for Rice including, but not limited to, protein and oil content or milling quality will not be considered.

Planted. The uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods:

(a) Drill seeding—Using a grain drill to incorporate the seed to a proper soil depth;

(b) Broadcast seeding—Distributing seed evenly onto the surface of an un-flooded seedbed followed by either timely mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water; or

(c) Broadcast seeding into a controlled flood—Distributing the rice seed onto a prepared seedbed that has been intentionally covered to a proper depth by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions.

Prevented planting guarantee. The Prevented Planting Guarantee for such acreage will be that percentage of the Final Guarantee for timely planted acres as set forth in section 13.

Saline water. Water that contains a concentration of salt sufficient to cause damage to the insured crop.

Second crop rice. The regrowth of a stand of rice following harvest of the initially insured rice crop that can be harvested in the same crop year.

Swathed. Severance of the stem and grain head from the ground without removal of the rice kernels from the plant and placing in a windrow.

Total milling yield. Rice production consisting of heads, second heads, screenings, and brewer's rice as defined by the official United States Standards for Rice.

2. Unit Structure

Provisions in the Basic Provisions that allow optional units by irrigated and

non-irrigated practices are not applicable.

3. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of rice in the county insured as grain under this policy will have the same coverage level and price percentage elections.

4. Contract Changes

In accordance with section 5 in the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas Counties south thereof.	January 15.
Florida	February 15.
All other Texas counties and all other states	February 28.

6. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the rice in the county for which a premium rate is provided by the actuarial documents (or by written agreement):

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is flood irrigated; and

(d) That is not wild rice.

7. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions:

(a) We will not insure any acreage planted to rice:

(1) The preceding crop year unless allowed by the Special Provisions; or

(2) That does not meet the rotation requirements shown in the Special Provisions; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

8. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 immediately following planting.

9. Causes of Loss

(a) In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions (except drought);

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, if due to a cause of loss contained in sections 9(a)(1) through 9(a)(7) occurring within the insurance period; or

(9) A Harvest Price that is less than the Base Price.

(b) In addition to the causes of loss not insured against in section 13 of the Basic Provisions, we will not insure against any loss of revenue due to the application of saline water.

10. Replanting Payment

(a) A replanting payment for rice is allowed as follows:

(1) You must comply with all requirements regarding replanting payments contained under section 14 of the Basic Provisions;

(2) The rice must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the Minimum Guarantee for the acreage; and

(3) The replanted rice must be seeded at a rate that is normal for initially planted rice (if new seed is planted at a reduced seeding rate into a partially damaged stand of rice, the acreage will not be eligible for a replanting payment).

(b) In accordance with the provisions of section 14 of the Basic Provisions, the maximum amount of the replanting payment per acre will be the lesser of 20 percent of the Minimum Guarantee or 400 pounds, multiplied by the Base Price, multiplied by your insured share.

(c) When rice is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

In addition to your duties under section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit of rice by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee;

(2) Subtracting the Calculated Revenue from the result of section 12(b)(1); and

(3) Multiplying the result of 12(b)(2) by your share.

If the result of section 12(b)(3) is greater than zero, an indemnity will be paid. If the result of section 12(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;

(2) For each basic unit or optional unit in section 12(c)(1), compute the Calculated Revenue;

(3) Subtract each result in section 12(c)(2) from the respective result of section 12(c)(1); and

(4) Multiplying each result of section 12(c)(3) by your share; and

(5) Total the results of section 12(c)(4).

If the result of section 12(c)(5) is greater than zero, an indemnity will be paid. If the result of section 12(c)(5) is less than zero, no indemnity will be due.

(d) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(e));

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any production from a second rice crop harvested in the same crop year.

(e) Mature rough rice may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 12 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Rice, result in rice not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of red rice, chalky kernels or damaged kernels;

(ii) The rice has a total milling yield of less than 68 pounds per hundredweight;

(iii) The whole kernel weight is less than 55 pounds per hundredweight of milled rice for medium and short grain varieties;

(iv) The whole kernel weight is less than 48 pounds per hundredweight of milled rice for long grain varieties; or

(v) Substances or conditions are present that are identified by the Food and Drug Administration of other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions specified in section 12(e)(2) resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions specified in section 12(e)(2) result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions specified in section 12(e)(2) are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade rice under the authority of the United States Agriculture Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health.

Notwithstanding the preceding sentence, test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Rice production that is eligible for quality adjustment, as specified in sections 12(e)(2) and (3), will be reduced by the quality adjustment factors contained in the Special Provisions:

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Prevented Planting

Your prevented planting coverage will be 45 percent of your Final Guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Rice (This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Rice crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Rice policy are determined.

(III) You may only select 100 percent of the Base Price and Harvest Price.

(IV) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling all the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of

the contract specified in the Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(V) This endorsement defines the Base Price and Harvest Price as shown in section 1 of the Crop Revenue Coverage Basic Provisions by Cancellation Date as follows:

Rice—Chicago Board of Trade (CBOT)—Counties With a January 15 Cancellation Date

Base Price (CBOT)—The December pre-harvest year's average daily settlement price per pound for the harvest year's CBOT September rough rice futures contract rounded to the nearest one-tenth (1/10th) of a cent. The Base Price will be released as an actuarial document addendum by January 10 of the harvest year.

Harvest Price (CBOT)—The August harvest year's average daily settlement price per pound for the harvest year's CBOT September rough rice futures contract rounded to the nearest one-tenth (1/10th) of a cent. The Harvest Price cannot be less than the Base Price minus five cents ($0.05), or greater than the Base Price plus five cents ($0.05). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Rice—(CBOT)—Counties With February 15 or February 28 Cancellation Dates

Base Price (CBOT)—The January harvest year's average daily settlement price per pound for the harvest year's CBOT November rough rice futures contract rounded to the nearest one-tenth (1/10th) of a cent. The Base Price will be released as an actuarial document addendum by February 10 of the harvest year.

Harvest Price (CBOT)—The October harvest year's average daily settlement price per pound for the harvest year's CBOT November rough rice futures contract rounded to the nearest one-tenth (1/10th) of a cent. The Harvest Price cannot be less than the Base Price minus five cents ($0.05), or greater than the Base Price plus five cents ($0.05). The Harvest Price will be released as an actuarial document addendum by November 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Crop Revenue Coverage Insurance Policy

Wheat Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Adequate Stand. A population of live plants per unit of acreage which will produce at least the yield used to establish your Final Guarantee.

Average Daily Settlement Price. Refer to the definition contained in the Commodity Exchange Endorsement—Wheat.

Harvest. Combining or threshing the insured crop for grain or cutting for hay or silage on any acreage. A crop which is swathed prior to combining is not considered harvested.

Initially planted. The first occurrence of planting the insured crop on insurable acreage for the crop year.

Latest final planting date.

(a) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(b) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(c) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

Local market price. The cash grain price per bushel for the U.S. No. 2 grade of the insured crop offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of the insured crop. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will be considered planted.

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Prevented planting guarantee. The Prevented Planting Guarantee for such acreage will be that percentage of the Final Guarantee for timely planted acres as set forth in section 13(b).

Sales closing date. In lieu of the definitions contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

Wheat. Wheat for grain only.

2. Unit Structure

In addition to the requirements of section 2(b) of the Basic Provisions, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both winter and spring type final planting dates as designated in the Special Provisions.

3. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of wheat in the county

insured as grain under this policy will have the same coverage level and price percentage elections.

4. Contract Changes

In accordance with section 5 in the Basic Provisions, the contract change date is December 31 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel Counties; all Iowa Counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties and all Iowa counties north thereof; all Wisconsin Counties except Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties and all Wisconsin counties north and west thereof; and all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30 ...	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley Counties; New York; Oregon; Rhode Island; all South Dakota counties except Harding, Perkins, Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties and all South Dakota counties north and east thereof; Washington; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties.	September 30 ...	November 30.
Matanuska-Susitna County, Alaska; Arizona; California; Nevada; and Utah	October 31	November 30.
All Alaska Counties except Matanuska-Susitna County; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Harding, Perkins, Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin, and all Wisconsin counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.

6. Insured Crop

(a) In accordance with section 9 of the Basic Provisions, the crop insured will be wheat you elect to insure, that is grown in the county on insurable acreage, and for which premium rates are provided by the actuarial documents (or by written agreement):

(1) In which you have a share;

(2) That is planted for harvest as grain;

(3) That is not:

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(b) If you anticipate destroying any acreage prior to harvest you:

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in section 7 of the Basic Provisions); or

(2) If the actuarial documents provide a reduced premium rate for acreage destroyed by a date designated in the Special Provisions, you may report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage. Your premium amount will be reduced by the amount shown on the actuarial documents for any acreage you destroy prior to a date designated in the Special Provisions if you do not claim an indemnity on such acreage. In accordance with section 15(b) of the Basic Provisions, you must obtain our consent before and give us notice after you destroy any of the insured crop so your acreage report can be revised to make you eligible for this reduction in premium.

(c) In counties for which the wheat Special Provisions designate both fall and spring final planting dates, you may elect a winter wheat coverage endorsement. This endorsement provides two options for alternative coverage for wheat that is damaged between the fall final planting date and the spring final planting date. Coverage under the endorsement will be effective only if you designate the coverage option you elect by executing the endorsement by the sales closing date for winter wheat in the county.

7. Insurance Period

In lieu of the requirements under section 12 of the Basic Provisions, and subject to any provisions provided by the Winter Wheat Coverage Endorsement if you have elected such endorsement, the insurance period is as follows:

(a) Insurance attaches on each unit or part thereof on the later of the date we accept your application or the date the insured crop is planted subject to the following limitations:

(1) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in section 12 of these Crop Provisions and section 17 of the Basic Provisions.

(2) Whenever the Special Provisions designate only a fall final planting date, any acreage of winter wheat damaged before such final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(3) Whenever the Special Provisions designate both fall and spring final planting dates, winter wheat planted on or before the fall final planting date which is damaged:

(i) Before the fall final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(ii) On or after the fall final planting date, but before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to an appropriate variety of the insured crop unless we agree that replanting is not practical.

If you have elected coverage under one of the available Winter Wheat Coverage Endorsement Options available in the county, the insurance period for wheat will be in accordance with the selected option.

(4) Whenever the Special Provisions designate only a spring final planting date:

(i) Any acreage of spring wheat damaged before such final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical; and

(ii) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted wheat is not insured unless you request such coverage and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your Final Guarantee. Insurance will then attach to acreage having an adequate stand on the earlier of the spring final planting date or the date we agree to accept the acreage for insurance. If such fall planted acreage is not to be insured it must be recorded on the acreage report as an uninsured fall planted crop.

(b) Insurance ends on each unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on the unit;

(4) September 25 following planting in Alaska, or October 31 of the calendar year in which the crop is normally harvested in all other states; or

(5) Abandonment of the crop on the unit.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A Harvest Price that is less than the Base Price.

9. Replanting Payments

(a) A replant payment for wheat is allowed as follows:

(1) You comply with all requirements regarding replanting payments contained under section 14 of the Basic Provisions and in the Winter Wheat Coverage Endorsement for which you are eligible and which you have elected;

(2) The wheat must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the Minimum Guarantee for the acreage;

(3) The acreage must have been initially planted to spring wheat in those counties with only a spring final planting date;

(4) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(5) Replanting must take place not later than 25 days after the spring final planting date; and

(6) The replanted wheat must be seeded at a rate that is normal for initially planted wheat (if new seed is planted at a reduced seeding rate into a partially damaged stand of wheat, the acreage will not be eligible for a replanting payment).

(b) No replanting payment will be made for acreage initially planted to winter wheat in any county for which the Special Provisions contain only a fall final planting date.

(c) In accordance with section 14(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be the lesser of 20 percent of the Minimum Guarantee or 3 bushels, times the Base Price times your share.

(d) When wheat is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

10. Duties In The Event of Damage or Loss

In addition to your duties under section 15 of the Basic Provisions, if you initially discover damage to the insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit of wheat by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee;

(2) Subtracting the Calculated Revenue from the result of section 11(b)(1); and

(3) Multiplying the result of section 11(b)(2) by your share.

If the result of section 11(b)(3) is greater than zero, an indemnity will be paid. If the result of section 11(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;

(2) For each basic unit or optional unit in section 11(c)(1), compute the Calculated Revenue;

(3) Subtract each result in section 11(c)(2) from the respective result of section 11(c)(1); and

(4) Multiplying each result of section 11(c)(3) by your share; and

(5) Total the results of section 11(c)(4).

If the result of section 11(c)(5) is greater than zero, an indemnity will be paid. If the result of section 11(c)(5) is less than zero, no indemnity will be due.

(d) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for acreage:

(A) Which is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(e)); and

(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If:

(A) Agreement on the appraised amount of production is not reached, you may elect to continue to care for the crop, or we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.

(B) You elect to continue to care for the crop, we will determine the amount of production to count for the acreage using the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested production from the insurable acreage.

(e) Mature wheat production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of 13.5 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (excluding heat damage), shrunken or broken kernels, or defects (excluding foreign material and heat damage), or grading garlicky, light smutty, smutty or ergoty;

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is specified in section 8;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Production of wheat that is eligible for quality adjustment, as specified in sections 11(e)(2) and 11(e)(3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Late Planting

A late planting period is not applicable to fall-planted wheat. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions also contain a final planting date for spring wheat will not be insured. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions contain only a fall final planting date will not be insured unless you were prevented from planting the winter wheat by the fall final planting date. Such acreage will be insurable, and the Final Guarantee and premium for the acreage will be determined in accordance with sections 17(b) and (c) of the Basic Provisions.

13. Prevented Planting

(a) In addition to the provisions contained in section 18 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting Final Guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your Final Guarantee for timely planted acreage. You may increase your preventing planting coverage to a level specified in the actuarial documents by paying an additional premium.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Wheat (This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Wheat crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Wheat policy are determined.

(III) You may only select 100 percent of the Base Price and Harvest Price.

(IV) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by totaling all the daily settlement prices for the contract specified in the applicable Base Price or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price or Harvest Price definition, and dividing that sum by the total number of days included in the total. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price or Harvest Price definition. A full active trading day is any day on which there are twenty-five (25) or more open interest contracts of the contract specified in the

Base Price or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price or Harvest Price definition, during the month specified in the applicable Base Price or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(V) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by wheat type and state as follows:

Winter Wheat—(Insured as winter wheat), Chicago Board of Trade (CBOT)

Illinois, Indiana, Michigan, Ohio, and Wisconsin

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as winter wheat), (CBOT)

Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia

Base Price (CBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (CBOT)—The June harvest year's average daily settlement price for the harvest year's CBOT July soft red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Winter Wheat—(Insured as winter wheat), Kansas City Board of Trade (KCBOT)

Iowa, Montana, Nebraska, South Dakota, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The July 15 to August 14 harvest year's average daily settlement price for the harvest year's KCBOT September hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by August 20 of the harvest year.

Winter Wheat—(Insured as winter wheat), (KCBOT)

Arizona, Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Texas

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (KCBOT)—The June harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by July 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 3/15 cancellation date), Minneapolis Grain Exchange (MGE)

Colorado, Minnesota, Montana, North Dakota, South Dakota, and Wyoming

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Spring Wheat—(Insured as spring wheat in counties with a 9/30 cancellation date), (KCBOT/MGE)

Colorado, Iowa, Montana, South Dakota, Wisconsin, and Wyoming

Base Price (KCBOT)—The August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's KCBOT July hard red winter wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September hard red spring wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Wheat—Portland Grain Exchange (PGE)

California, Idaho, Oregon, Utah, and Washington

Base Price (PGE)—The Portland Price equals the August 15 to September 14 pre-harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) plus an adjustment equal to the current five-year average difference between the August average daily

settlement price for the nearby CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) and the August average daily settlement price for the PGE soft white wheat contract (rounded to the nearest whole cent). The Base Price will be released as an actuarial document addendum by September 20 of the pre-harvest year.

Harvest Price (PGE)—The August harvest year's average daily settlement price for the PGE soft white wheat contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Durum Wheat—(Insured as durum wheat in counties with a 3/15 cancellation date), (MGE)

North Dakota

Base Price (MGE)—The February harvest year's average daily settlement price for the harvest year's MGE September durum wheat futures contract rounded to the nearest whole cent. The Base Price will be released as an actuarial document addendum by March 10 of the harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for the harvest year's MGE September durum wheat futures contract rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

Durum Wheat—(Insured as durum wheat in counties with a 10/31 cancellation date), (MGE)

Arizona and California

Base Price (MGE)—The Southern Durum Price equals the September 15 to October 14 pre-harvest year's average daily settlement price for the harvest year's CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) plus an adjustment equal to the average of the current year nearby basis, determined during the months of May, June, July and August of the current crop year, and the current five-year average difference between the August average daily settlement price for top milling durum wheat as reported by the MGE (rounded to the nearest whole cent) and the August average daily settlement price for the nearby CBOT September soft red winter wheat futures contract (rounded to the nearest whole cent) not to exceed $1.00. During the months of May and June the nearby futures contract used to determine the current year nearby basis for top milling durum wheat will be the July contract. During the months of July and August the nearby futures contract used to determine the current year nearby basis for top milling durum wheat will be the September contract. The Base Price will be released as an actuarial document addendum by October 20 of the pre-harvest year.

Harvest Price (MGE)—The August harvest year's average daily settlement price for top milling durum wheat as reported by the MGE rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus two dollars ($2.00), or greater than the Base Price plus two dollars ($2.00). The Harvest Price will be released as an actuarial document addendum by September 10 of the harvest year.

All other terms and conditions of the Policy remain unchanged.

Signed in Washington, D.C. on November 17, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–30952 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program: Title VI Civil Rights Collection Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved under OMB No. 0584–0025, Civil Rights Title VI Collection Reports—Forms FNS–191 and FNS–101, for the Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program.

DATES: Comments on this notice must be received by January 31, 2000.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

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 of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Civil Rights Title VI Collection Reports—FNS–191 and FNS–101.

OMB Number: 0584–0025.

Expiration Date: March 2000.

Type of Request: Extension of a currently approved collection.

Abstract: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–7, requires the collection of racial/ethnic data for all programs receiving Federal financial assistance. The Department of Justice (DOJ) regulations, 28 CFR 42.406, require all Federal agencies to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI in each assisted program.

For purposes of the Information Collection Notice only, the Food and Nutrition Service (FNS) employs program terminology in place of the standard Title VI terminology adopted by the U.S. Department of Agriculture (USDA) and codified at 7 CFR 15.2. Thus, ''State agencies,'' ''local

agencies,'' and/or ''operators'' are the program entities responsible for fulfilling the data collection requirements associated with ''primary recipients'' and/or ''recipients'' as defined by Title VI. Moreover, the program terms ''respondents,'' ''applicants,'' and/or ''participants'' refer to the ''potential beneficiaries,'' ''applicant beneficiaries,'' and/or ''actual beneficiaries'' of Federal financial assistance as defined by Title VI.

In order to conform with the statutory mandates of Title VI of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination in Federally assisted programs, the USDA's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of persons receiving benefits from FNS food assistance programs. Local agencies use the two forms referenced above (i.e., the FNS–191 and FNS–101) to collect data on the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), and the Food Stamp Program (FSP) as explained below. FNS' data collection requirement for operators is found in the regulations for the CSFP at 7 CFR Part 247.13(d), and for the FSP at 7 CFR Part 272.6(g); the requirement for the FDPIR is found in FNS Handbook 501.

All State or local agencies must submit the appropriate form in order to receive benefits and comply with applicable legislation. If a State or local agency does not comply voluntarily, the State or local agency is subject to fund termination, suspension, or denial; or judicial action.

CSFP local agencies complete the FNS–191 for the CSFP. FNS requires local agencies to provide the actual number and racial/ethnic designations women, infants, children and elderly who receive CSFP benefits during the month of April.

FSP and FDPIR State or local agencies complete the FNS–101. FNS requires State or local agencies to report annually the actual number and racial/ethnic designation of households who receive FDPIR and/or FSP benefits during the month of July.

FNS requests that an applicant voluntarily designate a racial/ethnic category on his or her application. However, racial/ethnic information will not affect an applicant's request for benefits. In all three programs, State and local agencies collect racial/ethnic information on the benefits application form which applicants may complete and file manually or electronically. All three programs allow the individual to self-identify his or her racial/ethnic status on the application. Observation is used when the individual does not self-identify. The Federal reporting forms do not identify individual participants.

FNS is proposing to extend the current forms unchanged (except for editorial changes such as the updating of the Agency's name) through FY 2001 reporting. In addition, at this time FNS is proposing substantial changes to be made to the forms for reporting for FY 2002. These changes are discussed below.

The New Categories and Reporting Forms

Background

The racial and ethnic categories, which have been in place for nearly 20 years, conform to standards set by the Office of Management and Budget (OMB) in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. On October 30, 1997, OMB issued a revision of Statistical Policy Directive No. 15 in a notice in the **Federal Register** (62 FR 58781 (Oct. 30, 1997)). The new standards revise the categories and manner of reporting. All Federal agencies are to comply with the new standards. In turn, States will have to comply with the new standards.

State Collection of Data

The new standards revise the racial/ethnic categories by separating the ''Asian and Pacific Islander'' category into two separate categories. The five racial categories for future State agency reporting are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. The two new ethnic categories are: ''Hispanic or Latino'' and ''Not Hispanic or Latino.'' These categories are to be included on the application or data input screen.

The new standards also require that State and local agencies offer applicants the option of selecting one or more racial designations from the above categories. State agencies may not offer respondents (applicants) a ''multi-racial'' category. Instructions on race reporting on the application form should ask the respondent to ''Mark one or more . . .'' or ''Select one or more . . . .'' State agencies shall use separate questions on the application form or data input screen for collecting data on race and ethnicity, collecting ethnicity data first, then race. Applicants may choose only one response to the Hispanic ethnicity question. State agencies will need to modify their application forms, computer input screens and information systems to capture and retrieve data in the new categories.

The new multiracial reporting is intended to capture information on the number of people reporting that they are of more than one race. For the CSFP, State agencies currently collect the data by groups of participants (Women, Infants, Children and Elderly). CSFP State agencies shall continue to collect the data by participant but will have to use the new racial and ethnic categories and provide for multiracial reporting. However, to reduce the paperwork burden associated with the administration of the CSFP at the State and local level, we are recommending that the data no longer be reported separately by each group of participants but simply by the total number of participants in the program.

For FDPIR and FSP, State agencies currently collect the data by ''household'' with each household unit being counted under only one race. In actuality, most State agencies collect racial/ethnic data for one person in the household, normally the person who completes the application or is interviewed. This is done because the reporting of racial information by an applicant is voluntary and not all household members are required to be present for the eligibility interview. When an applicant chooses not to self-identify, capturing or determining racial information on absent household members based on observation of present household members or other means would be burdensome and error prone for States. FDPIR and FSP State agencies may continue to collect the data for one person per household but must use the new racial and ethnic categories and provide for multiracial reporting.

Reporting of Data

FNS is proposing drafts of the revised forms discussed above for comment at this time in order to begin to comply with the revised racial and ethnic categories and to inform State agencies of the reporting changes to come. The FNS–191 will continue to collect data for each participant. However, the FNS–191 is being revised to collect data on the number of participants in the new racial and ethnic categories and the number of participants choosing more than one race. In addition for the CSFP, States will no longer be required to report racial ethnic data separately for women, infants, children and elderly.

The FNS–101 will continue to collect data only on one person per household. We plan to refer to this individual as ''household contact'' on the reporting

form. FNS believes this is a more appropriate term than ''household.'' The FNS–101 is being revised to collect data on the number of household contacts in the new racial and ethnic categories and the number choosing more than one race.

For both forms, FNS is proposing to have the State agencies report the number of people who selected only one racial category, separately for each of the five racial categories, and to provide a count of all people who selected more than one racial category. In addition, State agencies shall report the number of persons in each racial category who are Hispanic or Latino. Detailed reporting instructions will be issued by FNS when the new forms are approved by OMB and finalized. The new proposed forms are displayed at the end of this section.

Implementation

FNS recognizes that State and local agencies will need time to modify their application forms, data input screens, and information systems in order to begin capturing and tabulating the new data. We also recognize that State and local agencies may currently be involved in doing high priority Year 2000 system modifications to keep their systems operational after 1999 as well as doing other system modifications due to welfare reform and other program changes. It is crucial for FNS' information system that all State agencies for a given program implement the new reporting format at the same time.

FNS proposes that CSFP, FDPIR, and FSP State and local agencies begin collecting the racial/ethnic data for the new reporting with new applications filed beginning October 2001. The new reporting to FNS would be effective for the report month of April 2002 for the FNS–191 and the report month of July 2002 for the FNS–101.

FNS requests comments on the proposed reporting forms and the above proposed implementation dates from State and local agencies for each program. FNS is also interested if State agencies could implement sooner than the above proposed implementation date. After considering the comments, FNS will finalize the revised forms and include them in the next burden package for OMB approval. FNS will announce the effective date(s) for each of the affected programs either through rulemaking (for the FSP) or implementing memoranda. The two revised forms follow this notice.

Burden Estimate

Respondents: Local agencies that administer the CSFP, FDPIR, and FSP.

Number of Respondents: 2,939 (72 for CSFP, 106 for FDPIR, and 2,761 for FSP).

Estimated Number of Responses per Respondent:

Form FNS–191: 72 local CSFP agencies once a year.

Form FNS–101: 106 local FDPIR agencies and 2,761 local FSP agencies once a year.

Estimate of Burden:

Form FNS–191: The local CSFP agencies submit Form FNS–191 at an estimate of 1.75 hours per respondent, or 126 total hours. There is an additional recordkeeping burden of .25 hours per respondent for maintaining the responses, or 18 hours. Total burden is 144 hours.

Form FNS–101: The local FDPIR and FSP agencies submit Form FNS–101 at an estimate of 2 hours per respondent, or 5,734 total hours. There is an additional burden of .25 hours per respondent for maintaining the responses, or 717 hours. Total burden is 6,451 hours.

Estimated Total Annual Burden on Respondents: The revised annual reporting and recordkeeping burden for OMB No. 0584–0025 is estimated to be 6,595 hours. The burden is unchanged.

Dated: November 18, 1999.

George A. Braley,

Acting Administator.

BILLING CODE 3410–30–P

U.S. DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE

RACIAL/ETHNIC GROUP PARTICIPATION COMMODITY SUPPLEMENTAL FOOD PROGRAM

FNS INSTRUCTION 113-2

No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by existing regulation. *(Instructions on reverse of last copy.)*

1. STATE	2. STATE #		L/A#		NO. OF CLINICS	

3. REPORTING

LOCAL AGENCY NAME

ADDRESS

CITY

STATE | ZIP CODE | TELEPHONE NUMBER

4. REPORTING YEAR: APRIL _____ **ACTUAL NUMBER OF PARTICIPANTS FOR THE MONTH OF APRIL**

	AMERICAN INDIAN OR ALASKA NATIVE	ASIAN	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER	WHITE	MORE THAN ONE RACE	TOTAL *(See Note Below)*
5. NO. OF PARTICIPANTS BY RACIAL/ETHNIC GROUP							
6. NO. OF HISPANIC OR LATINO PARTICIPANTS BY RACE							

DATE	TITLE	SIGNATURE

FORM FNS-191 (10-98) *Previous editions are obsolete*
Electronic Form Version Designed in JetForm 5.01 Version

ORIGINAL - FNS REGIONAL OFFICE

NOTE: Total number of participants should agree with the data reported on the April Form FNS-153 Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report.

INSTRUCTIONS

This report will be prepared annually covering the month of April.

LOCAL AGENCIES - shall forward the original and one copy to the State agency by the 7th day of July, retaining the second copy.

STATE AGENCIES - shall determine that reports have been received from all local agencies and review all information prior to forwarding the original copy to the appropriate FNS regional office in time to reach that office no later than the 31st day of July. The duplicate copy form shall be retained and used for analysis in monitoring local agencies and State agency compliance with civil rights requirements.

FNS REGIONAL OFFICES - shall determine that all local agency reports have been received from the State agencies and reviewed for completeness. The regional office shall enter all local agency information into the National Master database by the 19th day of September.

Item 1 and 4 - Self-Explanatory.

Item 2 - For State agency, enter the 4-digit Letter of Credit number. For local agency, enter the 3-digit identification number used in previous year(s) that was assigned by FNS. New local agencies shall obtain the identification number from the State agency. The new local agency 3-digit number should be the next unused consecutive identification number. Enter the number (001 or more) of clinics under each local agency's supervision.

Item 3 - Enter the name, address and 10-digit telephone number for the local Agency. For the name and address, enter one letter or number in each block. Abbreviations are permitted, where necessary. This will be used as input information for the CSFP Local Agency Directory.

Items 5 - Report for each racial group the number of participants who received commodities during April and that selected one race. Report the number of participants in April that reported they are more than one race in the "More than One Race" block.

Using the same racial categories from item 5, report for each racial group the number of participants who participated in April who are Hispanic or Latino.

OMB BURDEN STATEMENT: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0025. The time required to complete this information collection is estimated to average 1-3/4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FORM APPROVED OMB NO. 0584-0025

U.S. DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE

PARTICIPATION IN FOOD PROGRAMS - BY RACE

FNS Instruction 113-1

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0025. The time required to complete this information collection is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

1. STATE/ITO	2. PROGRAM ("X" one only). Use separate form for each program).	3A. NAME OF PROJECT AREA	4. NAME & ADDRESS OF REPORTING WELFARE AGENCY OR DISTRIBUTING AGENCY
5. REPORTING YEAR July _____	☐ FOOD STAMP ☐ FDPIR	3B. PROJECT AREA CODE	

	AMERICAN INDIAN OR ALASKA NATIVE	ASIAN	BLACK OR AFRICAN AMER	NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER	WHITE	MORE THAN ONE RACE	TOTAL *(See Note Below)*
6. NO. OF HOUSEHOLD CONTACTS PARTICIPATING BY RACE							
7. NO. OF HISPANIC OR LATINO HH CONTACTS BY RACE							

NOTE: Total number of participating household contacts in item 6 should agree with the data reported on the respective monthly report (July) submitted for the Food Stamp Program (Form FNS-388A) or the Food Distribution Program on Indian Reservations (Form FNS-152).

8. REMARKS

DATE	TITLE	SIGNATURE

FORM FNS-101 (8-98) *Previous edition obsolete*

Electronic Form Version Designed in JetForm 5.01

ORIGINAL - FNS Regional Office

No further monies or other benefits may be paid out under these programs unless this report is completed and filed as authorized by existing law (Title VI of the Civil Rights Act of 1964.

INSTRUCTIONS

This report will be prepared annually covering the month of July.

REPORTING UNITS - Send the original and one copy to reach the State Agency as soon as possible, but no later than the 20th of August.

STATE AGENCIES AND INDIAN TRIBAL ORGANIZATIONS (ITOs) - shall determine that reports have been received from all reporting units. The original copy shall be forwarded to the appropriate FNS Regional Office to reach that office as soon as possible, but no later than the 19th of September.

REGIONAL OFFICES - shall determine that reports have been received from all State Agencies, Indian Tribal Organizations, and reporting units. *The regional office shall enter all local agency information into FSPIIS and SNPIIS databases by the 20th of November.*

Items 1 thru 5 and 8 - self explanatory.

Item 6 - A household contact is the person who completes the application or is interviewed. Report for only one household contact per participating household. Report for each racial group the number of household contacts that participated (received coupon benefits or commodities) during July and that selected one race. Report the number of household contacts that participated in July and that reported they are more than one race in the "More Than One Race" block.

Item 7 - Using the same racial categories from item 6, in item 7 blocks, report for each racial group the number of household (HH) contacts who participated in July who are Hispanic or Latino.

FORM FNS-101 (8-98) *(Reverse)*

[FR Doc. 99–30907 Filed 11–29–99; 8:45 am]
BILLING CODE 3410–10–C

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–049N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection regarding applications for inspection, accreditation for laboratories, and exemptions for retail store, custom, and religious slaughter operations.

DATES: Comments on this notice must be received on or before January 31, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street, SW, Room 109, Washington, DC 20250–3700, (202) 720–0346.

SUPPLEMENTARY INFORMATION:

Title: Application for Inspection, Laboratory Accreditation, and Retail Store, Custom, and Religious Slaughter Exemptions.

OMB Number: 0583–0082.

Expiration Date of Approval: December 31, 1999.

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

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Product Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS requires meat and poultry establishments and FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. FSIS uses this collected information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories operate in accordance with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from the provisions of the FMIA and PPIA do not commingle inspected and non-inspected meat and poultry products and to ensure that establishments qualifying for a retail store exemption and that have violated the prohibition on commingling product are no longer violating the prohibition.

FSIS is requesting OMB extension and revision of this Information Collection Request that covers the following paperwork and recordkeeping activities: (1) The completion and submission to FSIS of an application for Federal inspection by all meat, poultry, and egg seeking a grant of Federal inspection; (2) the completion and submission of forms establishing accreditation and maintenance of laboratory results by FSIS-accredited non-Federal analytical laboratories used in lieu of an FSIS laboratories for analyzing official regulatory samples; (3) the maintenance of records by establishments engaging in custom or religious slaughter, as defined in the FMIA and PPIA; and (4) the maintenance of records by establishments that have been found to be in violation of the terms of a retail store exemption.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1.49 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 12,460.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 18,565 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street, SW, Room 109, Washington, DC 20250–3700, (202) 720–0346.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) The accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both Lee Puricelli, Paperwork Specialist, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

This notice is designed to provide information to the public and request their comments on FSIS' information collection requirements regarding applications for inspection, accreditation for laboratories, and exemptions for retail store custom, and religious slaughter operations. Public involvement is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are made aware of this request for the extension and revision of the currently approved information collection request 0583–0082 and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication 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/stakeholders. The 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 with a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC, on: November 23, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–30993 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Willamette Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Meeting notice.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Monday, December 6, 1999. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 3:00 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management, 1717 Fabry Road SE, Salem, Oregon, (503) 375–5646. The tentative agenda includes: (1) Presentation of the Draft Supplemental EIS to amend the survey and manage direction in the Northwest Forest Plan, (2) Review and critique of PAC accomplishments in 1999, (3) Set agenda topics and PAC focus for 2000, (4) Presentation on the national roadless initiative on Forest Service lands, and (5) Roundtable information sharing by Pac members and federal agency representatives including status reports from PAC subcommittees.

The Public Forum is tentatively scheduled to begin at 11:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the December 6 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue, Eugene, Oregon 97401; (541) 465–6924.

Dated: November 23, 1999.

Neal W. Forrester,

Acting Forest Supervisor.

[FR Doc. 99–30995 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Draft USDA Forest Service Strategic Plan (2000 Revision)

AGENCY: Forest Service, USDA.

ACTION: Notice, request for public comment

SUMMARY: The Government Performance and Results Act of 1993 requires the Forest Service to ask for the views and suggestions of anyone ''potentially affected by or interested in'' the Agency's strategic plan. Between October 1998 and January 1999, public meetings and other means were used to solicit input from the public about the development of the draft 2000 Revision. These comments were used, along with other information, to develop the draft 2000 Revision, which has now been completed by the Agency. This notice announces the opportunity for public review and comment on the draft 2000 Revision and provides information about where to send written comments.

DATES: Written comments must be received by the Strategic Planning and Resource Assessment Staff by January 31, 2000.

EFFECTIVE DATE: Written comments on the draft 2000 Revision may be sent to: Director, Strategic Planning and Resource Assessment Staff, USDA Forest Service, PO Box 96090, Washington, DC 20090–6090 or via internet at *resources.program/wo@fs.fed.us.* Written comments also may be faxed to (202) 205–1546. Additional information about the draft 2000 revision can be found on the internet on the Strategic Planning and Resource Assessment Staff home page at *http://www.fs.fed.us/plan.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning opportunities for public review and comment, the submission of comments, or to request a copy of the draft 2000 Revision, contact the Strategic Planning and Resource Assessment Staff. Washington, DC at (202) 205–1292 or via internet at *resources.program/wo@fs.fed.us.* A list of ''USDA Forest Service Strategic Planning contacts'' from whom additional information can be requested is included in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: The draft 2000 Revision contains long-term goals for the Agency; long-term objectives associated with the goals; indicator measures tied to each objective; and, the strategies to be pursued to achieve the long-term goals and objectives.

USDA FOREST SERVICE STRATEGIC PLANNING CONTACTS

Regional office or research station HQ	Strategic planning contacts	Telephone
Region 1 (Missoula, MT)	Tom Rhodes	(406) 329–3399
Region 2 (Denver, CO)	Pam Skeels	(303) 275–5152
Region 3 (Albuquerque, NM)	Parks Hilliard	(505) 842–3202
Region 4 (Ogden, UT)	Dave Iverson	(801) 625–5278
Region 5 (Vallejo, CA)	Mike Srago	(707) 562–8951
Region 6 (Portland, OR)	Richard Phillips	(503) 808–2281
Region 8 (Atlanta, GA)	Bob Wilhelm	(404) 347–7076
Region 9 (Milwaukee, WI)	Paul Monsoon	(414) 297–3181
Region 10 (Anchorage, AK)	Randy Coleman	(907) 586–8814
Forest Products Laboratory (Madison, WI)	Deb Dietzman	(608) 231–9320
Rocky Mountain Research Station (Fort Collins, CO)	Marcia Patton-Mallory	(970) 487–1157
North Central Research Station (Chicago, IL) or (St. Paul, MN)	John F. Dwyer	(847) 866–9311
	Nancy Lorimer	(612) 649–5249
Northeastern Research Station (Radnor, PA)	Margaret Harris	(610) 975–4017
Pacific Northwest Research Station (Portland, OR)	Thomas J. Mills	(503) 808–2100
Pacific Southwest Research Station (Albany, CA)	Carol DeMuth	(510) 559–6217
Southern Research Station (Asheville, NC)	Rob Doudrick	(828) 257–4305
Northeastern Area S&PF (Radnor, PA)	Kenneth Knauer	(610) 975–4103
International Institute of Tropical Forestry (Rio Piedras, PR)	William Edwards	(809) 766–5335
Washington Office	Nancy Osborne	(202) 205–1292

Comments on the draft 2000 Revision, including other issues and concerns that need to be considered in the development of the 2000 Revision, are requested.

Dated: November 24, 1999.

Mike Dombeck,

Chief.

[FR Doc. 99–31109 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural National Resources Conservation Service

Snake River Watershed, Marshall, Pennington, and Polk Counties, Minnesota

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: William Hunt, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Minnesota, is hereby providing notification that a record of decision to proceed with the installation of the Snake River Watershed project is available. Single copies of this record of decision may be obtained from William Hunt at the address shown below.

FOR FURTHER INFORMATION CONTACT: William Hunt, State Conservationist, Natural Resources Conservation Service, 375 Jackson Street, Suite 600, St. Paul, MN 55101, Telephone: (651) 602–7854.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention-and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: November 18, 1999.

William Hunt,

State Conservationist.

[FR Doc. 99–31100 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 2000

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster or are experiencing fundamental structural changes in the economic base.

Not more than 7 percent of the Agency quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBANK) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. CAIP loans are subject to a 50 percent limit of the overall CAIP loan program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business Programs Processing Division, Rural Business-Cooperative Service, USDA, Stop 3221, Washington, DC 20250–3221, telephone (202) 690–3809.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: November 23, 1999.

Wilbur T. Peer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–31081 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 31, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, D.C. 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Inventory of Work Orders.

OMB Control Number: 0572–0019.

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

Abstract: When a prospective borrower requests and is granted an RUS loan, a loan contract is established between the Federal government, acting through the RUS Administrator, and the borrower. At the time this contract is entered into, the borrower must provide RUS with a list of projects for which loan funds will be spent, along with an itemized list of the estimated costs of these projects. Thus, the borrower receives a loan based upon estimated cost figures.

RUS Form 219, Inventory of Work Orders, is one of the documents the borrower submits to RUS to support actual expenditures and an advance of loan funds. The form also serves as a connecting link and provides an audit trail that originates with the advance of

funds and terminates with evidence supporting the propriety of expenditures for construction or retirement projects.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 758.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 11,233.

Copies of this information collection, and related form and instructions, can be obtained from Bob Turner, Program Development and Regulatory Analysis, Rural Utilities Service, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 19, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–31084 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Pohnpei Utilities Corporation, Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment with respect to the potential environmental impacts related to the construction and operation of a 6.5 megawatt (MW) diesel electric generating plant at Dekehtik on the Island of Pohnpei. Pohnpei is the largest state in the Federated States of Micronesia. RUS may provide financing assistance to the Pohnpei Utilities Corporation (PUC) for the project.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414. His e-mail address is nislam@rus.usda.gov. Information is also available from Mr. Marcelino Actouka, General Manager, Pohnpei Utilities Corporation, P.O. Box C, Kolonia, Pohnpei FM96941 and Mr. Peter Howard, Executive Vice President, Oceanic Companies, Inc., 1287 Kalani Street, Suite 203, Honolulu, Hawaii 96817–4961, telephone (808) 874–0207.

SUPPLEMENTARY INFORMATION: The Dekehtik Generating Station will consist of a 6.5 MW diesel generating unit that will be located within an enclosed building. The same building could also house three smaller diesel units (2.4 MW total capacity) that may be relocated from the existing Nampohnmal Generating Station. Low sulfur light diesel fuel will be delivered via pipeline from the port facility and stored in four storage tanks. An existing substation and transmission line will distribute electricity generated by the facility to the island. The location of the proposed project is a 123,00 square feet section of the soon to be closed municipal waste dump site at Dekehtik. This area would be cleared of trash and refuse and filled with crushed coral or rock. Located in the immediate area, all of which has been designated as an industrial development zone, are the airport and the commercial port that serve Pohnpei.

Oceanic Companies, Inc. prepared an environmental report for RUS, which describes the project and assesses its environmental impacts. RUS has conducted an independent evaluation of the environmental report and believes that it accurately assesses the impacts of the proposed project. This environmental report will serve as RUS' environmental assessment of the project. No significant impacts are expected as a result of the construction of the project.

The environmental assessment can be reviewed at the headquarters of Pohnpei Utilities Corporation, Oceanic Companies, Inc., and the headquarters of RUS, at the addresses provided above.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for at least 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: November 23, 1999.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–31083 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Industrial Reports Surveys—WAVE I (Mandatory and Voluntary Submissions)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 31, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Judy Dodds, Assistant Chief for Census and Related Programs, (301) 457–4587, Census Bureau, Manufacturing and Construction Division, Room 2101, Building #4, Washington, DC 20233.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection.

In 1998, the Census Bureau converted the Current Industrial Reports (CIR) survey form names to reflect the switch from the old U.S. Standard Industrial Classification (SIC) system to the new North American Industry Classification System (NAICS). For example, the M37L under the old SIC system converted to M336L under the NAICS.

Due to the large number of surveys in the CIR program, for clearance purposes, we group the surveys into three waves. The mandatory and voluntary surveys in each wave are separately submitted. Thus, a total of six clearances cover all of the surveys in the CIR program. One wave is submitted for reclearance each year. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave I for clearance. The surveys in Wave I are:

Mandatory surveys	Voluntary surveys
M311H—Fats and Oils (Warehouse)	M336L—Truck Trailers*
M311M—Fats and Oils (Consumers)	MQ325B—Inorganic Fertilizer Materials and Related Products
M311N—Fats and Oils (Producers)	MQ327D—Clay Construction Products*
MA325F—Paints and Allied Products	MQ322E—Plumbing Fixtures*
MA327C—Refractories	
MA331A—Iron and Steel Castings	
MA331B—Steel Mill Products	
MA331E—Nonferrous Castings	
MA332K—Steel Shipping Drums and Pads	
MA333A—Farm Machinery and Lawn and Garden Equipment	
MA333M—Refrigeration, Air Conditioning & Warm Air Equipment	
MA332Q—Antifriction Bearings	
MA334R—Computers & Office & Accounting Machines	
MA335A—Switchgear, Switchboard Apparatus Relays, & Industrial Controls	
MA335F—Major Household Appliances	
MA335H—Motors and Generators	
MA335K—Wiring Devices and Supplies	
MA334B—Selected Instrument & Related Products	

*These voluntary surveys have mandatory annual counterparts.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0392—Mandatory Surveys. 0607–0393—Voluntary & Annual Counterparts Surveys.

Form Number: Set Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses, Other for Profit, or Organizations.

Estimated Number of Respondents: Mandatory Surveys—13,829. Voluntary & Annual Counterparts Surveys—2,991. Total—16,820.

Estimated Time Per Response: Mandatory Surveys—1.26 hrs. avg. Voluntary & Annual Counterparts Surveys—2.22 hrs. avg.

Estimated Total Annual Burden: Mandatory Surveys—13,032 hours. Voluntary & Annual Counterparts Surveys—1,877 hours. Total—14,909 hours.

Estimated Total Annual Cost: The estimated cost to respondents for all the CIR reports in Wave I for fiscal year 2001 is $197,395.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 61, 182, 224, and 225.

IV. Request for Comments

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 23, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–31005 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Award for Excellence in Economic Development—Request for Comments

ACTION: New collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following Emergency information collection under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Award for Excellence in Economic Development

Agency Form Number: Not Applicable.

OMB Approval Number:

Type of Request: New.

Burden: 150 hours.

Average Hours Per Response: 3.

Number of Respondents: Approximately 50 respondents.

Needs and Uses: EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) Information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5027, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 10 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 23, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–31004 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on December 16, 1999, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public.
3. Presentation on status of implementation of the Chemical Weapons Convention.

Closed Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded prior to the meeting to the address below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 14th St. & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: November 23, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–31038 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on December 14, 1999, at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC. The meeting will begin in open session at 9:30 a.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:30 a.m.–12:30 p.m.

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.
5. Open discussion.

Closed Session: 1:30 p.m.–5 p.m.

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 14th St. & Pennsylvania Ave., NW, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 25, 1999, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, contact Ms. Lee Ann Carpenter on (202) 482–2593.

Dated: November 23, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–31039 Filed 11–26–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54–99]

Foreign-Trade Zone 21—Charleston, South Carolina, Area; Application for Expansion; Correction

The **Federal Register** notice (64 FR 61820, November 15, 1999) describing the application submitted to the Foreign-Trade Zones Board by the South Carolina State Ports Authority, grantee of FTZ 21, requesting an expansion of its general-purpose zone to include an additional site at the former Charleston Naval Base and Shipyard, Cosgrove Avenue, N. Charleston, SC, is corrected as follows: last paragraph on page 61821, giving the location for the public inspection facility in N. Charleston, SC, has been changed to ''Office of the Port Director, U.S. Customs Service, 200 East Bay Street, Charleston, SC 29401.''

Dated: November 19, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–30966 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–99]

Foreign-Trade Zone 84—Houston, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority to expand its zone to include a site at the George Bush Intercontinental Airport in Houston, Texas, within the Houston-Galveston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 17, 1999.

FTZ 84 was approved on July 15, 1983 (Board Order 214, 48 FR 34792, 8/1/83), and the zone project currently consists of thirteen sites (1,499.92) at port facilities, industrial parks and warehouse facilities in Harris County.

The applicant is now requesting authority to expand the general-purpose zone to include the jet fuel storage and distribution system (22 acres) at the George Bush Intercontinental Airport on Fuel Storage Road, Houston, Texas. The site includes the existing jet fuel storage facility (17 acres) and an adjacent proposed 5-acre expansion of the facility planned for the year 2001. This facility consists primarily of jet fuel storage tanks, a pumping station, pipelines and other facilities and structures for loading and unloading fuel. The facility is owned by the City of Houston. The jet fuel system activity is currently handled by Ogden Aviation Services.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 31, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 14, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 500 Dallas, Suite 1160, Houston, TX 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230

Dated: November 19, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–31095 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Preliminary Results of Full Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of full five-year (''Sunset'') Reviews.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of seven full sunset reviews initiated on August 2, 1999 (64 FR 41915) covering various antidumping and countervailing duty orders and suspended investigations. Based on adequate responses from domestic and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the antidumping and countervailing duty orders or termination of the suspended investigations would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result

of these extensions, the Department intends to issue its preliminary results not later than February 18, 2000.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207, or (202) 482–1560 respectively.

Extension of Preliminary Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). The Department has determined that the sunset reviews of the following antidumping and countervailing duty orders and suspended investigations are extraordinarily complicated:

A–201–802 Grey Portland Cement and Cement Clinker from Mexico
A–307–803 Grey Portland Cement and Cement Clinker from Venezuela
C–122–815 Pure Magnesium from Canada
C–122–815 Alloy Magnesium from Canada
A–122–814 Pure Magnesium from Canada
A–821–802 Uranium from Russia
A–844–802 Uranium from Uzbekistan

Therefore, the Department is extending the time limit for completion of the preliminary results of these reviews until not later than February 18, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: November 22, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30964 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810, C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed-circumstances antidumping and countervailing duty administrative reviews.

SUMMARY: On October 5, 1999, the Department of Commerce published a notice of initiation and preliminary results of changed-circumstances antidumping and countervailing duty administrative reviews of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from the United Kingdom, in which we preliminarily determined that Niagara LaSalle (UK) Limited is the successor-in-interest to Glynwed Metals Processing Limited for purposes of determining antidumping and countervailing duty liability. We are now affirming our preliminary results.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson (Antidumping) or Dana Mermelstein (Countervailing), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4007, (202) 482–4929, or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (1998).

Background

On March 22, 1993, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (58 FR 15324). Also, on March 22, 1993, the Department published in the **Federal Register** the companion countervailing duty order (58 FR 15327).

On August 18, 1999, Niagara LaSalle (UK) Limited (Niagara) submitted a letter stating that it is the successor-in-interest to Glynwed Metals Processing Limited (Glynwed), and requested that the Department conduct a changed-circumstances review to determine whether Niagara should receive the same antidumping and countervailing duty treatment as is accorded Glynwed with respect to the subject merchandise. Niagara requested that the result of the Department's changed-circumstances review be retroactive to May 21, 1999, the date of its acquisition of Glynwed.

On October 5, 1999, we published a notice of initiation and preliminary results of changed-circumstances antidumping and countervailing duty administrative reviews (64 FR 53994) in which we preliminarily found that Niagara is the successor-in-interest to Glynwed for purposes of determining antidumping and countervailing duty liability. We stated that this finding would be effective as of the publication date of our final results for the purposes of antidumping duties, and as of May 21, 1999 for purposes of countervailing duties, if affirmed in our final results. We received comments from Niagara on October 15, 1999.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Interested Party Comments

Niagara argues that, while the Department properly recognized that Niagara's antidumping deposit rate as of May 21, 1999, should be that of the former Glynwed, the preliminary notice

fails to apply the correct rate as of that date. Niagara argues that the Department's determination to apply Glynwed's antidumping duty deposit rate to Niagara prospectively from the publication date of the final results, is contrary to the Department's finding that Niagara is the successor-in-interest to Glynwed as of May 21, 1999, and inconsistent with the retroactive application of Glynwed's countervailing duty deposit rate to Niagara. Niagara states that this failure to retroactively apply Glynwed's antidumping deposit rate of 7.69 percent to Niagara unjustly subjects it to the higher all-others rate of 25.82 percent for the entire period from May 21, 1999, to the date on which the final results in this case are published.

Finally, Niagara asserts that it has no practical means of obtaining a refund of the higher deposits, since the costs of undertaking an administrative review would exceed the value of the excess deposits it was erroneously required to pay.

Department's Position

We disagree with Niagara that it has been treated inconsistently with respect to the applicable cash deposit rates under the antidumping and countervailing duty orders. The basis for Niagara's apparent misunderstanding is that it fails to recognize that Glenwyd, the predecessor company to Niagara, was excluded, *ab initio,* from the countervailing duty order, but has always been subject to the antidumping duty order. As such, Glenwyd, and now its successor-in-interest Niagara, was never liable for any estimated cash deposits under the countervailing duty order. Thus, with the Department's determination that Niagara is the successor-in-interest to Glenwyd, Niagara (like Glenwyd) is not now, and never was subject to the countervailing duty order. Therefore, with respect to the countervailing duty order, it is appropriate to apply the changed circumstances-determination retroactively to May 21, 1999, the date Glenwyd became Niagara. (This is analogous to revocation, which may also apply retroactively. *See, e.g., Certain Fresh Cut Flowers From Ecuador: Final Results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order; Termination of Administrative Reviews,* 64 FR 56327, Oct. 9, 1999.)

However, with respect to the antidumping duty order, it is appropriate to change the estimated cash deposit rate for Niagara only as of the effective date of the Department's final changed-circumstances determination. Because Glenwyd was always subject to the antidumping duty order, it was always potentially liable for estimated cash deposits. Further, any new company under the antidumping duty order in question, even if it were subsequently determined to be the successor-in-interest to an existing company, would also be subject to estimated cash deposits.

In this instance, subject merchandise was entered under the name of Niagara, a company not heretofore assigned its own rate. Accordingly, its entries were properly subject to the all-others cash deposit rate at the time of entry. The all-others rate is by its very nature a prospective rate in that it is simply an estimate of the amount of duties to be paid by importers on future entries. It is not the assessment rate. Furthermore, in accordance with section 751(a)(2)(C) of the Act, a company's estimated cash deposit rate is only changed as the result of an administrative review. Thus, until the Department makes a final determination that a company subject to this antidumping duty order should be assigned a different cash deposit rate, the cash deposit rate assigned to its entries is the rate in effect at the time of entry.

Accordingly, in this instance, it is appropriate that the applicable cash deposit rate for Niagara's entries prior to these final results is the all-others cash deposit rate. That rate will, of course, be changed prospectively to Glenwyd's previous rate upon the effective date of this notice because the Department has determined that Niagara is, in fact, the successor-in-interest to Glenwyd. However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive. Any given cash deposit rate may, ultimately, be too high or too low. If Niagara believes that the deposits paid exceed the actual amount of dumping, it is entitled to request a review of those entries to determine the proper assessment rate and receive a refund of any excess deposits. This is the normal operation of our retrospective system.

Final Results

We determine that Niagara is the successor-in-interest to Glynwed for purposes of determining antidumping and countervailing duty liability. Because Glynwed is excluded from the countervailing duty order, we will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise produced and sold by Niagara (formerly Glynwed) entered, or withdrawn from warehouse, for consumption on or after May 21, 1999, the date of Niagara's acquisition of Glynwed. With regard to antidumping duties, a cash deposit rate of 7.69 percent will be effective for Niagara (formerly Glynwed) for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this changed-circumstances review.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: November 19, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31098 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–098

Anhydrous Sodium Metasilicate From France: Notice of Final Results of the 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 August 23, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 1998, through December 31, 1998. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review have not changed from those presented in the preliminary results of review, in which we applied total adverse facts available.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Stacey King or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1757/4477.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 23, 1999, the Department published in the **Federal Register** (64 FR 45949) the preliminary results of the review of this order. 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 January 1, 1998, through December 31, 1998, to be 60.0 percent. The Department has now completed the administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Final Results of the Review

Because we received no comments from interested parties, 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 January 1, 1998, through December 31, 1998, is as follows:

Company	Margin (percent)
Rhone-Poulenc, S.A	60.0

The Department will issue appraisement instructions for Rhone-Poulenc merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Rhone-Poulenc, S.A., will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 60.0 percent, the ''all others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 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) 777(i)(1) of the Act.

Dated: November 19, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31096 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Collated Roofing Nails From Taiwan: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 10, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on collated roofing nails from Taiwan (64 FR 4334). This review covers Dinsen Fastening System, Inc, a manufacturer/exporter of the subject merchandise to the United States, and the period November 20, 1997, through October 31, 1998. We conducted a verification of Dinsen Fastening System, Inc.'s antidumping duty questionnaire responses and gave interested parties an opportunity to comment on the preliminary results. No parties filed comments on the preliminary results. We have revised our margin calculation to correct an error in the verification report that was brought to our attention by the respondent on July 30, 1999. However, the correction did not change the final margin results from the preliminary margin results. The final results are listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Katherine Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1756, or 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1999, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on collated roofing nails from Taiwan (64 FR 43344) (*Preliminary Results*). We conducted verification of Dinsen Fastening System, Inc's, (''Dinsen'') antidumping duty questionnaire responses from June 1, 1999, through June 4, 1999, and issued

our report on July 6, 1999 (*see* Memorandum to the File: Sales and Cost of Production Verification). On July 30, 1999, Dinsen (''the respondent''), informed the Department of an error made with respect to Dinsen's threading cost for one control number in connection with the Department's verification of its sales and cost questionnaire response. While this submission was received too late to be analyzed for the preliminary results, we have considered it for purposes of these final results.

The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Scope of the Review

The product covered by this review is collated roofing nails made of steel, having a length of 13/16 inch to 1 13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.[1]

Collated roofing nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 7317.00.55.06. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Changes Since the Preliminary Results

We made the following change since the preliminary results: We deleted the adjustment made to Dinsen's threading cost for one control number to correct the per-kilogram threading cost, as described in Dinsen's July 30, 1999, submission.

Interested Party Comments

Interested parties did not file briefs in this review.

Final Results of the Review

As a result of this review, we have determined that the following margin exists for the period November 20, 1997, through October 31, 1998:

Manufacturer/exporter	Period	Margin (percent)
Dinsen Fastening System, Inc.	11/20/97–10/31/98	0.02 percent (*de minimis*).

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the respondent was unable to report importer-specific data, as facts available, we have calculated assessment rates based on the identity of the trading company involved in the sales transaction. We have calculated an assessment rate, based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those same sales. This rate will be assessed uniformly on all entries of that particular trading company made during the period of review (''POR''). The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise during the POR for which the trading-company-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Dinsen will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 2.98 percent, the all others rate established in the final determination of the less-than-fair-value investigation (52 FR 61729, November 19, 1997). The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice 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 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: November 19, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31099 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] On September 2, 1999, the Department made a final scope ruling that the scope of the antidumping duty orders on collated roofing nails from Taiwan and the People's Republic of China do not include stainless steel collated roofing nails.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers three producers/exporters of subject merchandise. The period of review is November 1, 1997, through October 31, 1998.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Farah Naim, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4203, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3174.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 120 days after the date on which the notice of preliminary results was published in the **Federal Register**. In the instant case, the preliminary results were published in the **Federal Register** on July 21, 1999 (64 FR 39115). The Department has determined that more time is needed to consider comments made by petitioners in their August 23, 1999, case brief. Therefore, pursuant to section 751(a)(3)(A) of the Act, because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the final results to no later than March 15, 2000.

Dated: November 18, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30968 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–601]

Final Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Malleable cast iron pipe fittings from Thailand.

SUMMARY: On July 29, 1999, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand (64 FR 41082) 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 received comments from respondent interested parties and rebuttal comments from domestic interested parties. The Department did not receive a request for a public hearing and, therefore, no hearing was held. 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 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 30, 1999.

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 certain malleable cast iron pipe fittings, other than grooved, from Thailand. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS item numbers are provided for convenience and customs purposes.

Background

On May 28, 1999, the Department issued the *Preliminary Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings from Thailand* (64 FR 41082) (''*Preliminary Results*''). In our *Preliminary Results,* we found that revocation of the order would likely result in 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 1.70 percent for Siam Fittings Co., Ltd. (''Siam'') as well as for all other producers and/or exporters.

On September 13, 1999, within the deadline specified in 19 CFR 351.309(c)(1)(i), we received comments on behalf of Siam, Thai Malleable Iron and Steel Co., Ltd., and BIS Pipe Fittings Industry Co., Ltd. (collectively, ''the Thai respondents''). On September 20, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from the Cast Iron Pipe Fittings Committee and its individual members, Grinnell Corporation and Ward Manufacturing, Inc. (collectively, ''CIPFC''). No public hearing was requested or held in this sunset review. We have addressed the comments received below.

Comments

Comment 1: The Thai respondents argue that the Department's preliminary determination concerning the likelihood of continuation or recurrence of dumping fails to reflect congressional intent. They argue that the Statement of Administrative Action (''SAA'') expressly states that increasing exports after the issuance of an antidumping duty order is indicative that dumping is not likely to continue or resume if the order were revoked. Specifically,

quoting the SAA at 889–90, the Thai respondents state that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked. The Thai respondents state that imports of the subject merchandise from Thailand increased three-fold over the life of the order. Moreover, the Thai respondents assert that, during the past five years, exports of subject merchandise from Thailand consistently exceeded the quantity exported from Thailand prior to the issuance of the order. Thus, according to the Thai respondents, increasing imports of subject merchandise from Thailand favors a determination that dumping is not likely to prevail.

In rebuttal, the CIPFC argues that the Thai respondents increasing import volumes argument is inaccurate. The CIPFC states that the Thai respondents, in their February 3, 1999, substantive response, admitted that exports of pipe fittings from Thailand have fluctuated during the last five years. Furthermore, the CIPFC states that there has actually been a decline in import volumes in four of the last five years (1994–1998). Therefore, according to CIPFC, there are not legitimate grounds for the Department to make a ''no likelihood'' determination.

Department: The Department disagrees with the Thai respondents. The existence of increasing imports by itself does not indicate that there would be no likelihood of continuation or recurrence of dumping. Rather, as provided in the SAA and *Sunset Policy Bulletin,* declining or no dumping margins *accompanied* by steady or increasing imports may indicate that a company does not have to dump in order to maintain market share. In this case, there has been no decline in dumping margins. Rather, absent administrative review, the dumping margin from the original investigation is the only indicator available to the Department with respect to the level of dumping. Because 1.70 percent is above the 0.5 percent *de minimis* standard applied in sunset reviews, we find that dumping has continued over the life of the order and is likely to continue if the order were revoked.

Comment 2: The Thai respondents argue that the fact that the domestic producers have never bothered to request that the Department conduct an administrative review of this order further supports a finding of no likelihood of continuation or recurrence of dumping. Citing to the preamble of the Department's May 1997 final regulations, the Thai respondents indicate that the Department itself has recognized that, ''[i]f domestic interested parties do not request a review, presumably it is because they acknowledge that subject merchandise continues to be fairly traded''. Furthermore, the Thai respondents cite to the Department's final determination in the sunset review of sugar and syrups from Canada (64 FR 48362 (September 3, 1999)) in which, according to the Thai respondents, the Department concluded that the absence of a domestic party request for an administrative review points to a finding of no dumping.

The CIPFC argues that the Thai respondents have completely mischaracterized the Department's sunset determination in sugar and syrups from Canada. The CIPFC asserts that the Department specifically rejected the proposition that the absence of administrative reviews could be equated with a lack of domestic industry interest in the order. More importantly, according to CIPFC, the sugar and syrups from Canada case involved a zero deposit rate which had remained in effect for many years, whereas respondents in this case have a 1.70 percent deposit rate.

Department: We do not agree that the absence of a request for an administrative review of this order supports an inference that the subject merchandise *continues* to be fairly trades or points to finding of no dumping. Unlike the facts in sugar and syrups from Canada, in which a zero deposit rate had been in effect for many years, the record in this case demonstrates the existence of an above *de minimis* deposit rate. Therefore, the domestic interested parties' lack of request of an administrative review presumably reflects their belief that dumping continues at a rate of 1.70.

Comment 3: The Thai respondents reiterate their arguments from their February 3, 1999, substantive response concerning the *de minimis* standard in their comments on the Department's *Preliminary Results.* The Thai respondents argue that, under current WTO standards, a 1.70 percent dumping margin would be *de minimis.* According to the Thai respondents, Article 5.8 of the Agreement on Implementation of Article VI (''Antidumping Agreement'') defines a *de minimis* margin of dumping as one that is less than two percent. The Thai respondents acknowledge that the Department's regulations impose a 0.5 percent *de minimis* standard for reviews (*see* 19 CFR 351.106(c)(1)), however, they argue that regulations which are inconsistent with the Antidumping Agreement should not be given effect.

The CIPFC, in its September 20, 1999, rebuttal comments, states that the Department has already soundly rejected the treatment of Siam's 1.70 dumping margin as *de minimis.* The CIPFC further states that the statute and the regulations encompassing the Uruguay Round commitments establish a *de minimis* rate of 0.5 percent (*see* 19 USC § 1675a(c)(4)(B) and 19 CFR 351.106(c)(1). Furthermore, according to the CIPFC, 19 USC § 3512(d) specifically provides that rates above 0.5 percent are not *de minimis* in sunset reviews.

Department: The Department agrees with the CIPFC. Both the statute and regulations clearly provide that in reviews of orders, the Department will treat as *de minimis* any weighted average dumping margin that is less than 0.5 percent *ad valorem* (*see* section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1)). Further, section 752(c)(4)(B) of the Act specifically provides that the *de minimis* standard to be applied in sunset reviews is the standard applied in reviews conducted under subsections (a) and (b) of section 751 (*i.e.,* 0.5 percent). Finally, we note that the SAA at 845 specifies that the requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations. Therefore, we find that the 1.70 percent deposit are applied to Siam as well as all other Thai producers and/or exporters, is not *de minimis* for the purposes of this sunset review.

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 and those above. Furthermore, for the reasons set forth in our *Preliminary Results* of review and those above, we find that margins calculated in the original investigations are probative of the behavior of Thai producers and/or 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)
Siam	1.70
All Other Producers/Exporters	1.70

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 of 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 22, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30961 Filed 11–29–99; 8:45]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–505]

Final Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: malleable cast iron pipe fittings from brazil.

SUMMARY: On July 29, 1999, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil (64 FR 41089) 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 party. 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 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, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 30, 1999.

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 certain malleable cast iron pipe fittings, other than grooved, from Brazil. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Background

On July 29, 1999, the Department issued the *Preliminary Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings from Brazil* (64 FR 41089) (''*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 5.64 percent for Industria de Fundicao Tupy, S.A. (''Tupy'') as well as for all other producers and/or exporters. 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 Brazilian 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)
Tupy	5.64
All Other Producers/Exporters	5.64

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. 99–30965 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Notice of Preliminary Results of Antidumping Duty New Shipper Review and Extension of Time Limit for Final Results of New Shipper Review: Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty new shipper review and extension of time limit for final results of new shipper review.

SUMMARY: In response to a request from the respondent, Atlas Tube, Inc. (''Atlas''), the Department of Commerce (the ''Department'') is conducting a new shipper review of the antidumping duty order on oil country tubular goods (''OCTG'') from Canada. This review covers one manufacturer/exporter, Atlas, and the period June 1, 1998 through November 30, 1998.

We have preliminarily determined the dumping margin for Atlas to be 0.86 percent during the period June 1, 1998, through November 30, 1998. Interested

parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3936 or (202) 482–5253 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1998).

Background

The Department published an antidumping duty order on OCTG from Canada on June 16, 1986 (51 FR 21782) and an amended order on August 19, 1986 (51 FR 29579). On December 30, 1998, Atlas Tube Inc., requested the Department to initiate a new shipper review pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 351.214(b). We initiated this new shipper review on February 3, 1999, (64 FR 5265) for the period June 1, 1998 through November 30, 1998.

The Department issued its questionnaire on February 24, 1999, and received Atlas' response to Section A on March 15, 1999, Sections B and C on April 2, 1999, and supplemental responses on August 30, 1999. Subsequently, on June 23, 1999, (64 FR 33475) due to the complexity of the issues raised in this review, the Department extended the time limit for the completion of preliminary results of the new shipper review. After an analysis of Atlas' Section A, B, and C responses, the Department initiated on August 6, 1999, an investigation to determine whether Atlas made sales below the cost of production. Respondent submitted its Section D response on August 30, 1999, and supplemental Section D response on October 29, 1999.

The Department is conducting this new shipper review in accordance with section 751(a)(2)(B) of the Act. Concurrent with the instant new shipper review, the Department is also conducting an administrative review of Atlas under section 751(a)(1) of the Act. Pursuant to respondent's request, due to the fact that the new shipper review covers shipments through November 30, 1999, the administrative review of Atlas (which would normally cover the period June 1, 1998 through May 31, 1999) is limited to the examination of shipments during the period December 1, 1998 through May 31, 1999. *See* 19 CFR 351.214(j). The preliminary results of administrative review are currently scheduled for February 29, 2000.

Extension of Final Results of Review

Section 751(a)(2)(B)(iv) of the Act permits the Department to extend the deadlines for the final results of review if the review is extraordinarily complicated. We have determined that this review is extraordinarily complicated and that we are unable to complete this review in the time frame provided by the statute. The Department is hereby extending the time limit for issuing the final results to 120 days after the publication of this preliminary results of review in the **Federal Register**.

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (''API'') specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Fictitious Market

On April 22, 1999, petitioners alleged that Atlas had created a fictitious home market sale for comparison purposes. Petitioners based their allegation on the fact that all of the subject merchandise sold in the United States during the POR was of one outside diameter size and that there was only a single sale of subject merchandise with the same outside diameter in the home market. Furthermore, they allege that the Department does not have sufficient information to make a determination, pursuant to section 773(a)(2) of the Act, whether there have been different movements in the prices at which different forms of subject merchandise have been sold in the home market and whether any such movement appears to reduce the amount by which foreign market value exceeds the U.S. price of the merchandise. Petitioners cite the Department's findings in *Porcelain-on-Steel Cookware from Mexico,* 58 FR 32095, 32096 (June 8, 1993), as support for their argument.

In our August 6, 1999, Section B supplemental questionnaire, we requested Atlas to demonstrate that the single home market sale of subject merchandise of the same outside diameter as the merchandise sold in the United States was made in the normal course of trade. In its August 30, 1999 response, Atlas stated that the circumstances surrounding this sale involved a shipping error where its customer inadvertently received merchandise of the wrong outside diameter size. Although the customer did not order the size of material delivered, Atlas stated that the customer kept the merchandise after it negotiated certain adjustments to the terms of the sale. Upon reviewing the information on the record, we note the following: (1) the sale in question accounts for a small percentage of total home market sales, (2) Atlas sold subject merchandise with the same outside diameter as the merchandise sold in the United States to only one customer while its home market sales of subject merchandise with other diameters were to multiple customers, and (3) Atlas was forced to negotiate certain adjustments to the terms of the sale in order to persuade its

customer to accept the delivery. Based upon these facts, the Department concludes that the sale at issue is most appropriately considered in the context of the ordinary course of trade provision of the statute rather than the fictitious market context. The Department preliminarily finds that the circumstances surrounding this sale are unusual enough to determine that this sale was made outside the ordinary course of trade. *See Decision Memorandum: Oil Country Tubular Goods from Canada—Petitioners' Allegation That Atlas Tube Inc.'s Matching Home Market Sale Is Outside the Ordinary Course of Trade,* November 24, 1999. Therefore, consistent with section 773(a)(1)(B) of the Act, we have excluded this sale from our calculations for the preliminary results because it is outside the ordinary course of trade. For this reason, we need not address whether to exclude this sale pursuant to section 773(a)(2) of the Act. However, we will continue to examine this issue in the final results of this review.

United States Price

Atlas reported as export price (''EP'') transactions sales of subject merchandise to unaffiliated U.S. customers prior to importation.

We calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise warranted, based on the facts of record. We based EP on the delivered price to unaffiliated purchasers in the United States. We adjusted the starting price by the amount Atlas reported for billing adjustments and made deductions to the starting price for discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, U.S. inland freight, and U.S. brokerage and handling charges.

Normal Value

After testing (1) home market viability and (2) whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Atlas' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Atlas' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Atlas.

2. Cost of Production Analysis

On April 22, 1999, petitioners filed an allegation that Atlas made home market sales at prices that were below the cost of production (''COP''). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Atlas had sold OCTG in the home market at prices less than the COP. Accordingly, on August 30, 1999, pursuant to section 773(b) of the Act, we initiated a COP investigation with respect to Atlas to determine whether sales were made at prices less than the COP.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Atlas' cost of materials and fabrication for the foreign like product, direct and indirect selling expenses, plus an amount for home market SG&A, interest expenses, and packing costs.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and rebates.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to be made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compare prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. With respect to U.S. price for EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Atlas reported one customer category and one channel of distribution (*i.e.,* sales to unaffiliated distributors) for its home market sales. Atlas reported EP sales in the U.S. market. For EP sales, Atlas also reported one customer

category and one channel of distribution (*i.e.,* direct sales to unaffiliated distributors). Atlas claimed in its response that its EP sales were made at the same LOT as home market sales to unaffiliated distributors. For this reason, Atlas has not asked for a LOT adjustment to NV for comparison to its EP sales.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Atlas' sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. Atlas reported that its selling functions for home market sales are arranging for freight, warehousing, and warranty service; however, we noted that Atlas did not report any warehouse or warranty expenses for home market sales during the POR. After reviewing the record evidence, we agree with Atlas that its home market sales comprise a single LOT.

In analyzing Atlas' selling activities for its EP sales, we noted that the sales generally involved the same selling functions associated with the home market LOT described above. Atlas reported that these selling activities are arranging for freight, warehousing, and warranty services; however, we noted that Atlas did not report any warehouse or warranty expenses for U.S. market sales during the POR. Based upon the record evidence, we have determined that there is one LOT for all EP sales and that it is the same LOT as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) is warranted.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers, where appropriate. The NV price was reported on a Goods and Services Tax-exclusive basis. We adjusted the starting price by the amount Atlas reported for billing adjustments. We made deductions from the starting price for rebates, inland freight, and inland freight insurance. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results

As a result of this review, we preliminarily determine that a 0.86 percent dumping margin exists for Atlas for the period June 1, 1998, through November 30, 1998.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). A party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this new shipper review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. There was only one importer during the POR. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Atlas reported entered value on an actual basis by subtracting discounts, freight, and brokerage and handling costs from the its reported U.S. price. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Atlas will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 16.65 percent, the ''all-others'' rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 351.214.

Dated: November 19, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30963 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan: Final Results of Changed Circumstances Review; Revocation of Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances review and revocation of antidumping findings.

SUMMARY: On October 27, 1999, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances

review and preliminary results of review with intent to revoke the antidumping finding on roller chain from Japan. We are now revoking this finding, retroactive to April 1, 1997, based on the fact that domestic parties no longer have interest in maintaining the antidumping finding.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor on Tom Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

On October 13, 1999, the petitioner, American Chain Association (''ACA''), requested that the Department conduct a changed circumstances review to revoke the antidumping finding on roller chain from Japan retroactive to April 1, 1997. The petitioner stated that circumstances have changed such that the petitioner no longer has an interest in maintaining the antidumping finding. Additionally, the petitioner indicated that it represents virtually all roller chain producers in the United States accounting for over 90 percent of the U.S. roller chain production.

We preliminarily determined that the affirmative statement of no interest by the ACA constituted changed circumstances sufficient to warrant revocation of this finding. Consequently, on October 27, 1999, we published a notice of initiation of a changed circumstances review and preliminary results of review with intent to revoke the finding. *See Roller Chain, Other Than Bicycle from Japan: Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke Finding, Rescission of Antidumping Duty Administrative Reviews, and Termination of Scope Inquiry* (64 FR 57863). We received no comments from interested parties on the preliminary results of this changed circumstances review.

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

On March 24, 1998, the Department determined that certain models of silent timing chain produced and exported by Kaga for use in automobiles are outside the scope of the antidumping finding. (*See Final Scope Ruling: Kaga's Request for Scope Ruling on Automotive Silent Timing Chain,* March 24, 1998, on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building).

Final Results of Changed Circumstances Review; Revocation of Finding

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping finding based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221, if the Department determines that there exist changed circumstances sufficient to warrant a review. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke a finding, in whole or in part, if it concludes that the finding under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product.

The ACA is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b). Furthermore, the ACA was the petitioner in the less-than-fair-value (''LTFV'') investigation of this proceeding and represents substantially all of the production of the domestic like product. Based on the affirmative statement by the ACA of no interest in the continued application of the finding and the fact that no interested parties objected to or otherwise commented on our preliminary results of this review, we determine that there are changed circumstances sufficient to warrant revocation of the finding. Therefore, the Department is revoking the antidumping finding on roller chain from Japan, retroactive to April 1, 1997.

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of roller chain from Japan made on or after April 1, 1997. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act.

This notice is in accordance with sections 751(b)(1), 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.222.

Dated: November 19, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30970 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–604]

Amended Final Results of Expedited Sunset Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of expedited sunset review: Tapered roller bearings and parts thereof, finished and unfinished, from Japan.

SUMMARY: On November 4, 1999, the Department of Commerce (''the Department'') issued its final results of the sunset review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), over four inches, from Japan (64 FR 60266). On November 3, 1999, Koyo Corporation U.S.A.-Manufacturing Division, Koyo Seiko Co., Ltd., and Koyo Corporation U.S.A. (collectively, ''Koyo'') timely alleged that the Department made a ministerial error in its final results. The domestic interested parties did not respond to the ministerial error comments. We agree with Koyo and, therefore, are amending the final results.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 30, 1999.

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on TRBs, over four inches, from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On November 4, 1999, the Department issued its final results of the sunset review of the antidumping duty order on TRBs, over four inches, from Japan (64 FR 60266), in which we determined that there was a likelihood of continuation or recurrence of dumping if the order were revoked. In this determination, the Department forwarded to the Commission two company-specific weighted-average dumping margins and the ''all others'' rate from the original investigation.

On November 3, 1999, the Department received allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from Koyo that the Department made a ministerial error in its final results. Koyo alleged that the Department, in its final results of the sunset review for this case, reported to the Commission the margin for Koyo from the original less than fair value (''LTFV'') determination, but overlooked the fact that this margin had been amended due to the correction of clerical errors.[1] Koyo therefore urged the Department to report the corrected margin to the Commission.

After analyzing Koyo's November 3, 1999, submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in the final determination of this sunset review. The Department notes that the definition of a ministerial error provides not only for the correction of errors in arithmetic but also for ''any other similar type of unintentional error which the Secretary considers ministerial'' (*see* 19 CFR 351.224(f)). In the Department's final results of the sunset review for this case, we inadvertently overlooked the fact that the original LTFV determination had been subsequently amended. The Department's reliance the original unamended margins from the final determination in the sunset review was in error.

Amended Final Results of Review

For the reasons stated above and in our November 4, 1999, final results of expedited sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the amended margins listed below.

Manufacturer/exporter	Margin (percent)
Koyo Seiko Co., Ltd	36.21
NTN Toyo Bearing Co., Ltd	36.53
All Others	36.52

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 22, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30969 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* 52 FR 47955 (December 17, 1987).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decisions and amended final results of antidumping duty administrative reviews.

SUMMARY: On February 11, 1992, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping finding on tapered roller bearings (TRBs), finished and unfinished, and parts thereof, from Japan during the period October 1, 1989 through September 30, 1990. See *Tapered Roller Bearings, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review* 57 FR 4960. Subsequent to our publication of these final results, parties to the proceeding challenged certain aspects of our final results determinations before the United States Court of International Trade (CIT) and, in certain instances, before the United States Court of Appeals for the Federal Circuit (CAFC).

The CIT recently affirmed final remand results with respect to the 1989–90 final results. On April 10, 1998, we amended our final results of review with respect to certain respondents for which litigation was completed. See *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews,* 63 FR 17815 (*1989–90 TRB Final Results*). As there is now a final and conclusive court decision with respect to litigation for the remaining respondent, we are hereby amending our final results of review and will subsequently instruct Customs to liquidate entries subject to these reviews.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2657 or (202) 482–5222, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the 1989–90 final results for which the CIT and CAFC have issued final and conclusive decisions. It is important to note that, due to the fact that litigation for each TRBs final results was unconsolidated, the CIT issued two or more orders throughout the course of litigation, which required us to recalculate a respondent's final results margin several times. To ensure the accurate calculation of amended final results, any recalculation we performed for a given respondent pursuant to a specific order reflected all recalculations we performed for that respondent pursuant to earlier orders. As a result, the last CIT order requiring a recalculation of a respondent's margin reflects the final amended margin for the respondent, provided that final and conclusive decisions have been made by the CIT and CAFC with respect to litigation which affected the respondent's final results.

On February 11, 1992, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1989–90 period of review (POR). This notice covered the administrative reviews for Koyo Seiko Co., Ltd. (Koyo), NSK Ltd. (NSK), Nachi-Fujikoshi Corporation, and NTN Toyo Bearing Co., Ltd (NTN). Subsequent to the publication of these final results, three respondents '' NTN, Koyo, and NSK '' and The Timken Company (Timken), the petitioner in this case, challenged certain issues before the CIT. The CIT and CAFC issued final and conclusive decisions with respect to the NSK and Timken litigation; on April 10, 1998, we published in the **Federal Register** our notice of final court decisions and amended final results for NSK. See *1989–90 TRB Final Results* at 17818. The CIT has now issued a final and conclusive decision with respect to the NTN litigation (CIT Ct. Nos. 92–03–00168 and 92–04-00257). We are hereby amending our final results of the 1989–90 administrative review for NTN.

The decisions issued by the CIT and CAFC with respect to the Department's final results for NTN were:

- *NTN* v. *U.S.,* Slip Ops. 94–200 (December 29, 1994) and 95–1 (January 3, 1995) (The CIT ordered the Department to apply the 10 percent cap for the model match methodology, explain its disregard of NTN's credit expense calculation methodology, and correct the margin calculation program for errors in the deduction of discounts from home market price for the cost of production test).
- *NTN* v. *U.S.,* Slip Op. 95–104 (June 7, 1995) (The CIT affirmed the remand results and dismissed the 92–03–00168 and 92–04–00257 litigation).
- *NTN* v. *U.S.,* Slip Op. 95–1477 and -1479 (July 10, 1996) (The CAFC overturned the CIT on its decision regarding the 10 percent cap for the model match methodology used for the final results for NTN.)
- *NTN* v. *U.S., Slip Ops. 96–150 (August 28, 1996) and 96–151 (August 29, 1996)* (In light of the CAFC's decision in Slip Op. 95–1479, the CIT ordered the Department to recalculate the dumping margin for NTN without imposing the 10 percent cap under the 92–03–00168 and 92–04–00257 litigation.)
- *NTN* v. *U.S.,* Slip Op. 98–90 (June 30, 1998) (The CIT affirmed the remand results and dismissed the 92–03–00168 and 92–04–00257 litigation).

As there are now final and conclusive court decisions with respect to the 92–03–000168 and –04–00257 (NTN) litigation, we are amending our final results of review for NTN based on the last court order which required a recalculation of NTN's rate (*NTN* v. *U.S.,* CIT Slip Ops. 96–150 and –151). The amended final results margin for NTN is 29.63 percent. We will issue instructions to Customs to liquidate entries of subject merchandise made by NTN during this period pursuant to these amended final results.

Amendment to Final Determinations

Pursuant to 19 U.S.C. 1516(f), we are now amending the final results of the 1989–90 administrative review of the antidumping finding on TRBs from Japan. The weighted-average margin is:

Manufacturer/exporter	Margin (percent)
NTN Toyo Bearing Co., Ltd.	29.63

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the review of the period listed above. The Department will issue appraisement instructions directly to Customs.

Dated: November 22, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31097 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Initiation of Antidumping Duty Investigation: Certain Tin Mill Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg at (202) 482–1386 or Linda Ludwig at (202) 482–3833, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On October 28, 1999, the Department of Commerce (''the Department'') received a petition filed in proper form by Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America, AFL–CIO (collectively petitioners). The Department received supplemental information to the petition on November 8, 1999.

In accordance with section 732(b) of the Act, petitioners allege that imports of certain tin mill products (''TMP'') from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation they are requesting the Department to initiate (*see Determination of Industry Support for the Petition* below).

Scope of Investigation

The scope of this investigation includes tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single-or double-reduced), and whether or not coated with a plastic material.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7210.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has, therefore, adopted the domestic like product definition set forth in the petition. In this case, the Department has determined that the petition and supplemental information to the petition contain adequate evidence of sufficient industry support (see Attachment to the Initiation Checklist Re: Industry Support, November 17, 1999). Producers and workers supporting the petition represent over 50 percent of total production of the domestic like product. Accordingly, both tests under section 732(c)(4)(A) are satisfied, and the Department determines that this petition is filed on behalf of the domestic industry within the meaning of 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Japan

Petitioners identified Nippon Steel Corporation, NKK Corporation, Kawasaki Steel Corporation, and Toyo Kohan Co. Ltd. as possible exporters of TMP from Japan. Petitioners further identified these exporters as the primary producers of subject merchandise in Japan. Petitioners based export price (''EP'') for imports from Japan on import values as recorded in official U.S. Department of Commerce IM–145 statistics. In calculating import values, petitioners used the customs values reported for the HTS categories which represent imports of tin plate (*e.g.,* HTSUS 7210.12.0000) and imports of tin free steel (*e.g.,* HTSUS 7210.50.0000). Petitioners used average customs values for each product (for the month of June 1999) which approximate the FOB price of the merchandise, packaged and ready for delivery in the exporter's country. Petitioners did not deduct foreign inland freight and handling in Japan because they had no information regarding these expenses.

With respect to normal value (''NV''), petitioners stated that the volume of Japanese home market sales was sufficient to form a basis for normal value, pursuant to section 773(a)(1)(C)(ii) of the Act. Petitioners constructed normal values based on the average prices of tin mill products sold in Japan by Nippon Steel Corporation (''Nippon'') to large end users during June 1999. Petitioners determined that, because Nippon is the largest producer of the subject merchandise in the Japanese market, Nippon's prices would be representative of the normal value in the Japanese tin mill market. The Japanese home market prices for five sample models of tin plate products and thirteen sample models of tin free steel were obtained by foreign market research consultants in Japan. The prices used in the calculation of NV were delivered, VAT exclusive prices. Petitioners derived NV by deducting a commission from the delivered price, which represents payment made to large trading companies. Petitioners also deducted expenses for freight, handling, and other movement related expenses such as storage during transportation and tolls. For the calculation of dumping margins, petitioners compared the average unit value for all five sample sales of tin plate to the average customs value for the corresponding HTSUS item for the month of June 1999, and the average unit value for all thirteen sample sales of tin free steel to the

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

average customs value for the corresponding HTSUS item for the month of June 1999.

The estimated dumping margins in the petition, based on a comparison between Nippon's home market prices and U.S. prices derived from IM–145 statistics, range from 0.78 percent to 95.29 percent.

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of certain tin mill products from Japan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than fair value. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury,* November 17, 1999).

Initiation of Antidumping Investigations

Based upon our examination of the petition on TMP and petitioners' supplemental information clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain tin mill products from Japan are being, or are likely to be, sold in the United States at less than fair value. Unless the deadline is extended, we will make our preliminary determination no later than 140 days after the date of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of Japan. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by December 13, 1999, whether there is a reasonable indication that imports of certain tin mill products from Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: November 17, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30972 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–333–401]

Final Results of Full Sunset Review and Termination of Suspended Investigation: Cotton Shop Towels From Peru

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review and termination of suspended investigation: Cotton shop towels from Peru.

SUMMARY: On July 29, 1999, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru (64 FR 41089) 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 party. As a result of this review, the Department finds that termination of the suspended countervailing duty investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy. Therefore, we are terminating this suspended investigation effective 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.

EFFECTIVE DATE: January 1, 2000.

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

The merchandise subject to this suspended countervailing duty investigation is cotton shop towels from Peru. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Background

On July 29, 1999, the Department issued the *Preliminary Results of Full Sunset Review: Cotton Shop Towels From Peru* (64 FR 41089) (''*Preliminary Results*''). In our *Preliminary Results*, we found that termination of the suspended countervailing duty investigation would not be likely to result in recurrence of a countervailable subsidy. In addition, we indicated our intent, pursuant to section 782(i)(2) of the Act, to verify the previously unverified information relied on in making our determination. Prior to verification, we invited interested parties to comment on the information to be verified. We received no comments.

From August 24, 1999, to August 26, 1999, we verified information used in making this determination. The Department's verification report was made available to the domestic and respondent interested parties. In addition, a copy of this report is available in the Central Records Unit of the Import Administration, Room B–099, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230 (*see* Verification Report: Cotton Shop Towels from Peru, dated September 7, 1999).

Following the issuance of our verification report, we again received no comments from any interested party.

Final Results of Review

As a result of this review, we find that termination of the suspended countervailing duty investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in our *Preliminary Results* of review and confirmed in our verification report.

As a result of this determination by the Department that termination of the suspended countervailing duty investigation on cotton shop towels from Peru would not be likely to lead to continuation or recurrence of a countervailable subsidy, the Department, pursuant to section 751(d)(2) of the Act, is terminating this suspended investigation. Pursuant to 751(c)(6)(A)(iv) of the Act, this termination is effective January 1, 2000. The Department will complete any pending administrative reviews of this suspended investigation and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

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.

Dated: November 22, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30962 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Preliminary Results of Full Sunset Review: Welded Carbon Steel Pipes and Tubes From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Welded Carbon Steel Pipes and Tubes from Turkey.

SUMMARY: On May 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on welded carbon steel pipes and tubes from Turkey (63 FR 23596) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of the notices of intent to participate and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full (240 day) review. In conducting this sunset review, the Department preliminarily finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the ''Preliminary Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 30, 1999.

Statute and Regulations

This review is being 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 19 C.F.R. 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

This order covers shipments of Turkish welded carbon steel pipes and tubes, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced in accordance with various American Society Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–500, or A–501. The subject merchandise was originally classifiable under item number 416.30 of the Tariff Schedules of the United States Annotated (''TSUSA''); currently, they are classifiable under item numbers 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the TSUSA and HTSUS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

This review covers all producers and exporters of subject merchandise from Turkey.

History of the Order

The Department published its final affirmative countervailing duty determination on welded carbon steel pipes and tubes from Turkey in the **Federal Register** on January 10, 1986 (51 FR 1268) and issued the countervailing duty order on March 7, 1986 (51 FR 7984). The Department found the following programs to confer subsidies: (1) *Export Tax Rebate and Supplemental Tax Rebate;* (2) *Preferential Export Financing;*[1] (3) *Deduction from Taxable Income for Export Revenues;* and (4) *Resource Utilization Support Fund (''RUSF'').* The country-wide countervailing duty rate was 18.81 percent, and after taking into account several program-wide changes, the Department established a duty deposit rate of 17.80 percent. The following companies were investigated in the original investigation: the Borusan group of companies, Mannesmann-Suemerbank Boru Endustris (''Mannesmann-Suemerbank''), Yucel Boru ve Profil

[1] Short-term export financing under Decree number 84/7557 was abolished by Decree number 84/8861, which became effective on January 1, 1985. The Department verified that all such loans were repaid prior to our preliminary determinations, and we took the elimination of this program into account by excluding it from the duty deposit rate (*see Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 1268 (January 10, 1986)).

Endustrisi (''Yucel Boru''), Erkboru Profil Sanayi ve Ticaret, and Umran Spiral Welded Pipe, Inc.[2]

The Department has conducted the following administrative reviews since the issuance of the order:

Review	Period of review	Final result citation
(1)	28 Oct 85–31 Dec 86	53 FR 9791 (March 25, 1988).
(2)	1 Jan 95–31 Dec 95	62 FR 43984 (August 18, 1997).
(3)	1 Jan 96–31 Dec 96	63 FR 18885 (April, 18, 1997).
(4)	1 Jan 97–31 Dec 97	64 FR 44496 (August 16, 1999).

During administrative reviews of this order, the Department investigated programs and companies in addition to those covered in the original investigation. In the first administrative review, covering the 1985/86 period, the *Export Revenue Tax Deduction* and *General Incentives Program (''GIP'')* were found to confer subsidies. The *Export Tax Rebate,* with respect to the U.S. and *RUSF* programs, were found to have been terminated,[3] and the Department determined a rate of 1.43 percent for Bant Boru Sanayi ve Ticaret A.S. (''Bant Boru'') and a rate of 12.67 percent for all others (53 FR 9791, March 25, 1988). After taking into account the program terminations, the Department established a deposit rate of 7.26 percent for all others, and, based on a zero subsidy rate, waived duty deposit requirements for Bant Boru.

In the second administrative review, the Department found that the *Pre-Shipment Export Credit* program conferred a countervailable subsidy on producers/exporters of subject merchandise.[4] Additionally, the following new programs were determined to confer subsidies: (1) *Investment Allowance* under the *GIP;* (2) *Foreign Exchange Loan Assistance;* (3) *Freight Program;* (4) *Resource Utilization Support Premium;*[5] and (5) *Export Incentive Certificate Customs duty and Other Tax Exemptions. Deduction from Taxable Income for Export Revenues was found to have been terminated in the second administrative review.*[6] The Department determined net subsidies of 4.06 percent for Erciyas Boru Sanayii ve Ticaret A.S. (''Erbosan'').[7]

In the third administrative review, the Department found that the new program, *Deduction from Taxable Income for Export Revenues,* conferred a countervailable subsidy of less than 0.005 percent for Borusan Birlesik Boru Fabrikalari A.S. (''BBBF'') and Borusan Ihracat Ithalat ve Dagitim A.S. (''Borusan Dagitim'') (BBBF and Borusan Dagitim are hereinafter referred to as the ''Borusan Group''.).[8] The following programs identified in previous reviews were found to confer subsidies: (1) *Investment Allowance;* (2) *Foreign Exchange Loan Assistance;* (3) *Incentive Premium on Domestically Obtained Goods; and* (4) *Pre-Shipment Export Credit* (63 FR 18885, April 16, 1998). The *Freight Program* was found to have been terminated in the preliminary results of the third review.[9] The Department determined a net subsidy of 3.10 percent for the Borusan Group (63 FR 18885, April 16, 1998).

In the fourth administrative review, programs that were determined to confer subsidies include: (1) *Pre-Shipment Export Credit;* (2) *the* Freight Program; and (3) *Foreign Exchange Loan Assistance. Export Incentive Certificate Customs Duty & Other Tax Exemptions* was found to be terminated (64 FR 16924, April 7, 1999). The Department determined net subsidies of 0.84 percent for Yucel Boru and its affiliated companies, Cayirova Boru Sanayi ve Ticaret A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively ''Yucel Boru Group'').

Background

On May 3, 1999, the Department published a notice of initiation of a sunset review of the countervailing duty (''CVD'') order on welded carbon steel pipes and tubes from Turkey (64 FR 23596), pursuant to section 751(c) of the Act. On May 18, 1999, the Department received, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*, a notice of intent to participate on behalf of domestic producers Allied Tube and Conduit Corp., Sawhill Tubular Division-Armco, Inc., Century Tube, IPSCO Tubular Inc., LTV Steel Tubular Products, Maverick Tube Corporation, Sharon Tube Company, Western Tube and Conduit, and Whetland Tube Co. (hereinafter, collectively ''domestic interested parties'') and the Government of the Republic of Turkey (''GRT'') and the Borusan Group (collectively ''respondent interested parties''). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic producers of subject merchandise. The GRT is an interested party pursuant to section 771(9)(B) of the Act as the government of a country in which subject merchandise is produced and exported; the Borusan Group is an interested party pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of subject merchandise.

The domestic interested parties participated in the original investigation and subsequent administrative reviews of the subject order; the GRT and Borusan Group have been actively involved in this case since 1985, the

[2] Because Erkboru Profil Sanayi ve Ticaret, and Umran Spiral Welded Pipe Inc. did not export to the United States during 1984 and the first six months of 1985, their responses were not used in the final determination. *Id.*

[3] *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 52 FR 47621 (December 15, 1987).

[4] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews,* 62 FR 43984 (August 18, 1997).

[5] The Department determined the benefit from this program to be 0.05 percent. However, in the same review, the Department verified that the GRT terminated the RUSP program in 1991, and that GIP investment incentive certificates issued after 1991 were no longer eligible to receive RUSP payments. *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews,* 62 FR 16782, 16787 (April 8, 1997).

[6] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews,* 62 FR 43984, 43986 (August 18, 1997).

[7] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews,* 62 FR 16782, 16788 (April 8, 1997).

[8] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews,* 63 FR 18885, 18887 (April 16, 1998).

[9] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews,* 62 FR 64808 (December 9, 1997).

year in which the countervailing duty petition on subject merchandise from Turkey was filed. The GRT participated in the original investigation and the four administrative reviews; the Borusan Group participated in the original investigation and all but the second administrative review.

We received adequate substantive responses from the domestic and respondent interested parties on June 2, 1999 and June 3, 1999, respectively, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). As a result, pursuant to 19 CFR 351.218(e)(2), the Department determined to conduct a full review.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, the Department determined that the sunset review of the countervailing duty order on carbon steel pipe and tube from Turkey is extraordinarily complicated, and extended the time limit for completion of the preliminary and final results of this review until not later than November 19, 1999 and March 28, 2000, respectively, in accordance with section 751(c)(5)(B) of the Act.[10]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement'').

The Department's preliminary determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, comments of the interested parties on each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the SAA, H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (see section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

Interested Party Comments

In their substantive response, the domestic interested parties assert that prior to the issuance of the 1985 order, there were over 30,000 tons of imports of subject merchandise from Turkish producers to the United States (*see* June 2, 1999, Substantive Response of the domestic interested parties at 3). However, according to the domestic interested parties, imports have since dropped dramatically: in 1998, imports amounted to only 7400 tons—a 75 percent drop from 1985 figures. *Id.* Moreover, the domestic interested parties note that, in subsequent administrative reviews, subsidization of the subject merchandise by the GRT for the benefit of Turkish producers continues. Thus, the domestic interested parties believe that the reduction of imports of the subject merchandise from Turkey into the United States and the continuing existence of countervailable subsidy programs indicate that there is a strong likelihood of continuation of a countervailable subsidy should this order be revoked.

The respondent interested parties assert that the GRT has eliminated or severely limited the availability of the incentive programs that led to the initiation of the countervailing duty investigation on standard pipe in 1985 (*see* June 3, 1999, Substantive Response of respondent interested parties at 4). They note that three programs—Export Tax Rebate and Supplemental Tax Rebate, Deduction from Taxable Income for Export Revenue, and the Resource Utilization Support Fund—that were found to provide countervailable benefits to Turkish producers/exporters of pipe and tube in the original investigation were confirmed by the Department to be terminated or eliminated in the final results of the 1995 and 1996 reviews, and the preliminary results of the 1997 review. *Id.* at 6–7. According to the GRT, only three other programs currently confer subsidies: the Pre-Shipment Export Credit program, which provides short term pre-shipment export loans to exporters through intermediary commercial banks;[11] the Foreign Exchange Loan Assistance, which allows commercial banks to exempt certain fees on loans used in export-related activities;[12] and the Deduction from Taxable Income for Export Revenues,[13] which allows companies to deduct 0.05 percent of their hard currency income derived from export activities from their corporate income taxes.[14]

Department's Determination

The Department verified the elimination of benefits provided by the Export Tax Rebate and Supplemental Tax Rebate and the RUSF; the duty

[10] *See Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Time Limit for Preliminary Results of Five-Year Review*, 64 FR 46885 (August 27, 1999).

[11] In the 1996 review, the Department determined that the net countervailable subsidy received by the Borusan Group from the Pre-shipment Export Credit Program was 0.22 percent.

[12] The exempted fees include a Resource Utilization Stabilization Fund fee of 6 percent of the loan principal, a Banking Insurance Tax equal to 5 percent of the interest paid, and a stamp tax equal to 0.6 percent of the principal (62 FR 64810).

[13] A program from the original investigation, Deduction from Taxable Income for Export Revenues was terminated in the second review (62 FR 43984, August 18, 1997). In the third review, however, the Department determined a new, similar program, also called Deduction from Taxable Income for Export Revenues (63 FR 18885, April 16, 1998).

[14] In the 1996 review, the Department calculated a subsidy for this program of less than 0.005 percent for the Borusan Group (*see* June 3, 1999, Substantive Response of respondent interested parties at 14).

deposit rate from the 1985/86 review reflects the elimination of benefits from these two programs on importers of subject merchandise. Specifically, we found that, effective January 1, 1987, pursuant to Communique 87/3 of Decree 86/11237, the GRT eliminated basic and supplemental export tax rebates on exports of iron and steel products to the United States (52 FR 47621, December 15, 1987). Also effective January 1, 1987, pursuant to Decree 86/11085, the GRT eliminated RUSF payments on exports. *Id.*

In the preliminary results of the 1995 period of review, the Department determined that the Resource Utilization Support Premium (''RUSP''), which distributed benefits on a regional basis under the umbrella of the GIP, conferred a net countervailable benefit of 0.05 percent on Erbosan. However, the GRT terminated the RUSP program in 1991, and GIP investment certificates issued after 1991 were no longer eligible to receive RUSP payments.[15]

As noted above, the Deduction from Taxable Income for Export Revenues was found terminated in the second administrative review. However, a similar program was subsequently found to confer subsidies of less than 0.005 percent for the Borusan Group for welded pipe and tube in the third review (63 FR 1888, April 18, 1992). In the fourth and most recent review, the program was found ''not used'' (64 FR 44496, August 16, 1999).

Finally, two programs investigated since the original investigation have been found to be terminated: the Freight Program was found terminated in the third review (62 FR 65808, 64811, December 9, 1997), and Export Incentive Certificate Customs Duty & Other Tax Exemptions was found terminated in the 1997 review when Communique No. 96/1, effective January 1, 1996, rescinded Communique No. 95/7, which provided export incentive certificates for the exclusion of taxes and duties, with no residual benefits.[16]

The Department finds that three of the programs that were investigated since the original investigation continue to confer subsidies on Turkish producers/exporters of pipe and tube. In the second review, although the Department found that the 30 percent minimum investment allowance under GIP is not countervailable, the Investment Allowance program conferred benefits of 0.02 percent (62 FR 43984, August 18, 1997) on Erbosan. In the third review, the Department determined that the net countervailable subsidies received by the Borusan Group from Foreign Exchange Loan Assistance and Incentive Premium on Domestically Obtained Goods were 0.43 percent and 0.01 percent, respectively (63 FR 18885, April 16, 1998). In the fourth review, the Pre-shipment Export Credit program conferred on the Yucel Group a subsidy of 0.84 percent (64 FR 44496, August 16, 1999).

Of the four programs, Deduction from Taxable Income for Export Revenues, Pre-Shipment Export Credit, Incentive Premium on Domestically Obtained Goods, and Foreign Exchange Loan Assistance that continue to exist, only Pre-Shipment Export Credit was determined to provide a subsidy above de minimis—1.77 percent—in the second review. Since at least one of the existing countervailable programs continues to confer benefits above *de minimis*, the Department, consistent with section III.A.3.a of the *Sunset Policy Bulletin*, preliminarily determines that termination of the subject order would likely result in the continuation or recurrence of countervailable subsidies.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[17]

Additionally, section III.B.2 of the *Sunset Policy Bulletin* states that the Department, where possible, calculates the individual countervailable subsidy rate in an investigation for each known exporter or producer of the subject merchandise. Although the original investigation resulted in a country-wide rate, the Department, in accordance with section 777A(e)(1) of the Act, will provide to the Commission company-specific margins for those companies that were investigated in subsequent reviews.

Interested Party Comments

In their substantive response, the domestic interested parties assert that both the overall decrease in imports of the subject merchandise from Turkey into the United States and the continuing existence of countervailable subsidy programs will injure the domestic industry. Accordingly, the Department should find that the magnitude of the net countervailable subsidy that is likely to prevail is identical to the net countervailable subsidy determined in the original investigation.

The respondent interested parties assert that the Department should exclude the amount of subsidies found to be provided in prior reviews by the Freight Program, Incentive Premium on Domestically Obtained Goods, Investment Allowance and Export Incentive Certificates Customs Duty and Other Tax Exemptions programs because the benefits associated with these programs have been terminated (*see* June 2, 1999, Substantive Response of respondent interested parties, at 16). Furthermore, the rate likely to prevail should be based upon the rate from the most recently completed administrative review since that rate is most representative of the current level of benefits associated with a program. *Id.* Accordingly, the new margin should be 0.655 percent, the sum of the margins from three programs in the third review: 0.43 percent from Foreign Exchange Loan Assistance; less than 0.005 percent from the *Deduction from Taxable Income* for Export Revenues; and 0.22 percent from Pre-Shipment Export Credits.

Department's Determination

In the *Sunset Policy Bulletin*, the Department states that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place (*see* section III.B.1 of the *Sunset Policy Bulletin*). However, the Department notes that the rate from the original investigation may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change,

[15] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews,* 62 FR 43984 (August 18, 1997).

[16] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews,* 64 FR 16924, 16928 (April 7, 1999).

[17] *See* section III.B.3 of the *Sunset Policy Bulletin.*

or the rate ignores a program found to be countervailable in a subsequent administrative reviews (see section III.B.3 of the *Sunset Policy Bulletin*).

The Department disagrees with the domestic interested parties' argument that the rate likely to prevail should be the 17.80 percent margin from the original investigation, because, as noted above, many of the benefits of countervailable subsidy programs have been eliminated. Thus, the Department determines that, as argued by the GRT, benefits from three programs from the original investigation—Export Tax Rebate and Supplemental Tax Rebate, Deduction from Taxable Income for Export Revenues and the RUSF—have been terminated. Of the programs investigated since the original investigation, benefits from the Freight Program and Export Incentive Certificate Customs Duty & Other Tax Exemptions were terminated.[18] Additionally, in the 1995 review, the Department found that the *RUSP* was terminated. Accordingly, the Department will adjust the new company-specific rates to reflect the elimination of the above programs.

Of the programs investigated since the original investigation, the Department determined that Deduction from Taxable Income for Export Revenues conferred on the Borusan Group a subsidy of less than 0.005 percent in the 1996 review. Additionally, the benefits from the Incentive Premium on Domestically Obtained Goods are ''recurring,'' because once a company has received an investment incentive certificate, it becomes eligible for the Incentive Premium benefits automatically and on a yearly basis (62 FR 64808, December 9, 1997). Accordingly, the Department will adjust the margin to include their respective subsidies of less than 0.005 percent and 0.01 percent for the Borusan Group.

The Department agrees with the respondent interested parties that two additional programs investigated since the original investigation, Foreign Exchange Loan Assistance and *Pre-Shipment Export Credit,* continue to confer benefits on Turkish producers/exporters of subject merchandise. Thus, we will include their respective subsidies in the company-specific margins.

Considering the termination of the Export and Supplemental Tax Rebate and RUSF programs in the first review, and the subsequent waiver of the duty deposit for Bant Boru, the Department will report to the Commission a margin of 0.00 percent for Bant Boru.

The Department will report a rate of 2.89 percent for Erbosan, the sum of 1.77 percent from the Pre-Shipment Export Credit Program; 0.02 percent from Investment Allowance under GIP; and 1.10 percent from the Foreign Exchange Loan Assistance, from the second review.

For the Borusan Group, the Department will report to the Commission a rate of 0.68 percent, which includes, from the third review: 0.22 percent from the Pre-Shipment Export Credit; 0.02 from Investment Allowance under *GIP;* 0.43 percent from Foreign Exchange Loan Assistance; 0.01 percent from the Incentive Premium on Domestically Obtained Goods; and less than 0.005 percent from Deduction from Taxable Income for Export Revenues.

For the Yucel Boru Group, the Department will report to the Commission a rate of 0.84 percent from Pre-Shipment Export Credit in the fourth review. Finally, the Department will report to the Commission a rate of 2.90 percent for all others. This rate includes 1.77 percent from Pre-Shipment Export Credit; 0.02 percent from Investment Allowance under *GIP;* 1.10 percent from Foreign Exchange Loan Assistance, 0.01 from Incentive Premium on Domestically Obtained Goods, and less than 0.005 percent from Deduction from Taxable Income for Export Revenues.

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic and respondent interested parties did not address this issue in their substantive responses.

Deduction from Taxable Income for Export Revenues and Pre-Shipment Export Credit fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement because the receipt of benefit is contingent on export performance. The remaining programs, although not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. However, the Department has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

Foreign Exchange Loan Assistance. The GRT Resolution Number: 94/5782, Article 4, effective June 13, 1994, concerns the encouragement of exportation, allowing commercial banks to exempt certain fees provided that the loans are used in the financing of exportation and other foreign exchange earning activities. The exempted fees include a Resource Utilization Stabilization Fund fee of 6 percent of the loan principle, a Banking Insurance Tax equal to 5 percent of the interested and a stamp tax equal to 0.6 percent of the principal.[19]

Incentive Premium on Domestically Obtained Goods. Companies holding investment incentive certificates under the *GIP* are eligible for a rebate of 15 percent VAT paid on locally-sourced machinery and equipment. Imported machinery and equipment are subject to the VAT and are not eligible for the rebate. These VAT rebates are countervailable subsidies within the meaning of section 777(5)(D)(ii) of the Act because the rebates constituted revenue foregone by the GRT, and they provide a benefit in the amount of the VAT savings to the company. Also, they are specific under section 771(5A)(C) because their receipt is contingent upon the use of domestic goods rather than imported goods (62 FR 64808, December 9, 1997).

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/exporter	Margin (percent)
Bant Boru	0.00
Erbosan	2.89
Borusan Group	0.68
Yucel Boru Group	0.84
All Others	2.90

[18] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews,* 64 FR 64808, 64811 (December 9, 1997) and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews,* 64 FR 44496 (August 16, 1999).

[19] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews,* 62 FR 64808 (December 9, 1997).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on January 17, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than January 10, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than January 13, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than March 28, 2000, in accordance with section 751(c)(5)(B) of the Act.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 19, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30967 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 99–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to JV Export Trading Company, Inc (''JV Export Trading Co.''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce with the concurrence of the Attorney General, to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1999).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

Export Markets

The Export Markets include all parts of Latin America, but not the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

JV Export Trading Co. may engage in the following activities with respect to the Export Markets:

1. Enter into exclusive export distribution agreements with U.S. manufacturers for export to the Export Markets.

2. Enter into agreements, exclusive or otherwise, with U.S. manufacturers regarding the prices for which their respective Products will be sold in the Export Market.

3. Enter into agreements with other exporters regarding Products, prices, and territories in the Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, JV Export Trading Co. will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not generally available to the trade or public.

2. JV Export Trading Co. will comply with requests made by the Secretary of Commerce, on behalf of the Secretary or the Attorney General, for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Secretary of Commerce or the Attorney General believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definition

1. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Protection Provided by Certificate

This Certificate protects JV Export Trading Co. and its officers, directors, and employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in this Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, l4th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 23, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–31058 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 99102–0281–9281–01]

RIN 0693–XX48

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) hereby announces the establishment of a sub-program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program to recognize accreditors that accredit laboratories that test telecommunications equipment and/or perform electromagnetic compatibility testing. The sub-program is being established pursuant to NVCASE regulations in response to a request from a Federal Agency, the Federal Communications Commission. Accreditation bodies recognized by

NIST may then accredit laboratories to perform specified testing to satisfy designated foreign or domestic government regulatory (i.e., mandated) requirements. NIST will explore with the National Cooperation for Laboratory Accreditation a cooperative and joint approach for recognizing applicant laboratory accreditors.

The action being taken under this notice addresses both generic and specific NVCASE requirements relating to two sectoral annexes (telecommunications equipment and electromagnetic compatibility (EMC)) of the United States (U.S.)/European Union (EU) Mutual Recognition Agreement (MRA) and the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for the Conformity Assessment of Telecommunications Equipment. If additional MRAs covering these areas are negotiated between the United States and another country or region, any additional specific requirements will be included under this NVCASE activity.

Sub-program requirements have been developed in accordance with NVCASE regulations and with public consultation.

Public input was obtained at two open meetings on April 27 and April 28, 1999 and from comments received through May 30, 1999.

DATES: Applications will be received beginning November 30, 1999.

ADDRESSES: Applications for recognition may be obtained from, and returned to, Robert L. Gladhill, NVCASE Program Manager, NIST, 100 Bureau Drive, Mailstop 2100, Gaithersburg, MD 20899–2100, by fax (301) 975–5414, or email at robert.gladhill@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, 100 Bureau Drive, Mailstop 2100, Gaithersburg, MD 20899–2100, telefax: (301) 975–5414, email: robert.gladhill@nist.gov

SUPPLEMENTARY INFORMATION: The NVCASE sub-program to recognize accreditation bodies that accredit laboratories to test telecommunications equipment and/or perform electromagetic compatibility testing is being established in accordance with the NVCASE Regulations (15 CFR Part 286.2(b)(3)(ii)) and in response to requiements as described in FCC GEN Docket 98–68 (FCC 98–338) adopted on December 17, 1998 and FCC Public Notice DA 99–1640 released August 17, 1999. The generic and specific requirements are also being established pursuant to NVCASE regulations (15 CFR Part 286.5). Public consultation on these requirements was conducted at two workshops held at the Department of Commerce on April 27 and 28, 1999. These workshops were announced in the **Federal Register** Sol. 64, No. 53/ Friday, March 19, 1999. Follow-up comments were accepted from the public through May 30, 1999.

This program is also being established to support NIST's responsibilities as a designating authority for the United States in both the Telecommunication Equipment and EMC Sectoral Annexes of the U.S./EU MRA (which may be located at http://www.iep.doc.gov/mra/mra.htm) and the APEC MRA for Conformity Assessment of Telecommunications Equipment (which may be located at http://www.apii.or.kr/telwg/mraTG/mraTG-frame.html).

Telecommunications equipment testing as referenced in this notice covers tests of equipment for network terminal attachment and other equipment subject to telecommunications regulation, including wire and wireless equipment, transmitters, and terrestrial and satellite equipment, whether or not connected to a Public Telecommunications Network. EMC testing relates to measuring the electromagnetic emissions from the product under test, both intended and unintended, and their effect on other products (emissions testing), as well as the effects of electromagnetic emissions from other products on the product under test (immunity testing).

NIST will apply the generic requirements contained in the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 58—''Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition,'' to all applicant accreditation bodies. All laboratories applying to recognized accreditors shall be assessed against the requirements of ISO/IEC Guide 25—''General Requirements for the Competence of Calibration and Testing Laboratories.'' These generic requirements will be supplemented by specific technical requirements contained in individual NVCASE handbooks, available on request from NIST.

NIST will accept applications from interested accreditation bodies for recognition to accredit laboratories under the U.S./EU MRA or the APEC MRA. Evaluation of an initial group of applicant accreditation bodies for NVCASE recognition will begin on or about December 30, 1999. All accreditation bodies that have submitted a complete application and required fees to NIST by December 15, 1999, will be included in this initial group. Applications received subsequently will be considered on an as-received basis for evaluation after the initial group of applicants has been considered.

NIST expects to announce recognition of qualified accreditation bodies on or about April 1, 2000. At about the same time, NIST also expects to identify and list an initial group of qualified laboratories for each of the areas noted. Each laboratory listed under the provisions of the U.S./EU MRA or under the APEC MRA will be designated by NIST as a conformity assessment body (CAB).

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information has been approved by OMB under the following control Number: 0693–0019.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget Control Number.

Dated: November 19, 1999.

Karen Brown,

Deputy Director.

[FR Doc. 99–31108 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111699B]

Environmental Impact Statement for Federal Activities to Recover the Cook Inlet, Alaska, Stock of Beluga Whale, Including the Management of a Subsistence Harvest

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

ACTION: Notice of intent; scoping meetings; request for comments.

SUMMARY: NMFS announces its intent to prepare a programmatic Environmental Impact Statement (EIS) on Federal activities necessary to halt the observed decline and promote recovery of the Cook Inlet, Alaska, stock of beluga whale. This will include, but is not limited to, the management of the subsistence harvest by Alaska Natives.

NMFS will hold a scoping meeting to receive public input on structuring the

alternatives and the range of issues to be assessed in the programmatic EIS. In addition to holding the scoping meeting, NMFS is accepting written comments on the same topics.

DATES: Written comments must be received by December 30, 1999. A scoping meeting will be held in Anchorage, Alaska at the following time and location: December 16, 1999, 1–5 p.m., Anchorage Federal Office Building, Room 154, 222 West 7th Avenue, Anchorage, AK.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the programmatic EIS should be sent to Mr. Brad Smith, 222 West 7th Avenue, Box 43, Anchorage, Alaska, 99513, or sent via facsimile to (907) 271–3030. Comments may also be hand-delivered to NMFS at Room 517 in the Anchorage Federal Office Building, 222 West 7th Avenue, Anchorage, Alaska. Comments will not be accepted if submitted via electronic mail or via the Internet.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271-5006.

SUPPLEMENTARY INFORMATION: A relatively small, isolated stock of beluga whales exists in south-central Alaska. This stock is found primarily in upper Cook Inlet during ice-free periods (April though October), often concentrating near the mouths of rivers. This stock is called the Cook Inlet Beluga (CIB) stock because the entire stock is believed to occur in Cook Inlet during the ice-free period, although its winter range is presently poorly understood. Genetic and distributional analyses by NMFS indicate that the CIB stock is genetically isolated from the four other beluga whale stocks in Alaska and constitutes a distinct population.

Early estimates of stock size, including estimates by Alaska Native hunters, ranged from 1,000 to 2,000 beluga whales. The most recent estimate by NMFS is 347 whales from 1998, indicating a decline of nearly 50 percent below the estimate by NMFS of 653 for 1994. NMFS has proposed that the CIB be designated as a depleted stock (64 FR 56298, 19 October 1999) under the Marine Mammal Protection Act (MMPA).

The MMPA provides an exemption for Alaska Natives from prohibitions on the taking of marine mammals. The CIB stock is hunted by Alaska Natives for subsistence uses, including food and traditional handicrafts. Data collected by Alaska Native Organizations (ANOs) and NMFS indicate subsistence harvest has recently been at unsustainable levels. Subsistence harvests averaged 37 whales per year between 1994 and 1998. This estimate does not include animals that were struck and lost which may occur at a ratio of 1–2 whales for each whale landed.

The MMPA allows ANOs to enter into agreements with NMFS to conserve marine mammals and provide for co-management of subsistence uses. Several such groups have expressed interest in entering into a co-management agreement with NMFS for the CIB stock. It is possible that such an agreement would include annual harvest levels determined under a harvest management plan, as well as means to allocate the harvest among Native hunters.

The National Marine Fisheries Service may regulate the subsistence hunting of a marine mammal when (1) that marine mammal is designated as depleted under the MMPA, and (2) specific regulations have been promulgated for this management. NMFS has taken separate action to designate the CIB stock as depleted and may, therefore, proceed with regulations to manage the Native harvest.

The National Environmental Policy Act requires preparation of an EIS for any major Federal action that may significantly impact the quality of the human environment. NMFS finds that an EIS is appropriate in this matter.

NMFS will assess the potential impacts of Federal activities necessary to halt the observed decline and promote recovery of the CIB stock of whales, including the management of a subsistence harvest by Alaska Natives. In a review of existing information, NMFS does not find that non-harvest factors, such as degradation of habitat, appear to have caused the rapid decline of the stock; however, NMFS has not conducted research designed specifically to determine the effects of habitat degradation on the stock. NMFS reviewed existing information on fish runs, oil and gas activities, sewage problems, and other sources of contaminants. The existing information suggests that beluga are not stressed by anthropogenic factors in Cook Inlet. The size of fish runs, especially salmon, may have some effect on the population; however, food limitations do not appear capable of causing the declines of beluga noted in recent years. Consequently, the level of harvest between 1994 and 1998 appear to be a significant factor in the observed declines in the population. Therefore, initial recovery actions would likely be directed at developing a subsistence harvest that would be consistent with recovery goals for the stock.

An assessment of the harvest would use a model based on three alternatives: (1) Maximizing short-term opportunity for subsistence harvests and prolonging the recovery of the stock; (2) maximizing the recovery of the stock by prohibiting harvest until the stock had recovered to optimum sustainable population levels; or (3) allowing an intermediate level of harvest that would provide some subsistence use and promote recovery of the stock faster than alternative (1) but slower than alternative (2).

The cumulative impacts section of the EIS would review the combined impacts of Federal and non-Federal activities on the CIB stock of beluga whale and their habitat. This would include, but not be limited to, the effects of fishing, vessel activities, industrial development, and oil exploration and development. The environmental consequences section of the EIS will also assess the impacts of the various CIB harvest management strategies (as described above) on the human environment. Major issues include the impact of subsistence removals on this stock; the impacts of regulated harvests on the traditional and cultural values of Alaska Natives; methods to allocate a limited harvest among Native groups and individuals; and the social and economic impacts of various population levels of the CIB stock of whales. Scoping for the programmatic EIS begins with publication of this document. To identify the scope of issues that will be addressed in the EIS and to identify potential impacts on the quality of the human environment, public participation is invited by providing written comments to NMFS and attending the scoping meeting. A scoping meeting will be held in Anchorage, Alaska at the following time and location: December 16, 1999, 1–5 p.m., Anchorage Federal Office Building, Room 154, 222 West 7th Avenue, Anchorage, AK.

Special Accommodations

The meeting will be physically accessible to people with disabilities. Special accommodations requests, such as requests for sign language interpretation or other auxiliary aids, should be directed to Brad Smith (907) 271–5006 at least 5 days before the meeting date.

Dated: November 22, 1999.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–31069 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101599G]

Marine Mammals; Scientific Research Permit (PHF# 638–1519–00)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Mr. Thomas R. Kieckhefer, Pacific Cetacean Group, UC Monterey Bay Education, Science & Technology Center, 3239 Imjin Road #122, Marina, CA 93933, has been issued a permit to take humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On July 21, 1999, notice was published in the Federal Register (64 FR 39118) that a request for a scientific research permit to take (*i.e.* harass) up to 300 humpback whales (*Megaptera novaeangliae*) annually in California waters had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 23, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–31068 Filed 11–29–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Meeting Notice

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Meeting.

Time and Date: 1 p.m.–4:30 p.m., December 7, 1999.

Status: Open.

SUMMARY: This is to give notice that Chairman William J. Rainer will hold a public roundtable meeting to discuss emerging technology related issues as they pertain to the financial services and commodities markets.

PLACE: 1155 21st St., NW, Washington, DC, Lobby Level Hearing Room.

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Legal Counsel to Chairman Rainer, at 202–418–5030, or Elizabeth Fox, Legal Counsel to Commissioner Newsome, at 202–418–5052. Written comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

Issued in Washington, D.C. on November 24, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31180 Filed 11–26–99; 11:17 am]

BILLING CODE 6351–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

Time and Date of Meeting: 6:00 p.m., December 8, 1999.

Place: Red Lion Hotel, Richland/Hanford House, McNary Room, 802 George Washington Way, Richland, WA 99352.

Status: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

Matters to be considered: The Board is visiting the Hanford Site as a part of its oversight of the Department of Energy's (DOE) safety management of its defense nuclear facilities. The Board's enabling legislation requires health and safety oversight encompassing design, construction, operation and decommissioning activities. The Board's Strategic Plan, submitted to the Office of Management and Budget and Congress, has identified the facilities and operations at Hanford that represent the greatest hazards and has worked with DOE to establish action plans to address them. These include emptying the K-basins, characterizing and stabilizing high-level tank wastes, stabilizing and safely storing or disposing of the weapons program radioactive residuals, and clean-up and decommissioning of contaminated facilities.

The Board will review DOE's progress on these stabilization and clean-up activities. The Board wishes to avail itself of the opportunity of this visit to learn the public's views on the Hanford clean-up program as it exists today, where they believe it should be focused in the future, and the reasons for that focus.

The Board's meeting will provide an opportunity for members of the public, DOE, and its contractor employees or their representatives to comment on or provide information directly to the Board regarding matters affecting health or safety at Hanford, including, but not limited to, those subject areas and facilities the Board will review during this visit.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the meeting may be submitted in writing or by telephone. Commentators should describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on December 7, 1999, will be scheduled for time slots, beginning at approximately 6:00 p.m. Prior to the meeting, the Board will post a schedule for those speakers who have contacted the Board. The posting will be made at the entrance to the McNary Room at the start of the 6:00 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC, office.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: November 26, 1999.

A.J. Eggenberger,

Vice-Chairman.

[FR Doc. 99–31182 Filed 11–26–99; 11:20 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 23, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: The Study of Personnel Needs in Special Education (SPeNSE).

Frequency: One-time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,083

Burden Hours: 5,578

Abstract: The Study of Personnel Needs in Special Education (SPeNSE) will describe the number and qualifications of personnel serving students with disabilities. SPeNSE will explore variation in workforce adequacy and identify working conditions, State and local policies, preservice education, and continuing professional development practices that explain that variation.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO IMG Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–30990 Filed 11–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the High Flux Beam Reactor at the Brookhaven National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of withdrawal.

SUMMARY: On November 24, 1997, the Department of Energy announced its intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the High Flux Beam Reactor (HFBR) at the Brookhaven National Laboratory (BNL) in Upton, New York. The EIS would evaluate the range of reasonable alternatives regarding the future of the reactor including resumption of operation at a power level of up to 60 MW. On November 16, 1999, the Secretary of Energy announced that the HFBR would be permanently closed. Therefore, the preliminary draft environmental impact statement (EIS) that was under review in the Department is no longer necessary. The NEPA process is hereby terminated. The preliminary draft EIS has been released as an environmental report.

FOR FURTHER INFORMATION CONTACT: For information on the HFBR, please contact: George Malosh, U.S. Department of Energy, 53 Bell Avenue, Bldg. 464, P.O. Box 5000, Upton, NY 11973–5000. Telephone: (516) 344–3424; facsimile (516) 344–3214; electronic mail: *gmalosh@bnl.gov.*

The report is available on the World Wide Web at http://www.doe.bnl.gov, or a hard copy may be requested through Dr. Nand Narain at (516) 344–5435.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119. Telephone: (202) 586–4600 or leave a message on (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Brookhaven National Laboratory was established in 1947 as a multi-disciplinary scientific research center. It is located close to the geographic center of Suffolk County, Long Island, about 56 miles (91 kilometers) east of New York City. The HFBR is centrally located within the BNL site. HFBR was commissioned in 1965 as a scientific facility dedicated to neutron scattering research and other research programs in solid state physics, nuclear physics,

materials technology, structural biology, medicine, and chemistry.

On December 21, 1996, the HFBR was shut down for refueling and maintenance. Before the reactor returned to scheduled scientific operations, monitoring indicated that a plume of tritiated water was contaminating the groundwater in excess of drinking water standards south and down gradient of the reactor, within the site boundary. Data collection and analysis identified the HFBR spent fuel pool as the likely source of the tritium plume. Cleanup of this contamination has been incorporated into the site's overall cleanup program. All fuel was removed from the reactor and the pool and shipped off-site. The pool was drained and decontaminated to eliminate the source of the tritium to the groundwater beneath the HFBR.

After analysis of the time and expense to restart the HFBR, the Department has decided to permanently close the HFBR. This decision is categorically excluded under DOE's NEPA regulators. Therefore, preparation of the draft EIS has been stopped. Additional NEPA review will be necessary in the future for a proposal to decontaminate and decommission the reactor.

Issued in Washington, DC, this 23rd day of November, 1999.

Patricia M. Dehmer,

Associate Director of the Office of Science for the Office of Basic Energy Sciences.

[FR Doc. 99–31016 Filed 11–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 15, 1999, 6 p.m.–9 p.m.

ADDRESSES: New Mexico Oil and Gas Conservation Service, 2040 Pacheco Street, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment, 6:30 p.m.–7 p.m.
2. Committee Reports:
   Environmental Restoration
   Monitoring and Surveillance
   Waste Management
   Community Outreach
   Budget
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 24, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–31025 Filed 11–29–99; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 16, 1999: 5:30 p.m.–8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.	Call to order/Discussion
6:00 p.m.	Approve Meeting Minutes
6:05 p.m.	Public Comments/Questions
6:30 p.m.	Presentations
7:15 p.m.	Sub Committee Reports
8:15 p.m.	Administrative Issues
8:30 p.m.	Adjourn.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying

at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8 a.m. and 5 p.m. Monday–Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on November 24, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–31026 Filed 11–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4166–001]

Mid-Continent Area Power Pool; Notice of Filing

November 23, 1999.

Take notice that on November 8, 1999, Mid-Continent Area Power Pool (MAPP), tendered for filing motion to withdraw its filing changes to its Restated Agreement filed with the Commission on August 20, 1999, in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 29, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30983 Filed 11–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–392–000, CP00–17–000 and CP00–19–000]

Transcontinental Gas Pipe Line Corp., South Carolina Public Service Authority; Notice of Site Visit

November 22, 1999.

On November 30, 1999 through December 3, 1999, the Office of Pipeline Regulation staff and representatives of Transcontinental Gas Pipe Line Corp. will conduct a site visit of facilities proposed for the SouthCoast Expansion Project in Choctaw, Marengo, Coosa, and Coweta Counties, Alabama and Chilton, Walton, Gwinnett and Henry Counties, Georgia. The staff and representatives of South Carolina Public Service Authority (Santee Cooper) will also visit Santee Cooper's proposed facilities in Hart County, Georgia and Anderson County, South Carolina.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–30984 Filed 11–29–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6482–1]

Review of Environmental Protection Agency Public Participation Policies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The EPA Administrator, in EPA Report 100–R–99–006, dated July 1999, entitled ''Aiming for Excellence—Actions to Encourage Stewardship and Accelerate Environmental Progress, Report of the EPA Innovations Task Force,'' pledges the Agency to, ''Evaluate and update EPA's public participation requirements. We will assess how well our regulations and policies ensure public participation in decision making. We will report on what we find and develop an action plan to upgrade requirements and fill gaps.'' EPA has convened an internal workgroup to conduct a review of EPA public participation regulations and policies in accordance with this pledge.

The workgroup is scheduled to give a report to the Administrator by January 31, 2000, which will contain an inventory of EPA regulations and policies regarding public participation and an initial assessment of how well these regulations and policies ensure public participation in decision making. The report will also contain an action plan to update requirements and fill gaps.

One of the primary policies being reviewed is the Final EPA Policy on Public Participation (**Federal Register**/Vol. 46/no. 12/Monday, January 19, 1981), herein referred to as the 1981 Policy. The statements in the 1981 Policy have been the basis for many of EPA's public participation requirements in the nineteen years since its initial publication.

The workgroup is seeking public comment on two issues at this time:

1. What changes need to be made to the 1981 Policy on Public Participation?

(1a) What is working well, and how does the experience of the past nineteen years suggest the need for improvements in the general procedures for involving the public in EPA programs and decisions?

2. How can we further engage the public in the effort to revise the 1981 Policy and other EPA regulations and policies which may need to be updated in regard to public participation?

(2a) What are the suggested elements of a strategy to further engage the public in updating requirements and filling gaps in EPA's regulations and policies concerning public participation?

Comments received within the 30-day period designated in this notice will be taken under consideration as the workgroup writes the initial report to the Administrator in January 2000. Comments received after the 30-day period will be reviewed as the Agency further develops and implements an action plan to update the 1981 policy and, as necessary, other regulations and policies.

DATES: Comments must be submitted on or before December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Dalton at EPA by fax at (202) 260–5478, by email at: *stakeholders@epa.gov*. The 1981 Policy on Public Participation, without the responsiveness summary and preamble,

has been attached to this FR Notice. You may also review the all inclusive 1981 Policy, as well as other information on EPA stakeholder involvement activities on EPA's website: www.epa.gov/stakeholders . The Report of the EPA Innovations Task Force may be reviewed on EPA's website: *www.epa.gov/reinvent/taskforce/report99.*

SUPPLEMENTARY INFORMATION:

Title: Review of EPA Public Participation Regulations and Policies

Abstract: The EPA's Regulatory Steering Committee has convened an internal workgroup to conduct a review of EPA public participation regulations and policies in accordance with a pledge made by the EPA Administrator in EPA Report 100–R–99–006, dated July 1999, entitled ''Aiming for Excellence—Actions to Encourage Stewardship and Accelerate Environmental Project, Report of the EPA Innovations Task Force.'' Action 9 of the Report reads: ''Build leadership capacity in communities to participate in local environmental problem solving. Task 5 of Action 9 reads: ''Evaluate and update EPA's public participation requirements. We will assess how well our regulations and policies ensure public participation in decision making. We will report on what we find and develop an action plan to upgrade requirements and fill gaps.''

The workgroup is scheduled to give a report to the Administrator by January 31, 2000, which will contain an inventory of EPA regulations and policies regarding public participation and an initial assessment of how well these regulations and policies ensure public participation in decision making. The report will also contain an action plan to update requirements and fill gaps.

One of the primary policies being reviewed is the Final EPA Policy on Public Participation (**Federal Register**/Vol. 46/no. 12/Monday, January 19, 1981), herein referred to as the 1981 Policy. The purpose of this policy is to ''strengthen EPA's commitment to public participation and to establish uniform procedures for participation by the public in EPA's decision-making process. This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns and preferences. It should also make the agency's decisions more acceptable to those who are most concerned and affected by them.'' The statements in the 1981 Policy have been the basis for many of EPA's public participation requirements in the nineteen years since its initial publication.

Since 1981, EPA has made great strides in incorporating public participation in all facets of its work—from rulemaking to Superfund cleanups, program implementation, and permitting.

The workgroup views the 1981 Policy's overall purpose and objectives as still generally appropriate, but it recognizes the need to update some of the specifics of the policy, *e.g.,* to include the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Negotiated Rulemaking Act, the Administrative Dispute Resolution Act, and Executive Order 12898 on Environmental Justice.

The workgroup will not actually update the policy by January 31, 2000, but will make general recommendations to the Administrator on the scope and timing of the update effort for the 1981 policy as well as other EPA regulations and policies. After the report is made to the Administrator in January 2000, the workgroup will address the changes to the 1981 policy in more detail and will be conducting a more intensive public participation effort to work on those changes. Specific EPA program offices may also be conducting processes to update their public participation policies.

The workgroup members feel strongly that it is essential for the public to have an opportunity to participate in the review of EPA's public participation regulations and policies. However, the short duration of the time available to present the initial report to the Administrator poses difficulties in obtaining meaningful participation in the review of a multitude of EPA regulations and policies. Therefore, the workgroup has decided to use the 1981 policy as the overarching statement of EPA's intentions and procedures.

The workgroup is seeking public comment on two issues at this time:

1. What changes need to be made to the 1981 Policy on Public Participation?

(1a) What is working well, and how does the experience of the past nineteen years suggest the need for improvements in the general procedures for involving the public in EPA programs and decisions?

2. How can we further engage the public in the effort to revise the 1981 Policy and other EPA regulations and policies which may need to be updated in regard to public participation?

(2a) What are the suggested elements of a strategy to further engage the public in updating requirements and filling gaps in EPA's regulations and policies concerning public participation?

Comments received within the 30-day period designated in this notice will be taken under consideration as we write the initial report to the Administrator in January 2000. Comments received after the 30-day period will be reviewed as the Agency further develops and implements an action plan to update the 1981 policy and, as necessary, other regulations and policies.

Your comments are valuable to us and, while we have a short deadline for receiving them before we submit our report to the Administrator, we feel that your experiences and opinions will enrich both the initial report and subsequent action steps.

Attachment

Final EPA Policy on Public Participation (1981)

This Policy addresses participation by the public in decision-making, rulemaking, and program implementation by the Environmental Protection Agency (EPA), and other governmental entities carrying out EPA programs. The term, ''the public'' as it is used here, means the people as a whole, the general population. There are a number of identifiable ''segments of the public'' who may have a particular interest or who may be affected one way or another by a given program or decision. In addition to private citizens, ''the public'' includes, among others, representatives or consumer, environmental, and minority groups; the business and industrial communities; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; universities, educational, and governmental associations: and public officials, both elected and appointed.

''Public participation'' is that part of the agency's decision-making process that provides opportunity and encouragement for the public to express their views to the agency, and assures that the agency will give due consideration to public concerns, values, and preferences when decisions are made.

A. Scope

The requirements and procedures contained in this Policy apply to the Environmental Protection Agency and other governmental entities carrying out EPA programs (referred to herein as ''agency''). The activities covered by this Policy are:

EPA rulemaking, when regulations are classified as significant, (under terms of Executive Order 12044);

The administration of permit programs as delineated in applicable permit program regulations;

Program activities supported by EPA financial assistance (grants and cooperative agreements) to State and substate governments;

—The process leading to a determination of approval of State administration of a program in lieu of Federal administration;

—Major policy decisions, as determined by the Administrator, appropriate Associate Administrator, Regional Administrator, or Deputy Assistant Administrator, in view of EPA's responsibility to involve the public in important decisions.

When covered activities are governed by EPA regulations or program guidance, the provisions of the Policy shall be included at appropriate points in these documents. Before those changes are made, the provisions of the existing regulations or program guidance shall govern.

B. Purpose

The purpose of this Policy is to strengthen EPA's commitment to public participation and establish uniform procedures for participation by the public in EPA's decision-making process. A strong policy and consistent procedures will make it easier for the public to become involved and affect the outcome of the agency's decisions.

This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns, and preferences. It should also make the agency's decisions more acceptable to those who are most concerned and affected by them.

Agency officials will provide for, encourage, and assist participation by the public. Officials should strive to communicate with and listen to all sectors of the public. Where appropriate, this will require them to give extra encouragement and assistance to some sectors, such as minorities, that may have fewer opportunities or resources.

The Policy identifies those actions which are required and others that are discretionary, on the part of agency managers. The Policy assumes, however, that agency employees will strive to do more than the minimum required, and is not intended to create barriers to more substantial or more significant participation. The Policy recognizes the agency's need to set priorities for its use of resources, and emphasizes participation by the public in decisions where options are available and alternatives must be weighed, or where substantial agreement is needed from the public if a program is to be carried out.

Public participation must begin early in the decision-making process and continue throughout the process as necessary. The agency must set forth options and alternatives beforehand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose.

Agency officials must avoid advocacy and precommitment to any particular alternative prior to decision-making. The role of agency officials is to plan and conduct public participation activities that provide equal opportunity for all individuals and groups to be heard. Officials should actively seek to facilitate resolution of issues among disagreeing interests whenever possible.

Decision makers are aware that issues which are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review. If the objectives of EPA's public participation program are achieved, delays to accommodate litigation should be reduced.

C. Objectives

In establishing a policy on public participation, EPA has the following objectives:

—To use all feasible means to create early and continuing opportunity for public participation in agency decisions;

—To promote the public's involvement in implementing environmental protection laws;

—To make sure that the public understands official programs and the implications of potential alternative courses of action;

—To solicit assistance from the public in identifying alternatives to be studied. And in selecting among alternatives considered;

—To keep the public informed about significant issues and changes in proposed programs or projects, as they arise;

—To create an equal and open access for the interested and affected parties to the regulatory process;

—To make sure that the government understands public goals and concerns, and is responsive to them;

—To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made;

—To anticipate conflicts and encourage early discussions of differences among affected parties;

—To foster a spirit of mutual trust, confidence, and openness between public agencies and the public.

D. General Procedures for All Programs

Each Assistant Administrator, Office Director, or Regional Administrator shall determine forthcoming decisions or activities to which this Policy should be applied, and take the steps needed to assure that adequate public participation measures are developed and implemented.

To ensure effective public participation in any decision or activity, the agency must carry out five basic functions: Identification, Outreach, Dialogue, Assimilation, and Feedback.

1. Identification

It is necessary to identify groups or members of the public who may be interested in, or affected by, a forthcoming action. This may be done by a variety of means: developing a contact list of person and organization who may have expressed an interest in, may by the nature of their purposes or activities be affected by or have an interest in forthcoming activity; requesting from others in the agency or from key public groups, the names of interested and affected individuals to include; using questionnaires or surveys to find out levels of awareness; or by other means. If EPA is required to file an Environmental Impact Statement (EIS), the scoping process can be used to identify interested parties.

The responsible official(s) shall develop a contact list for each program or projects, and add to the list whenever members of the public request it. The list should be updated frequently, and it will be most useful if subdivided by category of interest or geographic area.

The contact list shall be used to send announcements of participation opportunities, notices of meetings, hearings, field trips and other events, notices of available reports and documents, and for identifying members of the public who may be considered for advisory group membership and other activities.

2. Outreach

The public can contribute effectively to agency programs only if it is provided with accurate, understandable, pertinent and timely information on issues and decisions. The agency shall make sure that adequate, timely information concerning a forthcoming action or decision reaches the public. The agency shall provide policy, program, and technical information at the earliest practical times, and at places easily accessible to interested and affected

persons and organizations, so they can make informed and constructive contributions to decision-making. Information and educational programs shall be developed so that all levels of government and the public have an opportunity to become familiar with the issues and the technical data from which they emerge. Informational materials shall highlight significant issues that will be the subject of decision-making. Special efforts shall be made to summarize complex technical materials for the public.

a. *Methods.* The objective of the agency's public outreach program is to insure that the public understands the significance of the technical data so that rational public choices can be made. Outreach programs require the use of appropriate communication tools, and should be tailored to start at the public's level of familiarity with the subject.

The following, among other approaches, may be used for this purpose:

(1) Publications, fact sheets, technical summaries, bibliographies;

(2) Questionnaires, surveys, interviews;

(3) Public service announcements, and news releases;

(4) Educational activities carried out by public organizations.

b. *Content.* Outreach materials must include background information (*e.g.* statutory basis, rationale, or the triggering event of the action); a timetable of proposed actions; summaries of lengthy documents or technical material where relevant; a delineation of issues; alternative courses of action or tentative determination which the agency may have made; whether an EIS is, or will be, available; specific encouragement to stimulate active participation by the public; and the name of an individual to contact for further information.

Whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives should be clearly stated in outreach material. Technical evidence and research methodology should be explained. Summaries of technical documents should be footnoted to refer to the original data. Fact sheets, news releases, summaries, and similar publications may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents.

c. *Notification.* The agency must notify all parties on the contact list and the media of opportunities to participate and provide appropriate information. As described in the first paragraph of Section 2.b. above. Printed legal notices are often required by program regulations, but do not substitute for the broader notice of the media and contact list required by this section.

d. *Timing.* Notification (above) must take place well enough in advance of the agency's action to permit the public to respond. Generally, it should take place not less than 30 days before the proposed action, or 45 days in the case of public hearings (exceptions in the case of public hearings are discussed under Dialogue, below).

Where complex issues or lengthy documents are presented for public comment, the comment period should allow enough time for interested parties to conduct their review. This period generally should be no less than 60 days. Where participation opportunities are to be provide in programs of State, substate, and local governments supported by EPA financial assistance, notice shall be given by the recipient to the public within 45 days after award acceptance.

e. *Fees for copying.* Whenever possible, the agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR part 2.

f. *Depositories.* The agency shall provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Depository arrangements should be made when possible with public libraries and university libraries. Consideration must be given to accessibility, travel time, parking, transit, and to availability during off-work hours. Copying facilities, at reasonable charges, should be available at depositories.

3. *Dialogue.* There must be dialogue between officials responsible for the forthcoming action or decision and the interested and affected members of the public. This involves exchange of views and open exploration of issues, alternatives, and consequences.

Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to make sure that the public's options are not foreclosed, and to permit response to public views prior to agency action. Opportunities for dialogue shall be provided at times and places which, to the maximum extent feasible. Facilitate attendance or participation by the public. Whenever possible, public meetings should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.

Dialogue may take a variety of forms, depending upon the issues to be addressed and the public whose involvement is sought. Public hearings are the most familiar forum for dialogue and often are legally required, but their use should not serve as the only forum for citizen input. When used, hearings should be at the end of a process that has given the public earlier opportunity for becoming informed and involved. Often other techniques may serve a broader purpose:

- Review groups or ad hoc committees may confer on the development of a policy or written materials;
- Workshops may be used to discuss the consequences of various alternatives, or to negotiate differences among diverse parties;
- Conferences provide an important way to develop consensus for changing a program or the momentum to undertake new directions;
- Task forces can give concentrated and experienced attention to an issue;
- Personal conversations and personal correspondence gives the individualized attention that some issues require;
- Meetings offer a good opportunity for diverse individuals and groups to express their questions or preferences;
- A series of meetings may be the best way to address a long and complex agenda of topics;
- Toll-free lines can aid dialogue, especially when many questions can be anticipated or time is short;
- A hearing panel compiled of persons from representative public groups may be used in non-adjudicatory hearings to listen to presentations and review the hearing summary.

This list is not exhaustive, but it indicates the importance for program managers in being flexible and choosing the right techniques for the right occasions.

a. *Requirements for public hearings.*

(1) Timing of Notice. Notices must be well publicized and mailed to all interested and affected parties on the contact list (see 1. above) and to the media at least 45 days prior to the date of the hearing. However, when the Assistant Administrator or Regional Administrator find that no review of substantial documents is necessary for effective participation and there are no complex or controversial matters to be addressed, the notice requirement may

be reduced to no less than 30 days in advance of the hearing. Additionally, in permit programs, notice requirements will be governed by permit regulations and will be no less than 30 days. Notice for EIS's are covered by EIS regulation which calls for a 45-day review period, with an optional 15-day extension. Notice of the EIS hearing is generally contained in the Draft EIS. Hearings on EIS's are usually held before the end of the EIS review period, but no earlier than 30 days after the EIS notice. Assistant Administrators or Regional Administrators may further reduce or waive the requirements for advance notice of a hearing in emergency situations where there is imminent danger to public health and safety or in situations where there is a legally mandated timetable. Assistant Administrators may also reduce this requirement if they determine that all affected parties would benefit from a shorter time period.

Members of the public who object to a waiver may appeal to the Administrator, stating their reasons in detail.

(2) Content of Notice. The notice must identify the matters to be discussed at the hearing and must include or be accompanied by: (a) A discussion of alternatives the public is being asked to comment upon and the agency's tentative conclusions on major issues (if any); (b) information on the availability of an EIS and bibliography of other relevant materials (if appropriate); (c) procedures and contact for obtaining further information; and (d) information which the agency particularly solicits from the public.

(3) Provision of Information. All reports, EIS's and other documents and data relevant to the discussions at the public hearings must be available to the public on request after the notice, as soon as they become available to agency staff. Background information should be provided no later than 30 days prior to the hearing.

(4) Conduct of Hearing. The agency conducting the hearing must inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account under law and regulations, the agency's tentative conclusions (if any), and the information which the agency particularly solicits from the public. Whenever possible, the hearing room should be set up informally. The agency should allocate time for presentations, questions and answers, as well as formal commentary on the record. When needed, a pre-hearing meeting to discuss the issues should be held. Procedures must not inhibit free expression of views. When the subject of a hearing addresses conditions in a specific geographic area, the hearing itself should be held in that general area.

(5) Record of Hearing. The hearing record must be left open for at least ten days to receive additional comment, including any from those unable to attend in person, and may be kept open longer, at the discretion of the hearing officer. The agency must prepare a transcript or record of the hearing itself and add additional comments to the complete record of the proceeding. This must be available for public inspection and copying at cost at convenient locations. Alternatively, copies shall be provided free. If tapes are used, they should be available for use and copying on conventional equipment. When a Responsiveness Summary (see Assimilation below) is prepared after a hearing, it must be provided to those who testified at or attended the hearing, as well as anyone who requests it.

b. *Requirements for advisory groups.* Formation of an advisory group is one of the methods that can be chosen to gain sustained advice from a representative group of citizens.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on issues which the decision making body and the advisory group consider relevant. These issues may include policy development, project alternatives, financial assistance applications, work plans, major contracts, interagency agreements, budget submissions, among others. Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community understanding of the agency's action.

(1) Requirements for Federal EPA Advisory Committees: When EPA establishes an advisory group, provisions of the Federal Advisory Committee Act (Public Law 92–463) and General Service Administration (GSA) Regulations on Federal Advisory Committee Management must be followed.

(2) Requirements for State and Substate and Local Advisory Committees: (Explanatory Note: The following guidelines do not apply to advisory committees, as defined by the Federal Advisory Committee Act, which are established or utilized by EPA.) In instances where regulations, program guidance, or the public participation work plans of State, substate, or local agencies, call for advisory groups, the following special requirements will apply:

(A) Composition of Advisory Groups. Agencies must try to constitute advisory groups so that the membership includes the major affected parties, reflects a balance of interests, and consists of substantially equivalent proportions of the following groups:

- Private citizens. This portion of the advisory group would not include anyone who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer, or consumer as a result of any action that is likely to be taken by the managing agency;
- Individual citizens or representatives of organizations that have substantial economic interests in the plan or project;
- Federal, State, local, and tribal officials. These may be both elected and policy-level appointed officials, so long as the elected officials do not come from the decision-making body the group is advising;
- Representatives of public interest groups. A ''public interest group'' is an organization which has a general civic, social, recreational, environmental, or public health perspective in the area, and which does not directly reflect the economic interests of its membership.

Generally, where an activity has a particular geographic focus, the advisory group should be composed of persons from that geographic area, unless issues involved are of wider application.

Where problems in meeting the membership composition arise, the agency should request advice and assistance from EPA or the State in the case of a delegated program. EPA shall review the agency's efforts to comply, and approve the advisory group composition or, if the agency's efforts were inadequate, require additional actions.

(b) Resources for Advisory Groups. To the extent possible, agencies shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for mailing, duplicating, technical assistance, and other purposes the advisory group and the agency have agreed upon. The agency should establish a system for reimbursing advisory group members for reasonable out-of-pocket expenses that relate to their participation on the advisory group.

(3) Advisory Group Recommendations: Recommendations, including minority reports and the minutes of all meetings of an advisory

group, are matters of public information. As soon as these become available to agency staff, the agency must provide them to the public on request and distribute them to relevant public agencies. Advisory groups may communicate with EPA or the public as needed, or request EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

4. Assimilation

The heart of public participation lies in the degree to which it informs and influences final agency decisions.

Assimilating public viewpoints and preferences into final conclusions involves examining and analyzing public comments, considering how to incorporate them into final program decisions, and making or modifying decisions according to carefully considered public views. The agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Assimilation of public views must include the following three elements:

a. *Documentation.* The agency must briefly and clearly document consideration of the public's views in Responsiveness Summaries, regulatory preambles, EIS's or other appropriate forms. This should be done at key decision points specified in program guidance or in work for public participation.

b. *Content.* Each Responsiveness Summary (or similar document) must:

—Explain briefly the type of public participation activity that was conducted;
—Identify or summarize those who participated and their affiliation;
—Describe the matters on which the public was consulted;
—Summarize the public's views, important comments, criticisms and suggestions;
—Disclose the agency's logic in developing decisions; and
—Set forth the agency's specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public.

c. *Use.* The agency must use Responsiveness Summaries in its decision-making.

In addition, final Responsiveness Summaries that are prepared by an agency receiving financial assistance from EPA must also include that agency's (and, where applicable, its advisory group's) evaluation of its public participation program.

5. Feedback

The agency must provide feedback to participants and interested parties concerning the outcome of the public's involvement. Feedback may be in the form of personal letters or phone calls, if the number of participants is small. Alternatively, the agency may mail a Responsiveness Summary to those on the contact list, or may publish it.

a. *Content.* The feedback that the agency gives must include a statement of the action that was taken, and must indicate the effect the public's comments had on that action.

b. *Availability.* Agency officials must take the initiative in giving appropriate feedback, and must assure that all public participants in a particular activity are provided that feedback. As Responsiveness Summaries are prepared, their availability should be announced to the public. When regulations are developed, reprints of Preambles and final regulations must be provided to all who commented.

E. Work Plans

A work plan is a written document used for planning a public participation program. It may be an element of regulatory development plans or program plans. Each work plan should include the following elements: objectives, schedules, techniques, audiences and resources requirements. Work plans should be completed on both a program and project level or for each activity identified under Scope of the Policy.

Public participation work plans, undertaken by EPA or by applicants for EPA financial assistance, shall set forth, at a minimum:

1. Key decisions subject to public participation;

2. Staff contacts and budget resources to be allocated to public participation;

3. Segments of the public targeted for involvement;

4. Proposed schedule for public participation activities to impact program decisions;

5. Mechanism to apply the five basic functions—Identification, Outreach, Dialogue, Assimilation, and Feedback—outlined in section D of this Policy.

Reasonable costs of public participation incurred by assisted agencies, including advisory group expenses, and identified in an approved public participation work plan, will be eligible for financial assistance, subject to statutory or regulatory limitations.

Assistant Administrators and Regional Administrators will ensure that program work plans are developed in a timely manner for use in the annual budget planning process. Work plans will be reviewed by the Special Assistant for Public Participation, who will work with program and regional managers to ensure that work plans adequately carry out this Policy. Work plans may be used as public information documents.

F. Assistance to the Public

EPA recognizes that responsible participation by the various elements of the public in some of the highly technical and complex issues addressed by the agency requires substantial commitments of time, study, research analysis, and discussion. While the Agency needs the perspectives and ideas that citizens bring, it cannot always expect the public to contribute its efforts on a voluntary basis.

Assistant Administrators, office Directors, and Regional Administrators can provide funds to outside organizations and individuals for public participation activities which they, as EPA managers, deem appropriate and essential for achieving program goals, and which clearly do not involve rulemaking or adjudicative activities.

Participation funding criteria—Any financial assistance awarded by the Agency for non-regulatory or non-adjudicatory participation should be based on the following criteria:

(1) whether the activity proposed will further the objectives of this Policy:

(2) whether the activity proposed will result in the participation of interests not adequately represented;

(3) whether the applicant does not otherwise have adequate resources to participate; and

(4) whether the applicant is qualified to accomplish the work.

These are the primary tests for public participation financial assistance. From among those who meet these tests, the Agency will make special efforts to provide assistance to groups who may have had fewer opportunities or insufficient resources to participate.

G. Authority and Responsibility

Public participation has an integral part in the accomplishment of any program. It should routinely be included in decision-making and not be treated as an independent function. Managers shall assure that personnel are properly trained, and that funding needs are incorporated in their specific budgets.

Responsibility and accountability for the adequacy of public participation programs belong primarily to the Regional Administrators and the Assistant Administrators, under the overall direction of the Administrator.

1. *The Administrator* maintains overall direction and responsibility for the Agency's public participation activities. Specifically, the Administrator, aided by the Special Assistant for Public Participation, will:

(a) establish policy direction and guidance for all EPA public participation programs;

(b) review public participation program work plans, including resource allocation;

(c) coordinate public participation funding to outside groups to ensure the most economical expenditures;

(d) provide technical advice and assistance as appropriate;

(e) develop guidance and training needed to ensure that program personnel are equipped to implement the Policy;

(f) provide incentives to agency personnel to ensure commitment and competence; and

(g) evaluate at least annually the adequacy of public participation activities conducted under this Policy, and the appropriateness and results of public participation expenditures.

2. *Assistant Administrators* have the following responsibilities:

(a) identify and address those activities where application of this Policy is require;

(b) identify and address those forthcoming major policy decisions where the Policy should be applied;

(c) ensure that program work plans are developed annually to provide for adequate public participation in the above decisions and activities;

(d) implement approved work plans for public information and public participation activities;

(e) ensure that, as regulations for the programs cited in the Appendix of the Policy are amended, they incorporate the Policy's provisions;

(f) evaluate the appropriateness of public participation expenditures and activities under their jurisdiction, revising and improving them as necessary;

(g) encourage coordination of public participation activities;

(h) provide guidance and assistance to support regional office activities;

(i) seek public participation in decisions to modify or develop major national policies, at their discretion;

(j) consider funding authorized pilot and/or innovative demonstration projects;

(k) consider measures to ensure Policy implementation in appropriate managers' performance standards;

(l) provide financial assistance, as appropriate and available, for authorized public participation activities at the national level.

3. *Regional Administrators* have the following responsibilities:

(a) identify and address those EPA and EPA-assisted activities where application of this Policy is required;

(b) identify and address those forthcoming EPA and EPA-assisted major policy decisions where the Policy should be applied;

(c) ensure that work plans are developed annually by the programs and recipients to provide for adequate public participation in the above decisions and activities;

(d) implement approved work plans for public information and public participation activities;

(e) ensure that public participation is included by applicants in the development of program funding applications to EPA, and in other decisions as identified by this Policy;

(f) provide guidance and technical assistance to recipients on the conduct of public participation activities;

(g) evaluate annually public participation activities of State, substate, or local entities revising and improving them as necessary;

(h) encourage coordination of public participation activities;

(i) support and assist the public participation activities of Headquarters;

(j) ensure that Regional staff are trained, and resources allocated for public participation program;

(k) incorporate measures to ensure Policy implementation in managers' performance standards;

(l) provide small grants to representative public groups for needed public participation work;

(m) evaluate the appropriateness of public participation expenditures and activities, revising and improving them as necessary.

4. *The Director, Office of Public Awareness* has an important role in the development and support of Agency public participation activities. The Director will:

(a) Assist Headquarters and regional programs in identifying interested and affected members of the public in compiling project contacts lists;

(b) Support Headquarters and regional program in development and distribution of outreach materials to inform and educate the public about environmental programs and issues, and participation opportunities;

(c) Develop annual public awareness/participation support plans to complement public participation work plans and identify resources requirements.

H. Compliance

Assistant Administrator, Office Directors, and Regional Administrators are responsible for making certain that, for the activities under their jurisdiction, all those concerned comply with the public participation requirements set forth in this Policy.

Regional Administrators will evaluate compliance with public participation requirements in appropriate State and substate programs supported by EPA financial assistance. This will be done during the annual review of the States' program(s) which is required by grant provisions, and during any other program audit or review.

If the Regional Administrator is not satisfied that this Policy is being carried out, he or she should defer the grant award until these conditions can be met where that course is legally permissible. A Regional Administrator may grant a waiver from specific requirements in this Policy upon a showing by the agency that proposed action will result in substantially greater public participation that would be provided by the Policy.

The Administrator of EPA has final authority and responsibility for ensuring compliance. Citizens with information concerning apparent failures to comply with these public participation requirements should first notify the appropriate Regional Administrator or Assistant Administrator, and then if necessary, the Administrator. The Regional Administrator, Assistant Administrator, or Administrator will make certain that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

Appendix—List of Citations Covering Program Grants, Delegations, or Permits to States and Substate Governments

The Public Participation Policy will be incorporated in program regulations that cover financial assistance or delegations of authority to State or substate governments or approval of State programs. Where consolidated awards exist under these provisions, they also will be covered. Programs under the Clean Water Act, Safe Drinking Water Act, and the Resource Conservation Recovery Act are already covered by this Policy insofar as they have been amended, or will be amended, to incorporate 40 CFR part 25. Consolidated permit programs are covered by 40 CFR parts 122, 123, and 124. Regulations that refer to existing programs now covered by the Policy will have to be amended to incorporate its provisions. Where programs regulations are not yet written, the Policy shall be incorporated.

Clean Air Act (Public Law 95–95)

Air Pollution Control Program Grants

Sec. 105—Grants to State and local air pollution control agencies for support of air

pollution planning and control programs. (Catalogue of Federal Domestic Assistance No. 66001.)

Sec. 106—Grants to interstate air quality agencies and commissions to develop implementation plans for interstate air quality agencies and commissions to develop implementation plans for interstate air quality control regions. (When funded.)

Urban Mass Transportation Technical Studies Grants (DOT)

Sec. 175—Grants to organizations of local elected officials with transportation or air quality maintenance responsibilities for air quality maintenance planning. (CFDA No. 20.505)

Sec. 210—Grants to State agencies for developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs. (When funded.)

Quiet Communities Act (Public Law 95–609)

Quiet Communities—State and Local Capacity Building Assistance

Sec. 14(c)—Grants to State and substate governments and regional planning agencies for planning, developing, evaluating, and demonstrating techniques for quiet communities. (CFDA No. 66.031.)

Toxic Substances Control Act (Public Law 94–469)

State Toxic Substance Control Projects

Sec. 28—Grants to State for establishing and operating programs to complete EPA efforts in preventing or eliminating risks to health or environment from chemicals. (CFDA No. 66.800.)

Federal Insecticide, Fungicide and Rodenticide Act (Public Law 95–398)

Pesticides Enforcement Program Grant

Sec. 23(a)—Funding to States/Indian tribes through cooperative agreements for enforcement and applicator training and certification. (CFDA No. 66–700.)

Resource Conservation and Recovery Act (Public Law 94–580)

Sec. 3005(a)—Issuance of permits for treatment, storage and disposal of hazardous waste.

Sec. 3006—Delegation of authority to administer and enforce hazardous waste program.

Sec. 4002—State planning guidelines. Solid and hazardous waste management program support grants

Sec. 4007—Approval for State, local, and regional authorities to implement State or regional solid waste plans and be eligible for Federal assistance. (CFDA No. 66.451)

Sec. 4008—Grants to State and substate agencies for solid waste management, resource recovery and conservation, and hazardous waste management. (CFDA No. 66.451.)

Sec. 4009—Grants to States for rural areas solid waste management facilities. (CFDA No. 66.451.)

Solid Waste Management Demonstration Grants

Sec. 8006—Grants to State, municipal, interstate or intermunicipal agency for resource recovery systems or improved solid waste disposal facilities. (CFDA No. 66.452.)

Solid Waste Management Training Grants

Section 7007—Grants or contracts for States, interstate agency, municipality and other organizations for training personnel in occupations related to solid waste management and resource recovery. (CFDA No 66.453.)

Safe Drinking Water Act (Public Law 95–190)

Sec. 1421(b)—Issuance of permits for underground injection control programs.

State Public Water System Supervision Program Grants

Sec. 1443(a)—Grants to States for public water system supervision. (CFDA 66.432.)

State Underground Water Source Protection—Program Grants

Sec. 1443(b)—Grants to States for underground water source protection programs. (CFDA 66.433.)

Clean Water Act (Public Law 95–217)

Construction Grants for Wastewater Treatment Works

Sec. 201—Grants to State, municipality, or intermunicipal agencies for construction of wastewater treatment works. (CFDA 66.418.)

Water Pollution Control—State and Interstate Program Grants

Sec. 106—Grants to State and interstate agencies for water pollution control administration. (CFDA 66.419.)

Water Pollution Control—State and Areawide Water Quality Management Planning Agency

Sec. 205(g)—Delegation of management of construction grants programs to State designated agency(ies). (CFDA 66.438.)

Sec. 208—Grants for State and areawide waste treatment management planning. (CFDA 66.426.)

Water Pollution Control—Lake Restoration Demonstration Grants

Sec. 314—Clean Lakes Program.

Sec. 402(a)—Issuance of permits under National Pollutant Discharge Elimination System.

Sec. 404—Issuance of permits for disposal of dredge and fill materials.

Public Law 94—580, sections 3005 & 3006;

Public Law 95–190, sections 1421–1423; Public Law 95–217, section 402; Public Law 95–217, section 404;

Public Law 95–95, section 165;

Proposed consolidated permit regulations, covering; Hazardous Waste Program under RCRA; UIC Program under SDWA. NPDES and section 404 of the Clean Water Act, and the PSD Program under the Clean Air Act.

Dated: November 23, 1999.

Kathleen Bailey,

Senior Management Analyst.

[FR Doc. 99–31047 Filed 11–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50863; FRL–6396–1]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically Modified Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a receipt from the University of Maryland, of a notification of intent to conduct small-scale field testing of a genetically modified *Metarhizium* strain. The modified strain contains duplicate *Metahizium* genes to improve the suppression of *Tricoplusia ni* species (cabbage loopers) from infesting cabbage plants. The Agency had determined that the application may be of regional and national significance, and may help develop alternatives to traditional pesticides to protect human health and the environment. Therefore in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50863, must be received on or before January 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50863 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Carl Etsitty, Biopesticides, and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–605–0749; fax number: 703–308–7026; e-mail address: etsitty.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of pesticide interest to those persons who are or may be required to conduct small-scale field testing of genetically modified microbial pesticide under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also

be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related ocuments 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.'' Also, you can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/, to access information about OPP-Docket OPP-50863, or go directly to Office of Pesticide Programs' web page http://www.epa.gov/pesticides/ and select Biopesticides, then FR Notice.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–50863. 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 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50863 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 Hwy., 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 OPP–50863. 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 listed 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. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency will reviewed and evaluate this Notification and will make a decision as described in 40 CFR 172.50. Notice of receipt of this Notification does not imply a decision by the Agency on this Notification. This small-scale field testing is designed to evaluate the modified *Metarhizium* strain, to control Tricoplusia ni species from infesting cabbage plants. The tested organism, *Metarhizium anisopliae*, contains duplicates of a cuticle-degrading protease gene from *Metarhizium anisopliae*, under a constitutive *Aspergillus nidulans* promoter. A green-fluorescent protein molecular marker is also incorporated to allow monitoring of the genetic stability and fate.

The design of the test site is as follows: The plot, located in Maryland, will consist of a 0.05 hectare (ha) barren area containing a circular 0.02 ha planting of cabbages designed to allow for efficient maintenance. There will be monitoring to detect dispersal outside the confines of the plot of any *Metarhizium* containing the complete complemental *Metarhizium* cuticle-degrading protease gene sequence. A low-maintenance fallow zone outside the plot will also be monitored. A 0.20 ha^2 cabbage plant control is included-60 m from the edge of the barren zone. Background soil samples will be taken prior to initiation of study; Indigenous

Metarhizium strains will be analyzed by isozyme, and RAPD analysis to obtain strain-specific probes for population analysis.

In accordance with 40 CFR 172.3, the small-scale field test will be conducted on a cumulative total of no greater than 10 acres of land. Any food or feed crops will be destroyed.

B. What is the Agency's Authority for Taking this Action?

The Agency's Authority for reviewing this Notification is described in 40 CFR 172 Subpart C. This notice of receipt is published in accordance with 40 CFR 172.11.

List of Subjects

Environmental protection, Genetically modified organism.

Dated: November 23, 1999.

Janet L. Anderson,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–31197 Filed 11–29–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 22, 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 December 30, 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 Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0573.

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

Form No.: FCC Form 394.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal governments.

Number of Respondents: 2,000 respondents; 1,000 total annual responses.

Estimated Time Per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 7,000 hours.

Total Annual Cost: $377,000.

Needs and Uses: FCC Form 394 is a standardized form that is completed by cable operators in connection with the transfer of control of cable television systems. The form is used by cable operators to apply for local franchise authority (LFA) approval to assign or transfer control of a cable television system.

The data are used by the LFA's to restrict profiteering transactions and other transfers that are likely to adversely affect cable rates or service in the franchise area.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31059 Filed 11–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1308–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1308–DR), dated November 18, 1999, and related determinations.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 18, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from Hurricane Floyd on September 16–19, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A.D. Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Androscoggin, Cumberland, Kennebec, Oxford, and Somerset Counties for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–31088 Filed 11–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3151–EM]

Commonwealth of Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3151–EM), dated November 17, 1999, and related determinations.

EFFECTIVE DATE: November 17, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 17, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in the Commonwealth of Puerto Rico, resulting from Hurricane Lenny on November 17, 1999, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency. I have further authorized direct Federal assistance at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared emergency:

All 78 municipalities of the Commonwealth of Puerto Rico for assistance as follows:

Appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. Direct Federal assistance at 75 percent Federal funding will be provided.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–31089 Filed 11–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3152–EM]

U.S. Virgin Islands; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the U.S. Virgin Islands (FEMA–3152–EM), dated November 17, 1999, and related determinations.

EFFECTIVE DATE: November 17, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 17, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in the U.S. Virgin Islands, resulting from Hurricane Lenny on November 17, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the U.S. Virgin Islands.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency. I have further authorized direct Federal assistance, at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Barbara T. Russell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the U.S. Virgin Islands to have been affected adversely by this declared emergency:

The U.S. Virgin Islands for assistance as follows:

Appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the disaster. Direct Federal assistance at 75 percent Federal funding will be provided.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–31090 Filed 11–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3152–EM]

U.S. Virgin Islands; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the U.S. Virgin Islands (FEMA–3152–EM), dated November 17, 1999, and related determinations.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Byrne of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

This action terminates my appointment of Barbara T. Russell as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–31091 Filed 11–29–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the Emergency Management Institute.

DATES OF MEETING: December 9–10, 1999.

PLACE: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Room 408, Emmitsburg, Maryland 21727.

TIME: Thursday, December 9, 1999, 8:30 a.m.–5:00 p.m. Friday, December 10, 1999, 8:30 a.m.–1:00 p.m.

PROPOSED AGENDA: Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; expansion of the Independent Study program and EMI's Higher Education Program.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: November 15, 1999

Kay C. Goss, CEM(®),

Associate Director for Preparedness, Training and Exercises.

[FR Doc. 99–31092 Filed 11–29–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: December 6–7, 1999.

Place: Bank of America Main, 730 15th Street, NW, Washington, DC 20005. Room: The Penthouse, 10th floor (December 6), 9th floor conference room (December 7).

Times: 8:30 a.m. to 5:00 p.m., both days.

Proposed Agenda

1. Call to Order and Announcements.
2. Action on Minutes of Previous 2 Meetings.
3. 1999 Annual Report Discussion.
4. Map Modernization Update:
(a) DFIRM Graphic Specifications.
(b) Assessment of Mapping Needs Process.
(c) Stream Gage Network Discussion.
5. Actions for Year 2000.
6. New Business.
7. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC

20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Ms. Sally P. Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before September 6, 1999.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting.

Dated: November 22, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–31093 Filed 11–29–99; 8:45 am]

BILLING CODE 6718–04–P

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, December 6, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any 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 26, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–31193 Filed 11–26–99; 12:29 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 982 3152]

Quigley Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices of unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Daniel Kaufman or Michelle Rusk, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2888 or 326–3148.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 23, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent order from respondent the Quigley Corporation (''Quigley'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations for Cold-Eeze Zinc Lozenges and Cold-Eezer Plus Zinc Gluconate Lozenges (hereinafter, collectively ''Cold-Eeze'') and Kids-Eeze Bubble Gum (''Kids-Eeze'').

The Commission's proposed complaint alleges that Quigley made unsubstantiated representations that Cold-Eeze will prevent users from contracting colds and pneumonia; will treat allergies; will reduce the severity of colds in children; and that Kids-Eeze will reduce the severity of cold symptoms in children.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondent from making the representations about Cold-Eeze and Kids-Eeze challenged in the complaint, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part II of the proposed order prohibits respondent from making any representation that any food, drug, or dietary supplement can or will cure, treat or prevent any disease, or have any effect on the structure or function of the human body, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order allows the respondent to make any representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA.

Part IV of the proposed order allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts V through VIII require the respondent to keep copies of advertisements making representations covered by the order; to keep records concerning those representations, including material that they relied upon when making the representations; to provide copies of the order to certain of the respondents' personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission.

Part IX of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, but either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–31055 Filed 11–29–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 982 3152]

QVC, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Daniel Kaufman or Michelle Rusk, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2888 or 326–3148.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 23, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules or practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent order from respondent QVC, Inc. (''QVC'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations for Cold-Eeze Zinc Lozenges and Cold-Eezer Plus Zinc Gluconate Lozenges (hereinafter, collectively ''Cold-Eeze'').

The Commission's proposed complaint alleges that QVC made unsubstantiated representations that Cold-Eeze will prevent users from contracting colds and pneumonia; will treat allergies; and will reduce the severity of colds in children.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondent from making the representations about Cold-Eeze challenged in the complaint, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part II of the proposed order prohibits the respondent from making any representation that any dietary supplement can or will cure, threat or prevent any disease, or have any effect on the structure or function of the human body, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order allows the respondent to make any representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA.

Part IV of the proposed order allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts V through VIII require the respondent to keep copies of advertisements making representations covered by the order; to keep records concerning those representations, including material that they relied upon when making the representations; to provide copies of the order to certain of the respondents' personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission.

Part IX of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–31054 Filed 11–29–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Wednesday, January 26, 2000, from 9:00 a.m. to 5:00 p.m. and on Thursday, January 27, 2000 from 9:00 a.m. to 3:00 p.m. The meeting will take place at the Hyatt Regency Hotel On Capitol Hill, 400 New Jersey Ave., NW, Washington, DC 20001. The meeting will be entirely open to the public.

The topic of the meeting will be errors and accidents in blood administration and what might be done to reduce the occurrence of these events.

Public comment will be solicited both days. Public comment will be limited to three minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 12, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Safety, 200 Independence Avenue SW, Rm 736E, Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–7560 e-mail stephendnightingale@osophs.dhhs.gov.

Dated: November 19, 1999.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 99–30981 Filed 11–29–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Implementation of Universal Leukoreduction; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Workshop on Implementation of Universal Leukoreduction.'' The purpose of the public workshop is to stimulate public discussion on how to implement pre-storage leukoreduction as a routine step in the manufacture of whole blood, red blood cells, and platelets that are intended for human transfusion.

Date and Time: The public workshop will be held on December 10, 1999, 8:30 a.m. to 4:45 p.m.

Location: The public workshop will be held at the National Institutes of Health, Natcher Conference Center, 45 Center Dr., Bldg. 45, Bethesda, MD.

Contact: For information regarding this notice: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6129, FAX 301–827–2843. For information regarding the public workshop and registration: Jennifer Gormley, Laurel Consulting Group, 1815 Fort Meyer Dr., suite 300, Arlington, VA 22209, 703–351–7676, FAX 703–528–0716, E-mail: jgormley@lcgnet.com.

Registration: Early registration is recommended on or before December 3, 1999. Mail or fax registration information (including name, title, firm name, address, telephone, and fax number) to Jennifer Gormley (address above). Registration at the site will be on a space available basis on the day of the workshop, beginning at 7:30 a.m. There is no registration fee for the workshop. If you need special accommodations due to a disability, please contact Jennifer Gormley at least 7 days in advance.

Agenda: FDA anticipates that the ideas and experiences exchanged at the workshop will serve as a source of information for the blood industry and the public in planning for universal leukoreduction, as well as guide FDA in formulating specific regulatory recommendations. Issues to be discussed include: (1) The experiences in implementing leukoreduction as a routine blood manufacturing step and in the use of leukocyte reduced blood products; (2) whether and in what timeframe universal leukoreduction should be recognized as a blood manufacturing standard; and (3) what experiences exist to date in the United States with respect to implementing leukoreduction as a routine blood manufacturing step. An open panel discussion will include a critique of the experiences in the United States to date in implementing leukoreduction as a routine blood manufacturing step, as well as proposals for the FDA to consider in formulating new blood recommendations and regulations. All members of the transfusion community are encouraged to participate with the understanding that the workshop will focus on operational issues, rather than scientific, clinical and economic merits of universal leukoreduction.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16,Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. In addition, the transcript will be placed on the FDA Internet site at www.fda.gov/cber/minutes/workshop-min.htm.

Dated: November 23, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–30956 Filed 11–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4959]

Guidance for Industry on the Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000; 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 ''Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000.'' This

document provides guidance for industry on how FDA interprets the Federal Advisory Committee Act (FACA) with respect to the disclosure of materials provided to advisory committees convened by the Center for Drug Evaluation and Research (CDER).

DATES: Written comments may be submitted on the guidance document by February 28, 2000. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled ''Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000.'' The document provides guidance on how FDA interprets the FACA (5 U.S.C. App. 2) and § 314.430 (21 CFR 314.430) with respect to the disclosure of materials provided to advisory committees and how FDA will exercise its discretion under § 314.430(d)(1) in connection with open advisory committee meetings convened by CDER beginning on January 1, 2000.

FDA construes the FACA to require that, with respect to any open advisory committee meeting convened pursuant to the FACA, whenever practicable and subject to any applicable exemptions of the Freedom of Information Act (FOIA) (5 U.S.C. 552), those materials that are provided to the members of an advisory committee in connection with that meeting must be made available for public inspection and copying before or at the time of the advisory committee meeting. FDA interprets § 314.430 to be consistent with the FACA and therefore will exercise its discretion under § 314.430(d)(1) in a manner consistent with the FACA and the FOIA as described in the previous sentence to make available for public inspection and copying materials provided to the members of an advisory committee in connection with open advisory committee meetings convened by CDER, beginning on January 1, 2000.

FDA will issue further guidance on what sponsors may expect concerning the disclosure of the materials they submit to advisory committees in connection with open advisory committee meetings convened by CDER beginning on January 1, 2000.

This level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It is being implemented immediately without prior public comment because the guidance is needed to implement a court-approved settlement agreement. However, the agency wishes to solicit comment from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

The guidance represents the agency's current thinking on the disclosure of materials provided to advisory committees in connection with open advisory committee meetings convened by CDER beginning on January 1, 2000. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 22, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–30955 Filed 11–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Antitumor and Antimicrobial Lead—Discovery and Development From Natural Products

Opportunities for Cooperative Research and Development Agreements (CRADAs) are available for collaborations with the NCI intramural Laboratory of Drug Discovery Research and Development (LDDRD) to discover and identify novel antitumor and antimicrobial leads from natural products. Collaborative projects will focus upon cancer and/or areas of infectious diseases of high public health significance and high national and international priority.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of opportunities for Cooperative Research and Development Agreements (CRADAs).

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks one or more Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or biotechnology companies to discover and develop new potential antitumor and/or antimicrobial drug leads from natural products. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, methods of treatment or prevention that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Development & Commercialization Branch, National Cancer Institute—Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick,

MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquires should be submitted to Dr. Michael R. Boyd, Chief, Laboratory of Drug Discovery Research & Development, National Cancer Institute—Frederick Cancer Research & Development Center, Bldg. 1052, Rm 121, Frederick MD, 21702–1201 (phone: 301–846–5391; Fax: 301–846–6919; e-mail boyd@dtpax2.ncifcrf.gov).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential, preliminary CRADA proposals, preferably two pages or less, must be submitted to the NCI on or before January 31, 2000. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

SUPPLEMENTARY INFORMATION:

Technology Available:

The LDDRD is an NCI intramural research laboratory dedicated to the discovery of new potential lead molecules for antitumor and/or antimicrobial drug development. Some general background and contact information for the LDDRD are available on the Internet at http://dtp.nci.nih.gov/docs/branches/lddrd/lddrd__home.html.

The primary starting materials for LDDRD's discovery research principally comprise the remarkable library of natural product extracts residing in the NCI Natural Products Repository (NPR).

The NPR contains the largest and most diverse natural products extracts collection in the world, derived during the past 15 years from an NCI contracts-based collections consortium led by renowned botanical, marine science and microbial research professionals and organizations globally. Most of these collections have been performed subject to legally-binding agreements between the NCI and relevant Source Country organizations or government agencies which commit the NCI to terms of collaboration and compensation in the event of discovery of a compound which meets the criteria for drug development. Even in instances where no agreement has been signed, the NCI still considers itself bound to the same policies of collaboration and compensation. Therefore, CRADA partners will be subject to similar requirements to those governing the NCI. (Further information may be obtained from the NCI—Developmental Therapeutics Program website, http://dtp.nci.nih.gov).

The LDDRD also engages in selected lead-discovery collaborations based upon natural product extracts originating directly from specific collaborating researchers or organizations rather than from the NCI–NPR. In such cases, collaborative projects are undertaken based both upon unique and mutual scientific and drug discovery and development interests, expertise and resources of the collaborating parties.

LDDRD's principal lead-discovery strategy employs bioassay-guided fractionation, isolation, purification and structural elucidation of bioactive molecules. The sought-for bioactivity is defined by the specific type(s) of assay and/or target(s) employed in the primary screen(s) used for bioassay support of the process.

The LDDRD comprises an interdisciplinary research team, and appropriate resources, expertise and experience, to carry out all essential aspects of natural products lead-discovery, including high-throughput screening, cell-based bioassays, chemical isolation, purification and structural determinations.

Technology Sought

LDDRD now seeks potential collaborators with expertise or resources in several areas including but not limited to: novel screening technologies, bioassays, reagents or targets; synthetic chemistry capabilities pertinent to the specific collaboration; novel or distinctive extract and/or compound collections; preclinical and/or clinical drug research and development expertise and experience; proven track record in moving preclinical lead-discoveries through lead-optimization, drug candidate selection, preclinical and clinical development, regulatory approvals, and commercialization.

Collaborators Sought:

Accordingly, DHHS now seeks collaborative arrangements for the joint LDDRD and collaborator discovery research and development of novel, natural product lead-derived, clinically useful, antitumor and/or antimicrobial drugs of high public health priority. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide for equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

As a minimum, the successful Collaborator should either possess broad experience in most if not all of the following areas; or possess highly specialized, unique expertise in one or more of the following areas, as particularly pertinent to natural products lead-discovery and development: (a) Preclinical and clinical drug development; (b) ability to carry out or direct chemical synthetic studies supporting lead-optimization, drug candidate selection and development; (c) application of automation and robotics technologies to antitumor and/or antimicrobial high-throughput screening (HTS) assays; (d) experience with other pertinent enzyme-based, biochemical, cellular *in vitro* and/or *in vivo* assays; (e) application of database and bioinformatics technologies for the manipulation, storage and analysis of high-throughput assay data, including the development of software as required; (f) the use of high-throughput assay methods to support antitumor and/or antimicrobial lead-discovery from natural products; (g) elucidation and validation of novel antitumor and/or antimicrobial molecular targets; and, (h) specific experience in development and applications of lead-discovery HTS assays addressing novel antitumor and/or antimicrobial molecular targets.

NCI and Collaborator Responsibilities

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Providing the Collaborator with isolated lead-molecules for evaluation.

3. Planning research studies and interpreting research results.

4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.

2. Providing essential research materials, such as extracts, enzymes or other reagents, compounds, hardware or software.

3. Planning research studies and interpreting research results,

4. Providing technical expertise and/or financial support (*e.g. facilities, personnel and expertise) for CRADA-related research as outlined in the CRADA Research Plan.*

5. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on research and development of this technology involving lead discovery/optimization and biological evaluation.

This ability can be demonstrated through experience, expertise, and the ability to contribute intellectually in this or related areas of drug developmental research and development.

2. The demonstration of adequate resources to perform the research, development and commercialization of this lead discovery/optimization and biological evaluation technology (*e.g.* facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology as defined above.

4. The demonstration of expertise in the commercial development, production, marketing and sales of antitumor and/or antimicrobial natural products.

5. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

6. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

7. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with: (1) The grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor; or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: November 19, 1999.

Kathleen Sybert,

Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–30996 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 6–7, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW, Washington, DC 20007.

Contact Person: Mary C. Fletcher, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN-Room 643G, Bethesda, MD 20814, 301/496–7413.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–31002 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Trustees of Indian University.

Date: December 13, 1999.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, 8th Floor, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–31003 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the Cancer Advisory Panel for Complementary and Alternative Medicine (CAPCAM) meeting on Monday, December 13, 1999. The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting will be open to the public, with attendance limited to space available. The agenda includes: Remarks from the Director, NCCAM; CAPCAM Chair; and Director, OCCAM, NCI,

scientific presentations, CAPCAM process overview, public comments session, and other business of the Panel.

The public comments session is scheduled from 4:30 p.m. to 5 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 31 Center Drive, (MSC 2182), Building 31, Room 5B37, Bethesda, Maryland 20892, 301–594–2013, Fax: 301–480–9500. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on December 7, 1999. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (December 23, 1999) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, CAPCAM, National Institutes of Health, Building 31, Room 5B37, 31 Center Drive, Bethesda, Maryland 20892, (301) 594–2013, Fax: 301–480–9500. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Nahin.

Dated: November 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 99–30997 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 6–7, 1999.

Time: .7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Town Center Hotel, 8727 Colesville Rd., Silver Spring, MD 20910.

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS; Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 19, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30999 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 16, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 19, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–31001 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 2, 1999.

Time: 11 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (telephone conference call).

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 1999.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (telephone conference call).

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 9, 1999.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (telephone conference call).

Contact Person: N. Krish Krishnan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 14, 1999.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (telephone conference call).

Contact Person: Leonard Jakubczak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30998 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organizations, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 24167, May 5, 1999, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the following: (1) Establish the Office of Budget (OB), Office of the Director, NIH; (2) transfer the budget functions from the Office of Financial Management, Office of Management, OD, to the OB; and (3) establish the Program Budget Branch with the OB.

Section N–B, Organization and Functions, under the heading *Office of the Director (NA, formerly HNA*, is amended by inserting the following:

Office of Budget (NA7, formerly HNA7). (1) Has primary responsibility for NIH-wide budget policy, planning, analysis, formulation and presentation; (2) responsible for budget management once appropriations have been made, including reprogramming and coordination of the use of the Director's Discretionary Fund and transfer authority; and (3) provides budget advice to the Director, NIH, and senior OD and IC officials.

Program Budget Branch (NA72, formerly HNA72). (1) Services as the central NIH organizational component for budget policy, planning, formulation, justification and execution of annual direct appropriated funds; (2) develops budget policies and guidelines for use by the NIH components including development of guidance for budget preparation; (3) serves as the focal point at NIH for the interpretation, preparation, dissemination and implementation of OS and OMB financial policies and procedures; (4) analyzes relevant legislation and subsequent Congressional actions with regard to budgetary implications; (5) develops recommendations to the Associate Director for Budget (ADB) on the allocation of dollar resources to the NIH; (6) coordinates responses to Congressional inquires, Congressional appropriations reports and report language; (7) serves as budget advisor with NIH organizations on the preparation, receipt, and review of budgetary data required for formulation and presentation of the budget; (8) coordinates and consolidates NIH budget execution, administration and financial reporting which include development of apportionments, allotments, allowances, reprogrammings, transfers, reserves, etc; (9) implements fiscal controls; and (10) develops, coordinates and monitors all functions related to the management of FTE resources and makes recommendations to the Associate Director for Budget on the allocation of FTEs/positions for NIH.

Dated: November 17, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–31000 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–55]

Submission for OMB Review: Community Outreach Partnership Centers Program (COPC)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: This program provides competitive grants to public and private nonprofit institutions of higher education to assist in establishing and/or carrying out research and outreach activities addressing the problems of urban areas. This data collection will support the grantee selection process and monitoring of grantee performance. The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice

lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Community Outreach Partnership Centers (Program (COPC).

OMB Approval Number: 2528–0108.

Description of the Need for the Information and its Proposed Use: This program provides competitive grants to public and private nonprofit institutions of higher education to assist in establishing and/or carrying out research and outreach activities addressing the problems of urban areas. This data collection will support the grantee selection process and monitoring of grantee performance.

Respondents: Not-for-profit institutions.

Frequency of Submissions: Semi-annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	160		1		80		12,800
Annual Report	22		44		16		704
Final Report	22		22		16		352
Recordkeeping	22		22		16		352

Total Estimated Burden: 14,208.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 24, 1999.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 99–31074 Filed 11–29–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

ACTION: Establishment.

SUMMARY: Pursuant to Executive Order 13112, and acting as administrative lead on behalf of the new interdepartmental Invasive Species Council (Council), the Secretary of the Interior is establishing the Invasive Species Advisory Committee (ISAC). This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463).

FOR FURTHER INFORMATION CONTACT: Gordon Brown, Invasive Species Council, telephone (202) 208–6336; fax (202) 219–0229; e-mail a__gordon__brown@ios.doi.gov.

SUPPLEMENTARY INFORMATION: Invasive species are transforming America's lands and waters. Foreign animal and plant species are replacing native wildlife and wreaking enormous financial and ecological damage. Invasive species are second only to habitat destruction in causing species to be endangered, and estimates of economic harm from these biological invaders run as high as $123 billion annually. Among other things, invasive species crowd out nutritious native forage, create fire hazards, limit recreation, clog lakes and waterways, undermine fisheries, and corrupt water pipes.

Invasive species causing harm include weeds like yellow starthistle and leafy spurge, which cattle cannot eat; purple loosestrife, which chokes wetlands; miconia, which may destroy the Hawaiian rainforest; and melaleuca trees now expanding across the Everglades. Animals are also problems, such as the zebra mussel, corrupting water supply facilities; the brown tree snake, which has extirpated forest birds on Guam; and the Asian tiger mosquito, which has spread avian malaria to wild birds and other diseases to both humans and other animals.

Purpose and Objective

To advise the Council as authorized by Executive Order 13112 on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce.

The ISAC will maintain an intensive and regular dialogue with stakeholders and existing organizations to actively explore these issues and will draw on the expertise of its members and other sources to provide advice. The ISAC will meet up to four times per year.

Balanced Membership Plans

The Committee consists of up to 25 United States citizens. Members of the ISAC will be appointed by the Secretary of the Interior in consultation with the other members of the Council. Members will be selected based on specific needs of the Council in order to balance viewpoints, institutions, geographic diversity, and the advisory functions required to effectively address invasive species science and management. These factors are important and weight is given to geographical distribution, gender, minority status, and institution.

No member may serve on the ISAC for more than three consecutive terms of 2 years. Reappointment terms will be staggered within stakeholder groups (2 or 3 years) to avoid turnover.

Responsible DOI Officials

Gordon Brown, Invasive Species Council, Department of the Interior, 1849 C. St., NW, Room 6635, Washington, DC 20240.

Dated: November 19, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–30974 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Ox Yoke Road Development, Shasta County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability and Receipt of Application.

SUMMARY: This notice advises the public that William Schmitt (applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize the incidental take of the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), federally listed as threatened, and modification of its habitat during the construction of approximately 140,000 square feet of industrial warehouse space just west of the Anderson City limits in Shasta County. The permit would be in effect for 10 years.

The Service announces the receipt of the applicant's incidental take permit application that includes the proposed ''Low-Effect Habitat Conservation Plan for the Incidental Take of the Valley Elderberry Longhorn Beetle at the Ox Yoke Road Development, Shasta County, California.'' The proposed habitat conservation plan (Plan) is available for public comment. The Plan describes the proposed project and the measures the applicant would undertake to minimize and mitigate project impacts to the valley elderberry longhorn beetle. The Service has made a preliminary determination that the applicant's Plan qualifies as a ''low-effect'' habitat conservation plan eligible for categorical exclusion under the National Environmental Policy Act. We explain the basis for this determination in an Environmental Action Statement, which is also available for public review. This notice is provided pursuant to section 10(c) of the Act.

DATES: Written comments should be received on or before December 30, 1999.

ADDRESSES: Comments should be addressed to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, Suite W2605, Sacramento, California 95825–1826. Comments may be sent by facsimile to 916–414–6712.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Jim Browning, staff biologists, Sacramento Fish and Wildlife Office; telephone (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Plan and associated documents for review should immediately contact the above office. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize ''incidental take.'' Incidental take is defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The applicant proposes to construct 140,000 square feet of commercial warehouse space on approximately 10 acres of a 19-acre site. The remaining 9 acres of the project site lies in the 100-year floodplain of Spring Gulch and will not be developed. Instead, this area will be improved by removing asphalt, wood, and other debris that has been dumped there over the years. Riparian vegetation will be allowed to colonize this area. Mature valley oaks and other riparian vegetation located along the southeastern property line will be preserved.

The project site is located on the northeast corner of State Highway 273 and Ox Yoke Road in Shasta County, California. The proposed project consists of an industrial development comprising 12 lots. The building site, which consists of approximately 10 acres on the eastern portion of the 19-acre site would be graded and leveled. Earthwork on the 10 acres would involve approximately 11,000 cubic yards of cuts, 19,000 cubic yards of fill, and 8,000 cubic yards of imported earthen material. Land adjacent to the site is zoned for commercial use.

In 1998, biologists surveyed the proposed project area for special-status wildlife and plant species that could be affected by the project. Based upon the surveys, only one federally listed species, the valley elderberry longhorn beetle, has the potential to occur on site and to be directly impacted by the proposed project. The applicant has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of the beetle: (1) Mitigation and monitoring of transplanted elderberry shrubs and supplemental plants would be conducted according to the Service's Mitigation Guidelines for the Valley Elderberry Longhorn Beetle, dated July 9, 1999; (2) two affected elderberry bushes would be transplanted to a mitigation site at the proposed Stillwater Mitigation Bank located approximately 4 miles northeast of the proposed project site; (3) six additional elderberry cuttings (4 stems at a 1:1 ratio and one stem at a 2:1 ratio) and six associated native plants (1:1 ratio) would be planted to compensate for any adverse impacts to valley longhorn beetle habitat resulting from the proposed project; and (4) the mitigation area would be managed for the purpose of long-term protection of the valley elderberry longhorn beetle habitat.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to minimize and mitigate impacts of the project on the valley elderberry longhorn beetle. An alternative to the taking of listed species under the Proposed Action is considered in the Plan. Under the No Action Alternative, no permit would be issued. The two elderberry shrubs would remain on the project site and development would be planned around the shrubs. Because this is an industrial site, it is likely that large buildings would be constructed near the elderberry shrubs, thereby reducing their suitability as valley elderberry longhorn beetle habitat. Additionally, all other vegetation would be removed, leaving the two elderberry shrubs isolated from other riparian vegetation.

The Service has made a preliminary determination that the applicant's Plan qualifies as a ''low-effect'' habitat conservation plant as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low-effect habitat conservation plans are those involving: (1) Minor or negligible effects on federally listed, proposed, and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The Ox Yoke Road Development Plan qualifies as a low-effect habitat conservation plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the valley elderberry longhorn beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the valley elderberry longhorn beetle

resulting from construction of the warehouse.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Flood plain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the valley elderberry longhorn in conjunction with implementation of the Ox Yoke Road Development project. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: November 22, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–31006 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of the Saddle Mountain National Wildlife Refuge Acquisition Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and availability of the Record of Decision.

SUMMARY: This notice advises the public that we have adopted the Final Environmental Impact Statement (FEIS) adopting the Hanford Reach of the Columbia River Final Enviornmental Impact Statement for Comprehensive River Conservation Study, prepared a Record of Decision (ROD) based on the FEIS, and are making it available to the public. We have expanded an approved refuge acquisition boundary around the portions of the Hanford Site (the Saddle Mountain National Wildlife Refuge and the land known as the Wahluke State Wildlife Recreation Area) approximately 90,000 acres that are north and east of the Columbia River, to enable us to manage the land as part of the National Wildlife Refuge System (NWRS). Region 1 will be implementing the new approved acquisition boundary by adding most of the area within the boundary to Saddle Mountain Refuge in the near future. To ensure that the decision is in concert with Department of Energy (DOE) land-use policy, we also adopted the Habitat Conservation Plan (HCP) EIS. The HCP EIS and ROD provide DOE policies and procedures to guide development at the Hanford Site for 50 years or more.

DATES: We issued the Record of Decision on November 5, 1999.

ADDRESSES: Public reading copies of the ROD and the FEIS are available at the following libraries: Hanford Technical Library, Richland, Washington; Kennewick City Library, Kennewick, Washington; Mid-Columbia Regional Library, Kennewick, Washington; Othello City Library, Othello, Washington; Pasco Public Library, Pasco, Washington; Portland City Library, Portland, Oregon; Prosser City Library, Prosser, Washington; Richland City Library, Richland, Washington; Seattle City Library, Seattle, Washington; Vancouver City Library, Vancouver, Washington.

Copies of the ROD are available from U.S. Fish and Wildlife Service, Region 1, Division of Refuge Planning, 911 NE 11th Avenue, Portland Oregon, 97232–4181, phone number (503) 231–2231.

FOR FURTHER INFORMATION CONTACT: Anne Badgley, Regional Director, US Fish and Wildlife Service, Region 1, 911 NE 11th Avenue, Portland Oregon, 97232–4181, phone number (503) 231–6118.

SUPPLEMENTARY INFORMATION: Public Law 100–605 required the Secretary of the Interior to prepare, in consultation with the Secretary of Energy, a report for Congress evaluating the outstanding features of the Hanford Reach of the Columbia River and its immediate environment (including fish, wildlife, geologic, scenic, recreational, historical, cultural and other natural values) and to examine alternatives for preserving those values. The alternatives considered were to include, but not be limited to, inclusion of the Hanford Reach in the National Wild and Scenic Rivers System.

The Secretary selected the National Park Service (NPS) to lead the study. The NPS prepared the Environmental Impact Statement in compliance with section 102 of the National Environmental Policy Act of 1969 (NEPA) (40 U.S.C. 1051 *et seq.*) and pursuant to regulations promulgated by the Council on Environmental Quality (40 CFR Section 1505.2) and the implementing procedures of the National Park Service and the Department of the Interior.

We were a cooperating agency in the NEPA process under Interagency Agreement Number IA9000–0–0007 with the NPS, and pursuant to 40 CFR 1501.6. As a cooperating agency, FWS actively participated in the preparation of the Draft and Final EIS's and independently reviewed each document.

In July of 1994, the NPS released the Final Hanford Reach of the Columbia River Comprehensive River Conservation Study and Environmental Impact Statement (FEIS), followed by the Secretary's Record of Decision recommending that Congress establish a National Wildlife Refuge on the North Slope, and a Wild and Scenic River on the Hanford Reach. The Wild and Scenic River designation was recommended from river mile 346.5 to river mile 396, including a one-quarter mile wide corridor on both river banks. The Secretary selected the proposed action from the FEIS.

We adopted the FEIS to administratively establish an approved refuge acquisition boundary over the area known as the North Slope. The North Slope is comprised of the Saddle Mountain Refuge and the Wahluke Wildlife Recreation Area. This boundary provides our Region 1 with authority to acquire land and manage it as part of the NWRS. We may acquire lands through

direct land transfer from another Federal agency, fee acquisition, conservation easement, withdrawal, or cooperative agreement. The FEIS complies with NEPA and meets our regulatory requirements for making a decision (341 FW 2).

Since the 1994 FEIS, no significant new circumstances or information relevant to environmental concerns bearing on this decision or its impacts have occurred. In the interim, we have added four species that may occur in the study area to the Federal list of threatened and endangered species. The FWS Record of Decision will benefit these species in a manner substantially similar to the 1994 FEIS proposed action.

We incorporate by reference and adopt a second EIS, the 1999 HCP EIS, prepared by the DOE with the Service participating as a cooperating agency. The DOE's Preferred Alternative includes increasing recreational access to the Columbia River and expanding the Saddle Mountain National Wildlife Refuge to include all of the Wahluke Slope, the McGee Ranch and Riverlands, and the Fitzner-Eberhardt Arid Lands Ecology Reserve. The Comprehensive Land Use Plan (CLUP) is the template that the DOE will use to define the range of management options on Refuge lands at the Hanford Site, including the potential for future Refuge additions. The DOE's decision anticipates multiple uses of the Hanford Site, including future DOE missions, non-DOE Federal missions, and other public and private-sector land uses.

Our jurisdiction with regard to DOE-administered Hanford land will be secondary to the DOE jurisdiction because of DOE's contaminants cleanup responsibilities, and because the known inventory of contaminated areas may not be complete. A vast majority of the North Slope is unaffected by past activities, and we will manage these lands as part of the NWRS. Management, as part of the NWRS, will occur under a permit with DOE and be secondary to DOE's jurisdiction. We will provide DOE with technical assistance on areas where DOE is conducting cleanup activities. We provide technical assistance under agreements with other agencies that need our wildlife, fish, or plant habitat management advice expertise. Areas for which we provide technical assistance are not part of the NWRS.

Dated: November 24, 1999.

Jamie Rappaport,

Clark, U.S. Fish and Wildlife Service.

[FR Doc. 99–31105 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On October 2, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 191, Page 53088, that an application had been filed with the Fish and Wildlife Service by Dallas World Aquarium for a permit (PRT–001425) to import 2 manatees (*Trichechus manatus*) for the purpose of enhancement of the survival of the species.

Notice is hereby given that on November 10, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: November 23, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–30958 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Proposed Forest Management Plan for the Flathead Indian Reservation, Pablo, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for the Final Environmental Impact Statement (FEIS) for the proposed Forest Management Plan for the Flathead Indian Reservation, Pablo, Montana, which was published in the **Federal Register** on November 8, 1999 (64 FR 60828). This change is being made in order to make the comment period consistent with that in the anticipated November 26, 1999, publication of the Notice of Availability for this FEIS by the U.S. Environmental Protection Agency.

DATES: The comment period is extended from December 6, 1999 to December 27, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Mr. Ernest ''Bud'' Moran, Superintendent, Flathead Field Office, Bureau of Indian Affairs, P.O. Box 40, Pablo, Montana 59855. You may also comment via the Internet to BudMoran@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (406) 675–0242.

Comments, including names and home addresses of respondents, will be available for public review at the Flathead Field Office during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or 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. We will not, however, consider anonymous comments. 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.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Trickey, (406) 676–3755.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–31104 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the White River Amphitheatre, Muckleshoot Indian Reservation, King County, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; Reopening of comment period.

SUMMARY: This notice reopens the public comment period for the Draft Environmental Impact Statement for the White River Amphitheatre, Muckleshoot Indian Reservation, King County, Washington, which was published in the **Federal Register** on Friday, August 27, 1999 (64 FR 46932). The comment period is reopened to accommodate the high degree of public interest sparked by the proposed amphitheatre project.

DATES: Comments must be received on or before December 15, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Stanley Speaks, Portland Area Director, Bureau of Indian Affairs, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169. You may also comment via the Internet to Jboynton@PORT.BIA.GOV. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (503) 231–6749.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or 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. We will not, however, consider anonymous comments. 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.

FOR FURTHER INFORMATION CONTACT: June Boynton, (503) 231–6749.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–31103 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Royalty-In-Kind Small Refiner Sale Program, OMB Control Number 1010–0135, which expires on April 30, 2000.

DATES: Written comments should be received on or before January 31, 2000.

ADDRESSES: The mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

PUBLIC COMMENT PROCEDURE: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Royalty-In-Kind Small Refiner Sale Program, OMB Control Number 1010–0135, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, fax (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, fax (303) 231–3385, email Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the

respondents, including the use of automated collection techniques or other forms of information technology.

Interior is the department within the Federal Government responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS, for collecting royalties from lessees who produce minerals, and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments must be submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil will be required to provide a surety instrument with their bid package. This surety instrument must be a Letter of Credit, Form MMS–4071, or a Royalty-In-Kind Contract Surety Bond, Form MMS–4072. We estimate the annual reporting burden for refiners submitting either surety document is 1 hour. Both surety documents are approved for use through April 30, 2000, and can be found on our web site at http://www.rmp.mms.gov/custserv/pubserv/forms.htm.

Dated: November 19, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–30992 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Long-Term Refuge Water Service Agreements, Central Valley Project, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare environmental documents (environmental assessments or environmental impact statements) and notice of scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation), the lead Federal agency, proposes to prepare environmental documents for entering into long-term Water Service Contracts/Agreements to provide water supplies to wildlife refuges in California's Central Valley, up to and including Level 4 water supplies. Certain actions may also require review under the California Environmental Quality Act as well; it is anticipated that joint NEPA/CEQA documents will be prepared.

The Central Valley Project Improvement Act (CVPIA), Title 34 of Public Law 102–575, requires the delivery of water to Central Valley refuges pursuant to two 1989 federal reports, the Report on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California, and the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report. The impacts of providing this additional water were assessed in the Programmatic Environmental Impact Statement (PEIS) prepared for the CVPIA. As required by the CVPIA, Reclamation is now proposing to enter into long-term water service agreements with the refuges to allow the delivery of those quantities of water supplies needed for full habitat management. The site-specific impacts of this action will be considered in the environmental documents for the long-term water service agreements, which will tier from the analysis contained in the CVPIA PEIS.

The purpose of the public/agency scoping process initiated by this Notice of Intent is to solicit comments from interested parties regarding the scope of the environmental analysis and the potential impacts that should be considered in the site-specific assessment being undertaken in this tier of the environmental review. In preparing the environmental documents, Reclamation will consider written and oral comments on the project scope and potential impacts raised during the scoping process.

DATES: Four scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting dates are:

- December 13, 1999, from 6:00–8:00 p.m. in Willows
- December 14, 1999, from 6:00–8:00 p.m. in Los Banos
- December 15, 1999, from 6:00–8:00 p.m. in Oakland
- December 16, 1999, from 3:00–5:00 p.m. in Sacramento

Written comments on the scope of the environmental documents should be sent to Reclamation at the address below by January 7, 2000.

ADDRESSES: The meeting locations are:

- City of Willows Council Chambers, 201 North Lassen Street, Willows, California
- Merced County Spring Fairgrounds (Floral Room), 403 F Street, Los Banos, California
- Oakland Marriott City Center (Room 208), 1001 Broadway, Oakland, California
- Expo Inn-Hotel (Expo Room), 1413 Howe Avenue, Sacramento, California

Send written comments on the scope of the environmental documents to: Bureau of Reclamation, Attn. Long-Term Refuge Water Service Contracts/Agreements, 2800 Cottage Way, Sacramento CA 95825.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Mona Jefferies-Soniea, (916) 978–5068 or TTD (916) 978–5068.

SUPPLEMENTARY INFORMATION: Reclamation would enter into long-term water agreements with the agencies that manage the refuges: The U.S. Fish and Wildlife Service (for National Wildlife Refuges), The California Department of Fish and Game (for state Wildlife Management Areas), and The Grassland Water District (for lands within the Grassland Resource Conservation District). At this time, it is envisioned that three environmental documents would be prepared corresponding to the following hydrologic regions:

- The Sacramento River Basin, covering the Sacramento, Delevan, Colusa, and Sutter National Wildlife Refuges and the Gray Lodge Wildlife Management Area;
- The San Joaquin River Basin, covering the Kesterson, San Luis, and Merced National Wildlife Refuges; the Los Banos, Volta, and Mendota Wildlife Management Areas; the Grassland

Resource Conservation District; and additional lands identified in the San Joaquin Basin Action Plan; and

• The Tulare Basin, covering the Kern and Pixley National Wildlife Refuges.

Persons requiring special assistance services should contact Matt Franck, CH2M HILL, at (916) 920–0212 ext. 272. Please notify Mr. Franck as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: November 23, 1999.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 99–31007 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

DATES: Comments on the proposed information collection must be received by January 31, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will require a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environment Resources—30 CFR Part 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once, at time of application submission.

Description of Respondents: Underground coal mining applicants and State regulatory authorities.

Total Annual Responses: 105.

Total Annual Burden Hours: 16,918 hours.

Dated: November 24, 1999.

Andrew F. DeVito,

Acting Chief, Division of Regulatory Support.

[FR Doc. 99–31035 Filed 11–29–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that a proposed consent decree in *United States* v. *Western Processing Co., et al.,* Civ. No. C83–252M, was lodged with the United States District Court for the Western District of Washington, on November 23, 1999. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for payment of past costs incurred, and future costs to be incurred, by the United States at the Western Processing Superfund Site in Kent, Washington. (The site is being cleaned up and some past costs have already been recovered pursuant to several prior settlements.) This decree requires Union Oil Company of California (d/b/a Unocal) (''Unocal'') to pay $879,593 in satisfaction of the United States' claims against it for response costs incurred in connection with the site between January 1, 1992 and December 31, 1996. Unocal remains liable for response costs incurred after that date. The United States is also continuing to pursue other defendants to recover past and future costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Western Processing Co., et al.,* D.J. Ref. 90–7–1–233.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104; and at the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed consent decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Western*

Processing Co., et al., D.J. Ref. 90–7–1–233.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural resources Division.

[FR Doc. 99–31102 Filed 11–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Portable Fire Extinguishers (Hydrostatic Test Certification Record).

OMB Number: 1218–0218.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 8,500,000.

Estimated time Per respondent: Varies from 2 to 35 minutes.

Total Burden Hours: 127,500.

Total Annualized capital/startup costs: $10,596,667.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information collection requirement (hydrostatic test certification record) in the Portable Fire Extinguishers standard (29 CFR 1910.157(f)(16)) ensures that employers properly inform employees about the condition of fire extinguishers they may be using in the workplace. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31011 Filed 11–29–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Crawler, Locomotive, and Truck Cranes, Inspection Certification Records.

OMB Number: 1218–0221.

Frequency: Monthly.

Affected Public: Business or other for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 19,000.

Estimated Time Per respondent: Varies from 15 to 30 minutes.

Total Burden Hours: 174,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The major purpose of the information collection requirements (inspection certification records) in the standard on Crawler, Locomotive, and Truck Cranes (29 CFR 1910.180) is to provide information for properly maintaining crawler, locomotive and truck cranes and, therefore, ensuring safe operating conditions for employees. Specifically, employers must establish certification records to demonstrate that crane inspections comply with the requirements specified in the standard.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31012 Filed 11–29–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz, ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Derricks (Inspection Certification).

OMB Number: 1218–0222.

Frequency: Monthly; Semi-annually.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 10,000.

Estimated Time Per respondent: 15 minutes.

Total Burden Hours: 28,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The major purpose of the information collection requirements in the standard on Derricks (29 CFR 1910.181 (g)(1) and (g)(3) are to provide information for properly maintaining derricks and, therefore, to ensure safe operating conditions for employees. Specifically, employers must establish certification records to demonstrate that derrick inspections comply with the requirements specified in the standard.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31013 Filed 11–29–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202)–219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202)–219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202)–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Manlifts (Inspection Certifications).

OMB Number: 1218–0226.

Frequency: Varies (monthly, daily.

Affected Public: Business or other for-profit, not-for-profit institutions; Federal government ; State, local or tribal government.

Number of Respondents: 3,000.

Estimated Time Per respondent: Varies from 5 to 69 minutes.

Total Burden Hours: 3,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services: $0.

Description: The information collection requirement in the standard on Manlifts (29 CFR 1910.86(e)) is necessary to insure compliance with the requirement for manlifts to be inspected by a competent person. This provision requires the employer to designate a person to record the results of these inspections. The inspection is intended to ensure that the manlifts are in safe operating condition, and all safety devices, such as belt switches, are working properly. The failure of belts or switches could cause serious injury or death to an employee. In addition, OSHA compliance officers may require employers to disclose to required certification record at the time of an inspection.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31014 Filed 11–29–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King at (202) 219–5096 ext. 151 or E-Mail to King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: Certification Records for Slings.

OMB Number: 1218–0223.

Frequency: Varies (On occasion, Annually).

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 155,675.

Estimated Time Per Respondent: Varies (3 minutes (0.05 hour) to 15 minutes (0.25 hour)).

Total Burden Hours: 21,435.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services: $0.

Description: The standard on Slings (29 CFR 1910.184) requires employers to generate and maintain records regarding the inspection of alloy steel chain slings, and to obtain and retain certificates showing that the equipment manufacturer (or equivalent entity) proof tested new, repaired, or reconditioned alloy steel chain slings, wire rope slings that have welded end attachments, and repaired synthetic web slings. The standard also requires that employers affix a durable marking to metal mesh slings stating the rated capacity for the vertical basket hitch and choker hitch loadings; repaired metal mesh slings must indicate the date and type of repair, as well as the person or organization performing the repair, using permanent marking or tagging, or by maintaining a written record.

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: Telecommunications, Training Certification.

OMB Number: 1218–0225.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 107,138.

Estimated Time Per Respondent: Varies from 2 minutes (0.03 hour) to 4 minutes (0.07 hour).

Total Burden Hours: 7,487.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services: $0.

Description: The information collection requirements (training certification records) contained in the standard on Telecommunications (29 CFR 1910.268(c)) are to ensure that employers properly train their employees in the various precautions and safe practices in the work performed at telecommunications centers and at telecommunications field installations.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31015 Filed 11–29–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Registered Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Committee (Pub. Laws 92–4613;5 U.S.C. APP. 1), notice is hereby given of a meeting of the Federal Committee on Registered Apprenticeship (FCRA).

DATES: The meeting will begin at 9:00 a.m. on Wednesday, December 8, 1999 and continue until approximately 5:00 p.m. The meeting will reconvene at 9:00 a.m. on Thursday, December 9, 1999, and continue until approximately 5:00 p.m. The meeting will reconvene at 9:00 a.m. on Friday, December 10, 1999, and adjourn at 12:00 noon.

Place: The Congressional Room of the Holiday Inn, Washington, DC on the Hill, 415 New Jersey Avenue, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, DC 20210.

Telephone: (202) 219–5921 (this is not a toll-free number).

Matters to be Considered.

The agenda will focus on the following topics: (1) the reestablishment of the FCRA (2) Advisory Committee Act Procedures/Ethics (3) overview of the Registered Apprenticeship System (4) current status of the Government Performance and Results Act (GPRA) (5) current status of the WIA implementation efforts (6) implementation of School-to-Work Opportunities Act (7) formation of FCRA Work Groups (8) NASTAD report (9) NAGLO REPORT (10) Child Care Program report (11) election of FCRA Vice Chairs.

Status

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 219–5921 no later than December 3, 1999, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending it to Mr. Anthony Swoope, Administrator, Office of Apprenticeship

Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room–N4649, 200 Constitution Avenue, NW, Washington, DC 20210. Such submittals should be sent by December 3, 1999 to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by December 3. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 24th day of November 1999.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 99–31053 Filed 11–29–99; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Partnerships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a teleconference meeting of the Partnerships Advisory Panel, Regional Partnership Agreements section, to the National Council on the Arts will be held from 3 p.m. to 5 p.m. on December 13, 1999 in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 23, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–31056 Filed 11–29–99; 8:45 am]

BILLING CODE 7537–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information (OMB control number 1212–0030; expires December 31, 1999). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The survey is conducted by the American Council of Life Insurance for the PBGC. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 30, 1999.

ADDRESSES: Comments may be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attn: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) may be obtained from the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR Part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR Part 4281). Each month the PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the investment and annuity markets. To determine these interest rates, the PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly ''Survey of Nonparticipating Single Premium Group Annuity Rates.'' The survey is distributed by the American Council of Life Insurance and provides the PBGC with ''blind'' data (i.e., is conducted in such a way that the PBGC is unable to match responses with the companies that submitted them).

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurance. The survey is conducted quarterly and will be sent to approximately 12 insurance companies. Based on experience under the current approval, the PBGC estimates that 8 insurance companies will complete and return the survey. The PBGC further estimates that the average annual burden of this collection of information is 32 hours and $48.

The collection of information has been approved by OMB under control number 1212–0030 through December 31, 1999. The PBGC is requesting that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, D.C., this 24th day of November, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–31063 Filed 11–29–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27107]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 23, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by December 20, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 20, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities; 70–9535

Northeast Utilities (''Northeast''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

Northeast proposes to acquire, by means of a merger, all of the issued and outstanding common stock of Yankee Energy System, Inc. (''YES''), a Connecticut corporation and an exempt holding company under section 3(a)(2) of the Act, pursuant to an Agreement and Plan of Merger dated as of June 14, 1999 (''Merger Agreement''). Northeast proposes to cause the organization of a wholly-owned subsidiary (''Merger Sub'') by Merger Sub issuing and Northeast acquiring one hundred shares of Merger Sub common stock, par value $10 per share for $1000. Under the Merger Agreement, YES will merge with and into Merger Sub. Holders of the common stock of YES will receive consideration in cash and Northeast common stock valued at $45.00 per YES share. The total consideration to be paid by Northeast for the outstanding shares of YES common stock will be approximately $478 million, based on approximately 10.6 million shares of YES common stock outstanding.

Each YES shareholder can elect the form of consideration, but this election is subject to proration and adjustment. Under the Merger Agreement, 55% of all issued and outstanding YES shares will be exchanged for cash, and 45% will be exchanged for Northeast common stock. If YES shareholders owning more than 55% of YES shares elect to receive cash, the number of YES shares converted into cash will be less than the number elected. If YES shareholders owning more than 45% of YES shares elect to receive Northeast common stock, the number of YES shares converted into stock will be less than the number elected.

Northeast currently anticipates that the full amount necessary to fund the cash consideration to be paid to YES shareholders will be financed through debt issued by Northeast. Northeast requests authorization to issue from time to time through June 30, 2002 short or long-term debt securities in an amount sufficient to satisfy the cash portion of the consideration in connection with the merger, estimated not to exceed $275 million. Such debt securities may include notes, debentures and medium-term notes and/or borrowings from banks and others financial institutions. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rates or methods of determining the same, terms of payment of interest, redemption provisions, non-refunding provision, sinking fund terms and other terms and conditions as Northeast may determine at the time of issuance. The effective cost of money on short-term debt borrowings will not exceed at issuance 400 basis points over the comparable term London Interbank Offered Rate and the effective cost of money on long-term borrowing will not exceed at issuance 400 basis over comparable term U.S. Treasury securities. The maturity of indebtness will not exceed 10 years from the date of issuance and the underwriting fees, commissions, or other similar remuneration paid in connection with the noncompetitive issue, sale or distribution of a security will not exceed 2.5% of the principal or total amount of the financing.

Merger Sub, as a wholly-owned subsidiary of Northeast and as successor to YES, will register as a holding company under section 5 of the Act and will act as the holding company for Northeast's gas utility subsidiary and related companies. Northeast's existing operating electric utility subsidiaries will remain direct operating subsidiaries of Northeast.

Northeast is the parent of a number of companies comprising the Northeast Utilities system (''System''). Northeast has traditionally furnished franchised retail electric service in Connecticut, New Hampshire and western Massachusetts through three of Northeast's wholly-owned subsidiaries, The Connecticut Light and Power Company (''CL&P''), Public Service Company of New Hampshire (''PSNH'') and Western Massachusetts Electric Company (''WMECO''). Northeast has also furnished retail electric service to a limited number of customers through another wholly-owned subsidiary, Holyoke Water Power Company (''HWP''), doing business in and around Holyoke, Massachusetts. In addition to their retail electric service business, CL&P, PSNH, WMECO and HWP (including its wholly owned subsidiary, Holyoke Power and Electric Company), together furnish wholesale electric service to various municipalities and other utilities throughout the Northeast.[1] The System serves approximately 30% of New England's electric needs and is one of the 24th largest electric utility systems in the country as measured by revenues.

North Atlantic Energy Corporation is a special-purpose operating subsidiary of Northeast that owns a 35.98 percent interest in the Seabrook nuclear generating facility in Seabrook, New Hampshire, and sells its share of the capacity and output from Seabrook to PSNH under two life-of-unit, full-cost recovery contracts. Several wholly-owned subsidiaries of Northeast provide support services for the Northeast companies and, in some cases, for other New England utilities.[2]

[1] CL&P, PSNH and WMECO furnish retail delivery franchise service in 149, 198 and 59 cities and towns in Connecticut, New Hampshire and Massachusetts, respectively. In 1998, CL&P furnished retail franchise service to approximately 1.11 million customers in Connecticut, PSNH provided retail service to approximately 422,000 customers in New Hampshire and WMECO served approximately 196,000 retail franchise customers in Massachusetts. HWP serves 32 retail customers in Holyoke, Massachusetts.

[2] Northeast Utilities Service Company (''NUSCO''), provides centralized accounting, administrative, information resources, engineering, financial, legal, operational, planning, purchasing and other services to the System companies. North

Continued

YES, is primarily engaged in the retail distribution of natural gas through its wholly-owned subsidiary, Yankee Gas Services Company (''Yankee Gas''), a Connecticut public utility service company. Yankee Gas serves approximately 185,000 residential, commercial and industrial customers in 69 cities and towns, and covers approximately 1,995 square miles in Connecticut.[3] Yankee Gas operates the largest natural gas distribution system in Connecticut as measured by number of customers and size of service territory.

YES also owns four active non-utility subsidiaries including: (1) NorConn Properties Inc., which holds property and facilities of Yes; (2) Yankee Energy Financial Services Company, which provides customers with financing for energy equipment installations; (3) Yankee Energy Services Company, which provides a wide range of energy-related services for its customers; and (4) R.M. Services, Inc., which provides debt collection service to utilities and other businesses nationwide.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31033 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

Atlantic Energy Service Corporation has operational responsibility for Seabrook. Northeast Nuclear Energy Company acts as agent for the System companies and other New England utilities in operating the Millstone nuclear generating facilities in Waterford, Connecticut. Three other subsidiaries (Rocky River Realty Company, The Quinnehtuk Company, and Properties, Inc.) construct, acquire or lease some of the property and facilities used by the System companies.

In January 1999, Northeast added three new corporations to the System: NU Enterprises, Inc. (''NUEI''), the holding company for the System's unregulated businesses; Northeast Generation Company and Northeast Generation Services Company. Also in January 1999 Northeast transferred to NUEI the stock of three other of its subsidiaries, making them wholly owned subsidiaries of NUEI: Select Energy, Inc.; HEC Inc.; and Mode 1 Communications, Inc. These companies engage, either directly or indirectly through subsidiaries, in a variety of energy-related and telecommunications activities, as applicable, primarily in the unregulated energy retail and wholesale commodity, marketing and service fields.

[3] Yankee Gas' assets include distribution lines, meters, pumps, valves and pressure and flow controllers. Yankee Gas owns approximately 2,820 miles of distribution mains, 133,033 service lines, and 185,000 active meters for customer use, all located in Connecticut. Yankee Gas also owns and operates various propane facilities and six gas storage holders.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42141A; File No. 1–2346]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Southwestern Bell Telephone Company, Seven Year 6⅛% Notes, Due March 1, 2000; Eight Year 6⅜% Notes, Due April 1, 2001; Twelve Year 6⅝% Notes, Due April 1, 2005; Twenty-Two Year 7% Debentures, Due July 1, 2015; Thirty Year 7⅝% Debentures, Due March 1, 2023; and Thirty-Two Year 7¼% Debentures, Due July 15, 2025); Correction

November 23, 1999.

In notice document 99–30318, beginning on page 63833, in the issue of Monday, November 22, 1999, the heading should read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31029 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24173; 812–11702]

SSgA funds, et al.; Notice of Application

November 23, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: SSgA Funds and its existing and future series; any other existing or future registered open-end management investment company or series thereof that is advised or subadvised by State Street Bank and Trust Company (''SSB&T'') or a person controlling, controlled by, or under common control with SSB&T (''State Street'') and that is part of the same group of investment companies as SSgA Funds (together with SSgA Funds, the ''Funds''); and State Street.

FILING DATES: The application was filed on July 22, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 16, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Philip H. Newman, Esq., Goodwin, Procter & Hoar LLP, Exchange Place, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, (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 SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202/942–8090).

Applicants' Representations

1. SSgA Funds is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. SSB&T serves as the investment adviser, custodian, and transfer agent for each series of SSgA Funds. SSB&T is a bank within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 (''Advisers Act'') and currently is not required to register as an investment adviser under the Advisers Act.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests

or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, some Funds have committed lines of credit with unaffiliated third party banks under which the banks are obligated to lend money to the Funds to meet the Funds' temporary cash needs.

3. If the Funds were to borrow money from any bank under their current arrangement, the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the bank's profit for serving as a middleman between a borrower and lender. With respect to committed lines of credits, the Funds pay substantial commitment fees in addition to interest.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan'').[1] Applicants state that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance Funds' ability to earn higher rates of interest on short-term lending. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to continue their committed lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. The situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the fund has undertaken to purchase a security with the proceeds from securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks may continue to be available to cover unanticipated redemptions and sale fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of an SSgA Fund that is a money market fund or short-term bond fund (''Central Fund'').[2] Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to a lending Fund from investment in overnight repurchase agreements.[3] The Bank Loan Rate for any day would be calculated by State Street each day an Interfund Loan is made according to a formula established by the Funds' trustees (the ''Trustees'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the funds. The formula would be based upon a publicly available rate (*e.g.,* Federal Funds plus 25 basis points) that would vary so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

9. The credit facility would be administered by a representative of State Street's fund accounting group and a compliance officer of the Funds (collectively, the ''Credit Facility Team''). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. State Street on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it has determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After allocating cash for Interfund Loans, the Credit Facility Team will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The money market Funds would not participate as borrowers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. State Street would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the

[1] All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] SSgA Funds and State Street have applied for an order from the SEC to permit certain SSgA Funds to invest cash balances in shares of Central Funds.

[3] SSgA Funds and State Street may in the future apply for an order from the SEC to permit the Funds to deposit cash balances that remain at the end of a trading day in one or more joint trading accounts to be used to enter into short-term investments. If such an order is obtained, the ''Repo Rate'' would be the highest rate from investments in overnight repurchase agreements that is available to a lending Fund or to a joint account in which a lending fund may participate.

Trustees concerning any transactions by the Funds under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Trustees, including a majority of Trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. State Street would administer the credit facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services. State Street may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (i) the Fund has obtained shareholder approval for its participation or, if such approval is not required by law, the Fund's prospectus and/or statement of additional information have, prior to the Fund's lending or borrowing any amounts under the credit facility, disclosed the possibility of the Fund's participation in the credit facility; (ii) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information; and (iii) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having State Street as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) State Street would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Central Funds; (iii) the Interfund Loans would not involve a greater risk than other similar investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that State Street would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

6. No equity, taxable bond or money market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to

exceed 5%, 7.5% or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. State Street will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Trustees of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, State Street will promptly refer the loan for arbitration to an independent arbitrator selected by the Trustees of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[4] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Central Fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. State Street will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are created fairly. After commencement of operations of the credit facility, State Street will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates State Street's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) that the Interfund Loan Rate will be higher than the Repo Rate, and, if applicable, the yield of the Central Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31030 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

[4] If the dispute involves Funds with separate Boards, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24158; 812–11684]

Fortis Series Fund, Inc. and Fortis Advisers, Inc.

November 23, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants, Fortis Series Fund, Inc. (the ''Company'') and Fortis Advisers, Inc. (the ''Adviser''), request an order to permit them to enter into and materially amend sub-advisory agreements without shareholder approval and to grant relief from certain disclosure requirements.

FILING DATES: The application was filed on July 2, 1999 and amended on October 29, 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 20, 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 issue contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, c/o Kathleen L. Prudhomme, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMAITON: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Company, a Minnesota corporation, is registered under the Act as an open-end management investment company. The Company is currently comprised of eighteen series (each a ''Fund'' and collectively the ''Funds''), each of which has its own investment objective, policies and restrictions.[1] Shares of the Funds currently are available exclusively as funding vehicles for variable annuity and variable life contracts of Fortis Benefits Insurance Company and First Fortis Life Insurance Company, entities under common control with the Adviser. The Adviser, registered under the Investment Advisers Act of 1940 (''Adviser Act'') serves as the investment adviser to the Funds pursuant to investment advisory agreements (''Advisory Agreements'').

2. Under the Advisory Agreements, the primary responsibilities of the Adviser, subject to the supervision of the board of directors of the Company (the ''Board''), are to provide the Funds with business and investment management services. Under certain Advisory Agreements, the Adviser, subject to the oversight of the Board, may delegate portfolio management to one or more sub-adviser (each a ''sub-Adviser'' and collectively the ''sub-Advisers''). Currently, each sub-advised Fund has only one Sub-Adviser. Each Sub-Adviser recommended by the Adviser is selected and approved by the Board, including a majority of the directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (''Independent Directors''). Each Sub-Adviser is, and any future Sub-Adviser will be, registered as an investment adviser under the Advisers act and will perform services under a sub-advisory agreement ('sub-Advisory Agreement'') between the Adviser and the sub-Adviser. Each Sub-Adviser's fees are paid by the Adviser out of the management fees received by the Adviser from the respective Fund.

3. The Adviser recommends Sub-Advisers based on a quantitative and qualitative evaluation of the Sub-Adviser's skills managing assets for specific asset classes, investment styles, and strategies. The Adviser reviews, monitors and reports to the Board regarding the performance and investment procedures of the Sub-Advisers. The Adviser also is responsible for recommending whether to terminate a Sub-Adviser under appropriate circumstances.

4. Applicants request reflief to permit the Adviser to enter into and materially amend Sub-Advisory Agreements without seeking shareholder approval.[2] The requested relief will not extend to a Sub-Adviser that is an ''affilaiated person,'' as defined in section 2(a)(3) of the Act, of the Company or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Funds (''Affiliated Sub-Adviser''). Currently, that are no Affiliated Sub-Adviser.

5. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid by the adviser to the Sub-Advisers. The Company will disclose for each Fund (both as a dollar amount and as a percentage of the Fund's net assets): (a) aggregate fees paid to the Adviser and Affiliated Sub-Advisers, and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (''Aggregate Fee Disclosure''). The Aggregate Fee Disclosure also will include separate disclosure of any advisory fees paid to any Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements

[1] Applicants also request relief with respect to all future Funds and to all subsequently registered open-end management investment companies including all series thereof that in the future are advised by the Adviser (or an entity controlling, controlled by, or under common control with the Adviser), provided that such companies or series (a) operate in substantially the same manner as the Company and (b) comply with the terms and conditions of the requested order (''Future Funds''). Applicants state that the Company is the only existing registered open-end management investment company that currently intends to rely on the requested order.

[2] The term ''shareholders'' includes variable contract owners, as applicable.

information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that shareholders are relying on the Advisor to select and monitor the activities of Sub-Advisers best suited for the respective Funds. Applicants assert that, from the perspective of the shareholders, the role of Sub-Advisers with respect to a Fund is substantially equivalent to the role of portfolio managers employed by an investment adviser in a traditional investment advisory arrangement. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the Adviser from acting promptly in a manner in the best interests of a Fund. Applicants note that the Advisory Agreements will remain fully subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Sub-Advisers use a ''posted'' rate schedule to set their fees. Applicants state that the Adviser may not be able to negotiate below ''posted'' fee rates with Sub-Advisers if each Sub-Adviser's fees are required to be disclosed. Applicants submit that the nondisclosure of the individual Sub-Advisers' fees is in the best interest of the Funds and their shareholders, where the disclosure of such fees would increase costs to shareholders without an offsetting benefit to the Funds and their shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before an existing fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Future Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition (2) below, by the sole initial shareholder(s) before offering shares of that Future Fund to the public (or the variable contract owners through a separate account).

2. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, any such Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within ninety (90) days of the hiring of any new Sub-Adviser, shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) will be furnished all information about the new Sub-Adviser that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. The Adviser will meet this condition by providing these shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that Sub-Advisory Agreement, including the compensation to be paid thereunder, being approved by the Fund's shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

5. At all times, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Adviser will provide general management services to the Company and the Funds, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will: (a) set each Fund's overall investment strategies; (b) evaluate, select, and recommend sub-advisers to manage all or a part of Fund's assets; (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant Fund's investment objective, policies, and restrictions.

8. No director or officer of the Company or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in any Sub-Adviser except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

9. The Company will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors of the Company. The selection of such counsel will be within the discretion of the then-existing Independent Directors.

11. The Adviser will provide the Board, no less than quarterly, with information about the Adviser's profitability on a per-Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the

expected impact on the Adviser's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31031 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24157; 812–11796]

The Alger Fund, et al.; Notice of Application

November 23, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit redemptions in-kind of shares of certain registered investment companies by certain shareholders who are affiliated persons of the investment companies.

APPLICANTS: The Alger Fund, The Alger American Fund, The Alger Retirement Fund, Spectra Alger Management, Inc. (together, the ''Funds''), and Fred Alger Management, Inc. (the ''Adviser'').

FILING DATE: The application was filed on October 5, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 20, 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 Gregory S. Duch, Fred Alger Management, Inc., One World Trade Center, Suite 9333, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Funds is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to each Fund.

2. The prospectus of each of the Funds provides that, if the board of trustees (''Board'') of the Fund determines that cash payments would be detrimental to the interests of remaining shareholders, any request for redemption of the Fund's shares may be honored by making payment in whole or in part in securities. The payment would be made on a pro rata basis, monitored by the Adviser, with the securities valued in the same manner as they would be for purposes of computing the Fund's net asset value. Each of the Funds also has elected to be governed by rule 18f–1 under the Act. This redemption procedure presently applies to all shareholders other than shareholders who are ''affiliated persons'' of the Funds within the meaning of section 2(a)(3) of the Act (''Non-Covered Shareholders'').

3. Applicants request relief to permit the Funds to satisfy redemption requests made by shareholders who are ''affiliated persons'' of a Fund solely within the meaning of section 2(a)(3)(A) of the Act (''Covered Shareholders'') because they own 5% or more of the Fund's outstanding shares by distributing portfolio securities in-kind.[1]

[1] Applicants request that the relief extend to any registered open-end management investment company created in the future and each series thereof, as well as each series of the Funds created in the future, for which the Adviser or a person controlling, controlled by or under common control with the Adviser acts as investment adviser (''Future Funds''). Any Future Fund that relies on the order requested will do so only in accordance with the terms and conditions contained in the application.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly ''purchase'' from such registered investment company any security or other property (except securities of which the seller is the issuer). Under section 29(a)(3)(A) of the Act, an ''affiliated person'' includes any person owning 5% or more of the outstanding voting securities of such other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt classes of persons or transactions from the Act, where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from the provisions of section 17(a) of the Act to permit Covered Shareholders to redeem their shares in-kind from the Funds. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Funds within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the proposed transactions meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that the terms of the proposed in-kind redemptions are reasonable and fair. Applicants state that Covered Shareholders who wish to redeem shares will receive the same ''in-kind'' distribution of securities and cash on the same basis as Non-Covered Shareholders wishing to redeem shares. Applicants state that the securities to be distributed in-kind will be valued in the

same manner as that used by each Fund to determine its net asset value.

6. Applicants state that the proposed in-kind redemptions are consistent with the policies of the Funds. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities distributed pursuant to a redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed on a pro-rata basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as a fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of a fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, a Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such securities.

3. The In-Kind Securities will be valued in the same manner as they would be valued for purposes of computing a Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market, or if there is no such reported price, the average of the most recent bid and asked price (or, if no such price is available, the last quoted bid price).

4. The Funds' boards, including a majority of the trustees who are not ''interested persons'' of a Fund as defined in section 2(a)(19) of the Act, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with conditions 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each affected Fund as reflected in its prospectus. In addition, the Boards will make and approve such changes as they deem necessary in the procedures for monitoring the applicants' compliance with the terms and conditions of the application.

5. The relevant Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first 2 years in an easily accessible place, a written record of each redemption setting forth a description of each security distributed, the identity of the Covered Shareholder, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31032 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24156; 812–11756]

Putnam American Government Income Fund, et al.; Notice of Application

November 23, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants seek to amend a prior order that permits the operation of certain joint accounts.

APPLICANTS: Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds, Putnam Balanced Retirement Fund, Putnam California Investment Grade Municipal Trust, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Convertible Income-Growth Trust, Putnam Convertible Opportunities and Income Trust, Putnam Diversified Equity Trust, Putnam Diversified Income Trust, Putnam Dividend Income Fund, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Florida Tax Exempt Income Fund, Putnam Funds Trust, The George Putnam Fund of Boston, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Global Natural Resources Fund, The Putnam Fund for Growth and Income, Putnam Growth and Income Fund II, Putnam Health Sciences Trust, Putnam High Income Convertible and Bond Fund, Putnam High Quality Bond Fund, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam High Yield Municipal Trust, Putnam Income Fund, Putnam U.S. Intermediate Government Income Trust, Putnam International Growth Fund, Putnam Investment Funds, Putnam Investment Grade Municipal Trust, Putnam Investment Grade Municipal Trust II, Putnam Investment Grade Municipal Trust III, Putnam Investors Fund, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Massachusetts Tax Exempt Income Fund, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Income Fund, Putnam Municipal Opportunities Trust, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Investment Grade Municipal Trust, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Preferred Income Fund, Putnam Premier Income Trust, Putnam Strategic Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Health Care Fund, Putnam Tax-Free Income Trust, Putnam Tax Managed Funds Trust, Putnam U.S. Government

Income Trust, Putnam Utilities Growth and Income Fund, Putnam Variable Trust, Putnam Vista Fund, Putnam Voyager Fund and Putnam Voyager Fund II, each on its own behalf and on behalf of its series (collectively, the ''Funds''), Putnam Investment Management, Inc. (the ''Adviser''), Putnam Mutual Funds Corp., and Putnam Fiduciary Trust Company.[1]

FILING DATES: The application was filed on August 18, 1999. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 17, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Brian D. McCabe, Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110–2624.

FOR FURTHER INFORAMTION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Managewment, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

[1] Applicants also seek relief for all registered open-end management investment companies and their series that are advised in the future by the Adviser or an entity controlling, controlled by, or under common control with the Adviser (''Future Companies''). Applicants state that all investment companies that currently intend to rely on the requested relief are included as applicants and that any Future Company will comply with the terms and conditions contained in the application.

Applicants' Representations

1. On October 5, 1992, the Commission issued an order (the ''Original Order'') to applicants under section 17(d) of the Act and rule 17d–1 under the Act.[2] The Original Order permits applicants to operate joint accounts (''Joint Accounts'') that invest in repurchase agreements and short-term money market instruments, as specified in the Original Order (''Short-Term Investments''), that have overnight, over-the-weekend, or over-the-holiday maturities.

2. Applicants seek to amend the Original Order to permit the Joint Accounts to invest in Short-Term Investments that have maturities or remaining maturities of 60 days or less. Applicants state that the board of trustees of each Fund has determined that permitting the Joint Accounts to invest in Short-Term Investments with maturities or remaining maturities of 60 days or less is in the best interests of each Fund and its shareholders. Applicants also state that any such investments will be consistent with each Fund's investment policies and restrictions.

3. Applicants represent that any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Release Act No. 13005 (Feb. 2, 1983), as modified by the staff's positions relating to repurchase agreements as set forth in Investment Company Institute (pub. avail. June 15, 1999). The Funds will not enter into ''hold-in-custody'' repurchase agreements, in which the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement, except in instances when cash is received very late in the business day or would otherwise be unavailable for investment.

4. Applicants acknowledge that they have a continuing obligation to monitor the Commission's and the staff's published statements on repurchase agreements entered into by registered management investment companies, and represent that the repurchase agreement transactions entered into through a Joint Account will comply with future positions of the Commission and its staff to the extent that such positions set forth different or additional requirements regarding repurchase agreements entered into by management investment companies. In the event that the Commission or the staff sets forth guidelines with respect to other Short-Term Investments purchased by registered management investment companies, all such investments made through the Joint Accounts will comply with those guidelines.

5. Applicants therefore request an order under rule 17d–1 under the Act amending the Original Order under section 17(d) of the Act and rule 17d–1 under the Act.

[2] Investment Company Act Release Nos. 18932 (Sept. 8, 1992) (notice) and 18998 (Oct. 5, 1992) (order).

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will comply with all conditions of the Original Order other than that part of condition 4 restricting a Joint Account to investing in Short-Term Investments with overnight, over-the-holiday, or over-the-weekend maturities.

2. All repurchase agreements held through a Joint Account will be ''collateralized fully'' (as defined in rule 2a–7 under the Act) and will have a remaining maturity of 60 days or less, and all Short-Term Investments held through a Joint Account will have a remaining maturity of 60 days or less, each as calculated in accordance with rule 2a–7 under the Act.

3. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity unless: (a) The Adviser believes the investment no longer presents minimal credit risk; (b) the investment no longer satisfies the investment criteria of all Funds participating in the investment because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all of the Funds prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Funds and the transaction will not adversely affect other Funds participating in that Joint Account. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds in a particular Joint Account or otherwise adversely affect the other participating Funds. Each Fund participating Funds. Each Fund participating in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

4. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–

7 under the Act, will be considered illiquid and subject to the restriction that no open-end Fund may invest more than 15%, or in the case of a money market Fund, more than 10%, (or such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, if the Adviser cannot sell the instrument, or the funds' fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31034 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42159; File No. SR–Amex–99–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Biotech HOLDRs

November 19, 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 October 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items and I and II below, which Items have been prepared by the Exchange. The proposal was amended on November 1, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade Biotechnology HOLDRs (''Biotech HOLDRs''), a trust issued receipt. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 Propose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to list for trading, pursuant to Rules 1200 *et seq.,* trust issued receipts that are intended to provide investors with a flexible, cost-effective way of purchasing, holding and transferring the securities of one or more specified companies. Trust issued receipts are unleveraged instruments, and therefore do not possess many of the attributes of stock index options.

Except for the composition of basket of securities deposited in the trust, the proposed Biotech HOLDERs are structurally identical to the Internet HOLDRs trust issued receipts previously approved for listing and trading on the Exchange.[4] The newly proposed trust issued receipts will evidence beneficial ownership of the specific deposited securities represented by the receipts. The Exchange belives that the level risk and sale of trust/issue receipts is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt. Under this proposal the Exchange anticipates listing trust issued receipts on one or more groups of securities. The Exchange notes that it will be required to submit a proposal, pursuant to Section 19(b) of the Exchange Act, before it lists a trust issued receipt on a new group of securities.

(a) Description of Trust Issued Receipts

The Exchange expects that this issuance of trust issued receipts will represent 20 companies involved in various segments of the biotechnology industry. The proposed companies and their specific share amounts for each round-lot of 100 trust issued receipts are set forth in the chart below and were determined as of October 25, 1999, so that the initial weightings of each underlying security included in the trust approximated the relative market capitalizations of the specified companies, subject to a maximum weight of 20%, as of that date. Because these weightings are a function of market prices, they are expected to change substantially over time, including during the period between the date of this proposed rule change and the date the trust issued receipts are issued to the public.

Name of company	Symbol	Share amounts	Initial weighting (percent)	Primary trading market
Amgen Inc	AMGN	20	19.58	Nasdaq.
Genetech, Inc	DNA	11	18.62	NYSE.
Biogen, Inc	BGEN	13	11.61	Nasdaq
Immunex Corporation	IMNX	13	9.87	Nasdaq.
PE Corp-PE Biosystems Group	PEB	8	6.33	NYSE.
Chiron Corporation	CHIR	18	5.77	Nasdaq.
MedImmune, Inc	MEDI	4	5.10	Nasdaq.
Genzyme Corporation	GENZ	9	4.20	Nasdaq.
BioChem Pharma Inc	BCHE	9	2.55	Nasdaq.
Millennium Pharmaceuticals, Inc	MLNM	3	2.81	Nasdaq.
Affymetric, Inc	AFFX	2	2.36	Nasdaq.
QLT Photo Therapeutics Inc	QLTI	2	2.01	Nasdaq.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Exchange to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission dated November 1, 1999 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

Name of company	Symbol	Share amounts	Initial weighting (percent)	Primary trading market
Gilead Sciences, Inc	GILD	3	2.34	Nasdaq.
Sepracor Inc	SEPR	2	1.73	Nasdaq.
IDEC Pharmaceuticals Corporation	IDPH	2	2.41	Nasdaq.
Human Genome Sciences, Inc	HGSI	2	1.97	Nasdaq.
ICOS Corporation	ICOS	3	1.05	Nasdaq.
Enzon, Inc	ENZN	3	1.00	Nasdaq.
Celera Genomics	CRA	2	0.80	Nasdaq.
ImClone Systems Incorporated	IMCL	3	0.89	Nasdaq.

The companies represented in the Biotech HOLDRs meet the following minimum criteria, which are set forth in Amex Rule 1200: (1) The companies' common stocks are registered under Section 12 of the Act; (2) the minimum public float of each company included in the portfolio is at least $150,000,000; (3) each stock is either listed on a national securities exchange or traded through the facilities of Nasdaq and is a reported national market system security; (4) the average daily trading volume for each stock was at least one hundred thousand shares during the preceding 60-day trading period; (5) the average daily dollar value of the shares traded during the preceding 60-day trading period was at lest $1 million; and (6) the initial weighting of each stock in the receipt was based on market capitalization, however, if on the date such weighting is determined, a stock represented more than 20% of the overall value of the receipt, then the amount of such stock was reduced to no more than 20% of the receipt value. Once initially set, the securities represented by a receipt will not change, except in accordance with the reconstitution events described below.

Trust Issued Receipts

Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold certain securities investments in a single, exchange-listed and traded instrument representing their beneficial ownership in the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Benefical owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. Holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts, will receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders, and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

The trust will issue trust issued receipts under the depositary trust agreement, among The Bank of New York, as trustee, Merrill Lynch Pierce Fenner & Smith Incorporated, other depositors and the owners of the trust issued receipts. After the initial offering, a trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust.

A round-lot of 100 trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. Trust issued receipts may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. The amounts of deposited securities for each round-lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts. Orders for less than a round-lot will be rejected, while orders for greater than a round-lot, but not a round-lot multiple will be executed to the extent of the largest round lot multiple, rejecting the remaining odd-lot (*e.g.,* orders for 50 trust issued receipts will be rejected, and for orders of 1050 trust issued receipts, 1000 will be executed and 50 will be rejected). The initial offering price for a trust issued receipt will be established on the date the receipts are priced for sale to the public.

Based upon the potential for arbitrage opportunities, the Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.,* the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of the trust issued receipts deviate enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the trust issued receipts at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.

Trust issued receipts will be deemed ''Eligible Securities,'' as defined in Amex Rule 230, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities. Further, specialist transactions with the trust issued receipts' trade made in connection with the creation and redemption of trust issued receipts will not be subject to the prohibitions of Rule 190.[5]

Minimum Fractional Change

Trust issued receipts will trade in minimum fractional increments pursuant to Amex Rule 127. Application of Rule 127 will result in a minimum fractional change of 1/16th of $1.00 for

[5] Amex Rule 190 prohibits, among other things, any business transaction between a specialist and the company in which stock the specialist is registered.

those trust issued receipts selling at or above $0.25 and 1/32nd of $1.00 for those selling below $0.25.

Maintenance of Trust Issued Receipts

Except when a reconstitution event occurs, as described below, the securities represented in a trust issued receipt will not change.[6] Additionally, the number of each security represented in a receipt will not change except for changes due to certain corporate events such as stock splits or reverse stock splits on the deposited securities or when a reconstitution event occurs. Under no circumstances will a new security be added to the list of securities after a particular receipt program is established.

The relative weightings among the deposited securities will change based on the current market price of the deposited securities and upon the reconstitution events discussed below. Once established, the component securities held by the trust and represented by trust issued receipts will not change unless an event described below occurs.

Reconstitution Events

The trust agreement provides for the automatic distribution of specified deposited securities to the beneficial owner of such receipts in the circumstances referred to in the prospectus as ''reconstitution events'': (1) If a company with deposited securities evidenced by a trust issued receipt no longer has a class of common stock registered under Section 12 of the Securities Exchange Act of 1934, then its securities will no longer be a deposited security and the trustee will distribute the securities of that company to the owners of the trust receipts; (2) if the Commission finds that a company with deposited securities evidenced by the trust issued receipts is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the securities of that company to the owners of the trust issued receipts; (3) if the deposited securities of a company evidenced by a trust issued receipt are no longer outstanding because the securities were acquired by another company, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of trust issued receipts, unless the consideration is additional deposited securities (*i.e.,* the acquiring company's securities are already included in the trust issued receipt as deposited securities), in which case such additional securities will be deposited into the trust; and (4) if an underlying issuer's deposited securities are delisted from trading on their primary exchange or market and not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.[7] If the trustee removes a deposited security from the trust due to the occurrence of one of the reconstitution events described above, the trustee, in accordance with the depositary trust agreement, will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, receipts only in a round-lot of 100 trust issued receipts or round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis.[8] The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

A holder may obtain trust issued receipts by either purchasing them on the Exchange or delivering to the trust during its normal business hours the requisite securities evidencing a trust issued receipt. The trustee will charge an issuance fee of up to $10.00 per 100 trust issued receipts. If a holder wants to cancel trust issued receipts and withdraw the deposited securities, the holder may do so by surrendering the receipts to the trust during normal business hours. The trustee will charge a cancellation fee of up to $10.00 per 100 trust issued receipts. The holder should receive the deposited securities no later than the business day after the trustee receives the request.

Termination of the Trust

The trust shall terminate upon the earlier of: (i) The removal of the receipts from Amex listing if they are not listed for trading on another national securities exchange or through the facilities of Nasdaq within five business days from the date the receipts are delisted; (ii) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (iii) 75 percent of beneficial owners of outstanding trust issued receipts vote to dissolve and liquidate the trust; or (iv) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the investor as promptly as practicable after the termination event.

(b) Criteria for Initial and Continued Listing

Because of the continuous issuance and cancellation of trust issued receipts, the Exchange believes that it is necessary to maintain appropriate flexibility in connection with listing a specific trust. In connection with initial listing, the Exchange proposes that, for each trust, the Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 under the Act for each trust. It is anticipated that a minimum of 150,000 receipts will be required to be outstanding when trading begins.

Because of the continuous issuance and cancellation of trust issued receipts, and because the number of holders is subject to substantial fluctuations depending on market conditions, the Exchange believes that it would be inappropriate and burdensome on trust issued receipt holders to consider suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, the Exchange will consider suspending or delisting a trust from trading when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(i) If the trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days;

[6] The Amex will consult with the Commission to confirm the appropriateness of the continued listing of trust issued receipts should the portfolio of securities held by the trust become fewer than nine.

[7] This provision is designed for the purpose of permitting a deposited security to move its listing between, for example, the Amex and Nasdaq without requiring the automatic distribution of the deposited security to beneficial owners of the receipts. Should deposited securities be delisted to a market other than a national securities exchange or Nasdaq (*e.g.,* the OTC Bulletin Board), such securities will be automatically distributed to the beneficial owners of the receipts.

[8] The receipt amount will be disseminated by the Amex every 15 seconds over the Consolidated Tape Association's Network B.

(ii) if the aggregate number of trust issued receipts outstanding is less than 50,000;

(iii) if the aggregate market value of trust issued receipts publicly held is less than $1,000,000; or

(iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

However, the Exchange will not be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one year after the initial listing of such trust issued receipts for trading on the Exchange.

(c) Exchange Rules Applicable to the Trading of Trust Issued Receipts

Trust issued receipts will be deemed equity securities subject to all Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability (Amex Rule 411), and the election, with the prior approval of a floor official, of a stop or limit order by a quotation (Amex Rule 154, Commentary .04(c)). Initial Exchange equity margin requirements of 50 percent and the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in trust issued receipts. However, trading rules pertaining to the availability of odd-lot trading in Amex equities will not apply to the trading of trust issued receipts, because they can only be traded in round-lots. The Amex applied for exemption from the short sale rate, Rule 10a–1 under the Act,[9] for Internet HOLDRs, which was granted on November 3, 1999.[10] This exemption applies to Biotech HOLDRs as well. The Exchange will issue a notice to its members detailing the terms of the exemption. Amex's surveillance procedures for trust issued receipts will be similar to those used for portfolio depositary receipts and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

With respect to investor disclosure, the Exchange notes that all investors is trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Amex members purchasing trust issued receipts from the trust for resale to customers will deliver a prospectus to such customers.

Prior to the commencement of trading in trust issued receipts, the Exchange will issue a circular to members informing them of, among other things, Exchange policies regarding trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Rule 117 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited share(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect 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

No written comments were either solicited or received.

III. 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 at the Commission's Public Reference Room. 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–Amex–99–46 and should be submitted by December 21, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

A. Generally

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[12] Specifically, the Commission finds, as it did in the Amex order approving the listing and trading of trust issued receipts generally, and Internet HOLDRs specifically, that the proposal to list and trade Biotech HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets. The Exchange's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[13]

The Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust issued receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the

[9] 17 CFR 240.10a–1.

[10] *See* Letter to Claire P. McGrath, Vice President and Special Counsel Derivative Securities, from James A. Brigagliano, Assistant Director, Division of Market Regulation, SEC, dated November 3, 1999.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess many of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.[14] Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues that must be addressed.

B. Listing and Trading of Trust Issued Receipts

The Commission finds that the Amex's proposal, as amended, to trade Biotech HOLDRs meets all of the specific criteria and listing standards that were approved in the Amex order approving the listing and trading of Internet HOLDRs.[15] Biotech HOLDRs are equity securities that will be subject to the full panoply of Amex rules governing the trading of equity securities on the Amex, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[16]

Moreover, in approving this proposal, the Commission notes the Exchange's representation that Biotech HOLDRs will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade Biotech HOLDRs in minimum fractional increments of 1/16th of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the Amex has developed surveillance procedures for trust issued receipts that incorporate and rely upon existing Amex surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading of Biotech HOLDRs, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal, as amended, will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of Biotech HOLDRs, including a statement regarding their redeemability and method of creation. The Commission notes that all investors in Biotech HOLDRs who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing Biotech HOLDRs directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Amex member firms who purchase Biotech HOLDRs from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks or this type of security. The circular will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of Biotech HOLDRs. The circular will inform members of Exchange policies regarding trading halts in Biotech HOLDRs.

D. Accelerated Approval

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register.** The Commission believes that the Exchange's proposal to trade Biotech HOLDRS, will provide investors with a convenient and less expensive way of participating in the securities markets. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Biotech HOLDRs, as an investment tool, the Amex's proposal should help provide investors with increased flexibility in satisfying their investment needs. This is achieved by allowing investors to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes however, that, notwithstanding approval of the listing of Biotech HOLDRs, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being listed and traded on the Exchange. Moreover, additional series cannot be listed prior to the Exchange contacting Division staff. Finally, the Amex may be required to submit a rule filing prior to listing and trading a new issue or series of trust issued receipts on the Exchange.

The Commission believes that the trading of this product raises no new regulatory issues and, except for the composition of securities deposited in trust, the Biotech HOLDRs are structurally the same as the Internet HOLDRs trust receipts previously approved by the Commission for listing and trading on the Amex. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–99–46), as amended, us hereby approved on an accelerated basis.

[14] The Commission has concerns about continued listing of the trust issued receipts if the number of component securities falls to a level below nine securities, because the receipts may no longer adequately reflect a cross section of the selected industry. Accordingly, the Amex has agreed to consult the Commission, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[15] *See supra*, note 3.

[16] Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

[17] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30977 Filed 11–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42168; File No. SR–CBOE–99–61]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Non-Automatic Handling of RAES Orders

November 22, 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 8, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 22, 1999, CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis for a ninety day pilot to expire on February 21, 2000.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rule governing the operation of its Retail Automatic Execution System (''RAES'') to allow, under certain circumstances, orders to be rejected from RAES and routed to the Public Automated Routing terminal (''PAR'') for manual handling. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 III below. The CBOE 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 proposal is to allow, under certain circumstances, orders to be rejected from RAES for manual handling where the bid or offer for a series of options generated by the Exchange's Autoquote system becomes crossed or locked with the best offer or bid for that series as established by a booked order. The proposed rule is intended to correct an unintended consequence of the planned implementation of the Automated Book Priority (''ABP'') system that could have significant detrimental effects on the operation of the RAES as described further below. The CBOE anticipates that the number of orders that will be rejected from RAES under this proposed rule should represent only a small subset of the orders that have been and currently are rejected pending implementation of the ABP system.

The Exchange's ABP system will allow an order entered into RAES to trade directly with an order on the Exchange's customer limit order book where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book.[4] The Commission recently approved the Exchange's rules implementing the ABP system,[5] which has not yet been implemented.[6]

The Exchange recently became aware of an unintended consequence of the operation of the ABP system. That is, in situations where the best bid or offer for one or more series of a particular option class is established by one or more orders in the book, the market-makers logged on to RAES for that class of options could be subject to a substantial risk in the event that the market in the underlying stock moves significantly and quickly in a direction that makes the booked order price substantially better than the price calculated by CBOE's Autoquote formula. In that event, while the booked order would quickly be executed, CBOE represents that the ABP system may not be able to react quickly enough to remove the executed order from the limit order book. As a result, once ABP is implemented, orders entered in RAES would automatically be executed against the stale bid or offer still being shown in the book notwithstanding the booked order having already been executed. CBOE contends that this result could cause direct and substantial economic disadvantage to the market-makers who are obligated to participate in RAES executions. The Exchange believes that implementing ABP without addressing this potential risk could cause market-makers to avoid participating on RAES (thus, affecting the liquidity of lower volume series traded on RAES and endangering the viability of RAES), or to widen their quotes to minimize the possible adverse consequences of executing orders based on stale quotes and to account for the potential losses (thus, affecting the ability of CBOE's market-makers to compete with competing specialists or market-makers). In the alternative, market-makers might request that the Equity Floor Procedure Committee reduce the size of orders eligible for RAES to minimize the impact of these orders (thus, eliminating a significant advance in automatic execution that CBOE represents its customers have requested).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE shortened the length of the pilot program from one year to ninety days. *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 19, 1999.

[4] In the event the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the rest of the order was executed.

[5] *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (File No. SR–CBOE–99–29).

[6] Currently, with certain exceptions discussed below, when a RAES order is entered into the Exchange's Order Routing System when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book, the order will be routed electronically to a Floor Broker's terminal or work station in the crowd subject to the volume parameters of each firm. Today, the orders are routed to the Floor Brokers instead of being automatically executed in the crowd at the market price, because execution with the crowd would be inconsistent with CBOE Rule 6.45, which provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. CBOE permits RAES orders in options on IBM, options on the Dow Jones Industrial Average (DJX) and options on the Standard & Poor's 100 Stock Index (OEX) to be executed on RAES even if the prevailing market bid or offer equals the best bid or offer on the Exchange's book. In other words, RAES orders in these options classes are currently allowed to ''trade through'' the book. Upon implementation of the ABP system, RAES orders in these option classes, like all other option classes, will trade against orders in the book in these circumstances.

CBOE explains the potential risk market-makers could be subject to by implementing the ABP system without the proposed ''carve out'' by way of example. Assume that in a volatile internet stock (where the maximum order size for RAES has been established at 50 contracts) small customer orders in the book are establishing the best bid in six different series. In one particular series, Series A, assume that the CBOE market is 5 (bid)—5 1/8 (offer), with a book order to buy 5 contracts at $5 (which establishes the best bid). Assume further that the price of the underlying internet stock drops precipitously in a matter of seconds. When the underlying stock moves, the Exchange's Autoquote system will update CBOE market-makers' quotes for the options overlying that stock.[7] Assume with the drop in the underlying stock, the Exchange's Autoquote system establishes a bid and offer of 4 3/4—4 7/8 for Series A. (The same scenario would play out with the other five series whose best bid is established by an order in the book.) The order in the book representing the best bid will likely be immediately executed by the crowd in the auction market. For some period of time after the trade has been consummated in open outcry, however, the bid will still be displayed as CBOE's bid while the Order Book Official physically punches the keys to take the bid down from the display. During the period, the displayed bid of 5 in the book will be out of line with the theoretical bid 4 3/4 generated by CBOE's Autoquote system. In the meantime, traders who have equipped themselves with the necessary computer equipment and communications facilities could have identified the pricing disparity between the theoretical price of the options and the displayed best bids, could automatically generate orders to sell the affected options and route those orders to RAES. If RAES is allowed to operate as it does under normal circumstances, each order to sell that arrives at the Exchange from these investors, for so long as the out-of-line book bid continues to be displayed, will be assigned to market-makers in the trading crowd who are logged on to RAES. These market-makers in turn will be obligated to buy at the $5 bid, which could be significantly away from the theoretical bid.[8] Of course, the same adverse consequence could be experienced in the other five series of the class in which the bid was established by a booked order.

The Exchange believes that by rejecting orders from RAES in the limited situation where the bids or offers generated by Autoquote become crossed or locked with the CBOE's best bid or offer as established by an order in the Exchange's customer limit order book, the problem described above can be resolved without any significant disruption in the proper handling of customer orders or to the market as a whole. The Exchange will then be able to offer RAES to its customers together with the benefit of the ABP system, which will allow RAES orders to trade directly with orders on the Exchange's customer limit order book. Those orders that are rejected from RAES in the limited circumstances when Autoquote crosses or locks the book will be immediately and automatically routed to a broker's PAR terminal in the trading crowd (absent contrary instructions of the firm), where they will be represented by the broker and, if executable, will ordinarily be executed in seconds. Because these orders remain RAES eligible, they will be entitled to receive firm quote treatment when they are represented in the crowd.

The Exchange represents that during the course of the pilot program, the Exchange will monitor those situations in which RAES orders are rejected as provided in the rule and will prepare a report to the Commission describing its experience with the rule before the end of the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[9] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–61 and should be submitted by December 21, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed pilot is consistent with the requirements of the Act.[10] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[11] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that it is imperative that CBOE implement the ABP system as expeditiously as possible to ensure that all customer limit orders on CBOE are, where appropriate, given priority over other interest on the Exchange. After the ABP system is implemented, RAES orders will be able to trade against orders in the book when the prevailing market bid or offer equals the best bid or offer in the Exchange's

[7] In approving this pilot, the Commission takes no position with respect to the procedures involved in CBOE's Autoquote system, which are the subject of pending proposal SR–CBOE–98–04.

[8] If, for example, six different traders use such a system to identify pricing disparities and to generate and send orders instantly for automatic execution, market-makers in the trading crowd could be responsible for trading 295 or 300 contracts of Series A options alone, reflecting an aggregate payment of as much as $150,000 more than their theoretical value. The maximum number of contracts to be purchased in response to six orders for 50 contracts each would be 300 contracts, except in the unlikely event that the original 5 contract order on the book had not yet been filled, in which case 5 contracts of the orders received would trade with the booked order, and market makers would be obligated to buy the remaining 295 contracts.

[9] 15 U.S.C. 78f(b)(5).

[10] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

limit order book. Implementation of the ABP system should provide for more efficient execution of both RAES and booked orders. The proposed rule change, which would result in RAES orders being routed to the trading crowd when the Exchange's Autoquote system locks or crosses CBOE's best bid or offer as established by the book, limits market-maker risk where CBOE is unable to remove a quote based on a customer limit order that has already been executed. The Exchange has represented that this exception should occur very infrequently.

In light of the likely benefits to customer limit orders expected to be gained by implementation of the ABP system, particularly in those classes, discussed above, where CBOE currently permits RAES orders to trade through orders on the limit order book, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission hereby requests that CBOE provide monthly reports to the Commission regarding the number of times the exception that is the subject of this pilot is used to allow the Commission to determine whether to approve the proposal permanently.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–99–61) is hereby approved through February 21, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31027 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

[12] The approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal permanently.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42167; File No. SR–CBOE–99–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Governing the Operation of Its Retail Automatic Execution System

November 22, 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 October 14, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. Additionally, on November 15, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the operation of its Retail Automatic Execution System (''RAES''). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Timothy Thompson, Director of Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated November 15, 1999. The Amendment clarifies the wording of the proposed rule change. Because of the substantive nature of the amendment, the Commission deems the filing date of the proposed rule change to be November 15, 1999.

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 permit the appropriate Floor Procedure Committee (''FPC'') to designate that RAES orders for a particular option series will default for manual representation in the trading crowd in situations where the National Best Bid or Offer (''NBBO'') for that particular series of that class is crossed (*e.g.,* 6⅛ bid, 6 asked) or locked (*e.g.,* 6 bid, 6 asked). The proposed rule will provide market-makers participating on RAES protection from having to fill orders at crossed or locked prices since the NBBO can become crossed or locked as a result of one market disseminating inaccurate or delayed quotes.

Currently, under CBOE Rule 6.8(a)(ii), when RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system, except as otherwise provided in Interpretation .02 of CBOE Rule 6.8 in respect of multiply-traded options. A buy order will pay the offer; a sell order will sell at the bid.

Pursuant to Interpretation .02, when RAES receives an order for a multiply-traded option at a time when a better bid or offer for that option is displayed on another exchange, the order will either be rejected for manual handling (so that the order is not automatically executed at an inferior price to the NBBO) or the order will be executed at the NBBO, if the NBBO is better than the CBOE bid or offer by no more than the designated number of minimum trading variations (''ticks''). The appropriate FPC determines which option classes will be entitled to be executed automatically at the better bid or offer and also determines the number of ticks better than the CBOE bid or offer that the NBBO may be and at which the order still will be executed automatically on RAES.[4] In situations where the NBBO for a particular series is more than the designated number of ticks better than the CBOE bid or offer, the order for that multiply-traded class will be rerouted for manual handling.[5]

[4] *See* Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999), approving SR–CBOE–99–17. SR–CBOE–99–17 amends Interpretation .02 to authorize the appropriate FPC to establish a step-up amount greater than the one-tick increment established under CBOE Rule 6.42.

[5] Any orders prevented from being automatically executed by operation of this policy will be

In addition, pursuant to the Exchange's firm quote rule, CBOE Rule 8.51, any order that is rerouted will be entitled to be executed at the Exchange's displayed bid or offer when that order is represented in the trading crowd. Depending on the circumstances, that order may be filled at a price better than the CBOE's displayed bid or offer.

The proposal adds another situation in which an order for a multiply-traded class may be rerouted for manual handling. The authority for determining when these orders will be rejected for manual handling will be set forth in Interpretation .06 to CBOE Rule 6.8. The Exchange is proposing to allow the appropriate FPC to designate option classes that will be rerouted for manual handling in situations in which the NBBO for a particular series of that class is crossed or locked. Depending on the circumstances, the appropriate FPC may determine to have such orders rerouted only when the NBBO is crossed but not locked.[6] The appropriate FPC may also determine to have orders be rejected only when the CBOE's market becomes crossed or locked as a result of the step-up amount having been applied to a particular options series. Also, the FPC may determine to allow for automatic executions of the orders notwithstanding that the NBBO is crossed or locked (assuming no other reason for the order to be rerouted exists) if the circumstances warrant such action to maintain a fair and orderly market.

The proposed rule would allow for the rerouting of RAES orders of a particular class notwithstanding that the orders of that particular class may not have been designated to automatically step up to the NBBO and notwithstanding that the NBBO may be more ticks away from the CBOE market than the designated step-up amount. Nonetheless, the CBOE believes that market makers are at risk for filling orders automatically in situations in which the NBBO is crossed or locked even if they are not stepping up to the NBBO on RAES because the fact that the NBBO is crossed or locked may be an indication that the prices are inaccurate. The NBBO may become crossed or locked because of communications or systems problems, or due to keystroke errors, or quotation dissemination delays. The proposal will allow the floor broker or DPM to determine if the locked or crossed market is actually a true market.

2. Statutory Basis

The CBOE believes that this proposal will enhance its ability to provide instantaneous, automatic execution of public customers' orders at the best available prices. This furthers the objectives of Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular by promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and national market system, and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Amendment No. 1 and Timing for Commission Action

The proposed rule filing has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] The proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative until thirty days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Specifically, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change because it will limit market-maker risk in situations where the NBBO becomes locked or crossed, by removing the requirement that market-makers execute transactions at prices that may not accurately reflect true market prices at the time the trade is initiated. For these reasons, the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest.

The Commission requests, however, that the CBOE provide it with information regarding the occasions in which the Interpretation is applied and the promptness of the manual execution of orders that are prevented from automatic execution by operation of the Interpretation. This data should cover, at a minimum, the period commencing as of the proposed Interpretation's operative date and concluding six months thereafter.

At any time within 60 days of the filing of this rule change, the Commission may summarily abrogate the 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.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

rerouted to the Public Automated Routing (''PAR'') machine of the Designated Primary Market-Maker (''DPM'') for manual handling. Upon receipt of that order, in accordance with CBOE Rule 6.73, the floor broker or DPM will be obligated to use due diligence in the handling of the order to execute the order at the best price or prices available to him.

[6] The Commission recently published an order declaring immediately effective CBOE's proposal to adopt new Interpretation .08 to Rule 6.8. New Interpretation .08 requires a RAES order to be rerouted for representation in the trading crowd when the CBOE market becomes crossed as a result of quotes ''stepping-up'' to match the NBBO. *See* Securities Exchange Act Release No. 42012 (October 15, 1999), 64 FR 57502 (October 25, 1999). The current filing will supersede that filing because it will provide the appropriate FPC with the discretion to have orders rejected from RAES when the CBOE market is not only crossed as a result of quotes ''stepping-up'' to match the NBBO, but also when it becomes locked as a result of application of the ''step-up'' Interpretation.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File Number SR–CBOE–99–57 and should be submitted by December 21, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31028 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42163; File No. SR–NYSE–98–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change to Amend NYSE Rule 64

November 19, 1999.

I. Introduction

On October 16, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 64. The proposed rule change was published for comment in the **Federal Register** on November 12, 1998.[3] On November 1, 1999, the Exchange filed Amendment No. 1.[4] The Commission received no comments on the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 1.

II. Description of Proposal

Currently, NYSE Rule 64 requires Floor Official approval for all ''non-regular way'' [5] trades during all but the final calendar week of the year. During the last calendar week of the year such approval is required only for sales more than 4/16 point away from the regular way bid or offer. The Exchange proposes to amend the rule to eliminate the requirement of Floor Official approval for certain non-regular way trades that do not occur during the final calendar week of the year. Under the proposed rule change, Floor Official approval would be required only for those non-regular way trades that are more than 2/16 point away from the regular way bid or offer throughout the year, but not during the final calendar week of the year.[6] The proposal does not change the existing requirement for Floor Official approval for non-regular way trades that are more than 4/16 point away from the regular way bid or offer during the last calendar week of the year.[7] Under the proposed rule change, Floor Officials will still be required to ''take into consideration whether the price of the transaction is reasonable in relation to the 'regular way' market'' when deciding whether to grant approval for a non-regular way trade.

Exchange staff and analyzed price changes from the current bid or offer for non-regular way trades during June 1998.[8] The Exchange's analysis showed that approximately 80% of non-regular way trades occurred at 2/16 point or less away from the regular way bid or offer. The Exchange believes that the proposed rule change would relieve members of the burden of obtaining Floor Official approval for routine non-regular way trades at small price variations, while preserving Floor Official supervision for those instances were it is most needed.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[9] Section 6(b)(5) [10] requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should help to alleviate the administrative burden for Floor Officials and members with regard to non-regular way trades, which should in turn permit the reallocation of valuable resources, and thereby increase operational efficiency for Floor Officials and members. As mentioned above, the Exchange's analysis of non-regular way trades indicates that this proposal should substantially reduce the number of Floor Official approvals required for such trades.[11] The Commission believes that by requiring Floor Official approval for non-regular way trades that are more than 2/16 point away from the regular way bid or offer throughout the year, but not during the final calendar week of the year, the proposal should facilitate transactions in securities and help to remove impediments to and perfect the mechanism of a free and open market. The Commission notes, however, that the approval of the elimination of the requirement for Floor Official approval for non-regular way trades with a 2/16 point, or less, deviation from the regular way bid or offer does not relieve brokers of their best execution duty. The Commission further notes that Floor Officials, as per NYSE guidelines, will still be required to consider whether the price of the transaction is reasonable in relation to the regular way market when deciding whether to grant approval for

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40631 (November 3, 1998), 63 FR 63347 (November 12, 1998).

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1999 (''Amendment No. 1''). Amendment No. 1 changes the proposal to require Floor Official approval for non-regular way trades throughout the year, but not during the last calendar week of the year, to 2/16 point away from the regular way bid or offer from 4/16 point away. Initially, the proposed rule change would have extended the existing requirement of NYSE Rule 64 for Floor Official approval for end-of-the-year non-regular way trades to the entire year. In other words, Floor Official approval would have been required for non-regular way trades that were more than 4/16 point away from the regular way bid or offer throughout the year.

[5] A ''non-regular way'' trade is a trade that is settled in a different time frame from ''regular-way'' trades, which settle on the third business day following the transaction. *See* NYSE Rule 64(a)(3).

[6] *See* note 4, *above.*

[7] *Id.*

[8] *See* NYSE Analysis of Non-Regular Way Trades for June 1998.

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* note 8, *above.*

a non-regular way trade when such approval is required.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register.** Specifically, Amendment No. 1 changes the proposal to require Floor Official approval for non-regular way trades throughout the year, but not during the last calendar week of the year, from 4/16 point away from the regular way bid or offer to 2/16 point away. Initially, the proposed rule change would have extended the existing requirement of NYSE Rules 64 for Floor Official approval for end-of-the-year non-regular way trades to the entire year. In other words, Floor Official approval would have been required for non-regular way trades that were more than 4/16 point away from the regular way bid or offer throughout the year. The Commission finds that reducing the deviation from the regular way bid or offer that would require Floor official approval for a non-regular way trade is consistent with Section 6(b)(5) of the Act.[12] The Exchange's analysis of non-regular way trades indicated that approximately 97% of such trades occur at a 4/16 point or less deviation from the regular way market, while approximately 80% of such trades occur at a 2/16 point or less deviation from the regular way market. Therefore, the Commission believes that Amendment No. 1 helps to achieve the Exchange's goal of alleviating a substantial administrative burden for Floor Officials and members while preserving the investor protection provided by Floor Official review of non-regular way trades that occur at 2/16 point or more away from the regular way market throughout the year, but not during the final calendar week of the year. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[13] to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, including whether Amendment No. 1 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–33 and should be submitted by December 21, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–98–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deptuy Secretary.

[FR Doc. 99–30979 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5) and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42162; File No. SR–NYSE–99–32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 22(b)

November 19, 1999.

I. Introduction

On July 9, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the NYSE seeks to codify an interpretation of a section of its Disqualification Because of Personal Interest Rule.[3] The proposed rule change was published for comment in the **Federal Register** on September 21, 1999.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The NYSE seeks to codify an interpretation of Exchange Rule 22(b), which addresses circumstances under which Board and committee members and other persons are obliged to disqualify themselves from participating in matters in which they have a personal interest. Exchange Rule 22(b) currently states that no person(s) shall participate in the ''adjudication'' of any matter in which they are personally interested. The proposed amendment to this rule would bar person(s) from participating in the ''consideration, review or adjudication'' of any matter in which they are personally interested.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[5] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[6] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the Act in that the change promotes fairness and impartiality in the operation and oversight of the NYSE. The proposal codifies an interpretation of Exchange Rule 22(b). This rule prevents persons with conflicts of interests from participating in matters in which they have a personal interest. The Commission believes the amendment clarifies those situations in which a person with a conflict of interest should disqualify himself.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–99–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30980 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 22(b).

[4] *See* Securities Exchange Act Release No. 41871 (September 13, 1999), 64 FR 51170.

[5] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42161; File No. SR–PHLX–99–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Phlx Rule 1014(g) Regarding Specialist Enhanced Participation

November 19, 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 October 4, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx') or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On November 4, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1014, ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders,'' and its corollary Option Floor Procedure Advice B–6 to revise the enhanced participation available to Exchange specialists. Under the proposal, if three or more controlled accounts [4] are on parity with an Exchange specialist, the specialist will receive 30% of the contracts of the initiating order.

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

a. Background

On August 26, 1994, the Commission approved the Exchange's proposal to adopt and enhanced participation for Exchange specialists in equity options.[5] The enhancement, or ''enhanced parity split,'' provided Exchange specialists with a greater participation in parity trades than the specialists would otherwise be entitled to receive. Initially, the enhanced parity split was approved as a one year pilot expiring August 26, 1995. On November 30, 1994, the Commission approved the Exchange's proposal to make the enhanced parity split available to index option specialist.[6] The enhanced parity split was later revised with respect to situations where less than three controlled accounts are on parity with a specialist.[7] The enhanced parity split was renewed unaltered and on a continuing pilot basis on three subsequent occasions.[8] Thereafter, the enhanced parity split was extended until December 31, 1998, and revised or that it would apply to: (1) All index options; (2) 50% of each specialist's equity options; and (3) all new options allocated to a specialist during the year. In addition, specialists were permitted to revised the list of eligible equity options on a quarterly basis, instead of annually.[9] Finally, in July 1999, the enhanced parity was permanently approved.[10]

Currently, the enhanced parity split applies to orders for more than five contracts. Specifically, when an equity or index option specialist is on parity with one controlled account, the specialist receives 60% of the initiating order and the controlled account receives 40%. When the specialist is on parity with two controlled accounts, the specialist receives 40% of the initiating order and each controlled account receives 30%. When the specialist is on parity with three or more controlled accounts, the specialist is counted as two crowd participants when dividing up the contracts. In any of these situations, if a customer is on parity, the customer will not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.

b. Proposal

The Exchange proposes to revise the manner in which the enhanced parity split operates. Specifically, in those cases where the specialist is on parity with three or more controlled accounts, the specialist will receive 30% of the contracts instead of being counted as two crowd participants. However, if a customer is on parity, the customer will not be disadvantaged by receiving a lesser allotment that any other crowd participant including the specialist. Pursuant to the current text of the rule, the Exchange will continue to limit the enhanced parity split to 50% for each of the specialist unit's equity issues.

The Exchange believes that fixing the percentage of an order that a specialist receives under the enhanced parity split should provide more certainty because a fixed percentage is ascertained more easily than a percentage that varies depending on the number of controlled accounts on parity. In addition, in larger crowds, a specialist may not receive a significant enhanced participation using the current two-for-one split because the potentially large number of controlled accounts on parity would significantly dilute the specialist's share of the order. For example, if there are seventy controlled accounts on parity, and there is an initiating order for seventy contracts, the specialist will only receive two contracts and the rest of the crowd will divide the remaining sixty-eight. However, with the proposed 30% enhanced parity split, the specialist will receive twenty-one contracts and the

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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 made technical changes to the proposal. *See* letter from Nandita Yagnik, Phlx, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 3, 1999 (''Amendment No. 1'').

[4] Pursuant to Phlx Rule 1014(g)(i), a controlled account includes any account controlled by or under the common control with a member broker-dealer.

[5] *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994).

[6] *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994).

[7] *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995).

[8] *See* Securities Exchange Act Release Nos. 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996); and 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997).

[9] *See* Securities Exchange Act Release No. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997).

[10] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999). The Exchange also received approval to give specialists and enhanced parity split when they develop and trade a new product. The enhanced parity split works as follows: when the specialist is on parity with three or more controlled accounts, the specialist receives 40% of the contracts and the controlled accounts receive the remaining 60%. When the specialists is on parity with less than three controlled accounts in the crowd, the specialist receives 60% of the contracts and the controlled accounts receive 40%. In either these situations, if a customer is on parity, the customer may not receive a lesser allotment than any other crowed participant including the specialist.

rest of the crowd will divide the other forty-nine equally. Thus, the 30% enhanced parity split should help to ensure that specialists in larger crowds receive participations that encourage them to make deep and liquid markets.[11] In addition, the proposal should allow the Exchange to recruit and retain well-capitalized specialists who attract order flow to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and with Section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade; prevent fraudulent and manipulative acts and practices; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest. The Exchange further believes that the proposal balances the competing interests of specialists and market makers while helping specialists protect the public interest by making tight and liquid markets in assigned issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[11] In those instances where three of four controlled accounts are on parity, the Exchange recognizes that the proposed 30% enhanced parity split will provide specialists with a lesser number of contracts than under the current two-for-one enhanced parity split. For example, if there is an initiating order of fifty contracts, and three controlled accounts are on parity, the specialist will currently receive twenty contracts and the controlled accounts will each receive ten contracts. In contrast, under the proposed 30% enhanced parity split the specialist will only receive fifteen contracts. However, the Exchange believes that the proposed 30% enhanced parity split will provide a more equitable treatment to all specialists such that specialists of both large and small crowds shall receive a significant enhanced participation when there are five or more controlled accounts on parity. *See* Amendment No. 1, *supra* note 3.

[12] 15 U.S.C. 78f.

[13] 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–39 and should be submitted by December 21, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30978 Filed 11–29–99; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 19, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6508.
Date Filed: November 16, 1999.
Parties: Members of the International Air Transport Association.
Subject:
Mail Votes 037 and 038
PTC12 NMS–ME 0092 dated 20 September 1999
Mid Atlantic-Middle East Resolutions r1–r10
PTC12 NMS–ME 0093 dated 20 September 1999
South Atlantic-Middle East Resolutions r11–r22
PTC12 NMS–ME 0097 and 0098 dated 5 November 1999
Adoption of Mail Votes 037 and 038
Minutes—PTC12 NMS–ME 0095 dated 1 October 1999
Tables—PTC12 NMS–ME Fares 0052 and 0053 dated 12 November 1999
Intended effective date: 1 April 2000

Docket Number: OST–99–6511.
Date Filed: November 16, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0077 dated 8 October 1999
Middle East–TC3 except South East Asia Resolutions r1–r43
PTC23 ME–TC3 0081 dated 2 November 1999 Technical Correction
PTC23 ME–TC3 0078 dated 14 October 1999 (Mail Vote 041)
Middle East-South East Asia Resolutions r44–r58
PTC23 ME–TC3 0082 dated 9 November 1999 (Adoption Mail Vote 041)
Minutes—PTC23 ME–TC3 0080 dated 29 October 1999
Tables—PTC23 ME–TC3 Fares 0038 dated 15 October 1999 and PTC23 ME–TC3 Fares 0040 dated 12 November 1999
Intended effective date: 1 April 2000

Docket Number: OST–99–6512.
Date Filed: November 16, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC1 0126 dated 16 November 1999
Mail Vote 050 Resolution 010s
TC1 Special Passenger Amending

Resolution Excursion and Pex Fares Within South America
Intended effective date: 1 December 1999
Docket Number: OST–99–6514.
Date Filed: November 17, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME–AFR 0041 dated 16 November 1999
Mail Vote 049 Resolution 010r
TC2 Middle East-Africa Special Passenger Amending Resolution from Iran to Libya
Intended effective date: 18 November 1999
Docket Number: OST–99–6523.
Date Filed: November 19, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0530 dated 19 November 1999
Mail Vote 051—Resolution 011a (Amending)
Mileage Manual non-TC Member/non-IATA Carrier Sectors
New Sector between Kristianstad and Palanga
Intended effective date: 1 December 1999

Andrea Jenkins,

Federal Register Liaison.

[FR Doc. 99–31106 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 19, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6538.
Date Filed: November 19, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 17, 1999.

Description

Application of Continental Airlines, Inc. pursuant to 49 U.S.C. Sections 41108 and 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing Continental to provide scheduled foreign air transportation of persons, property and mail between any point or points in the United States via any intermediate point or points and any point or points in Italy and beyond Italy to any point or points in third countries.

Andrea Jenkins,

Federal Register Liaison.

[FR Doc. 99–31107 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 20, 1999 (64 FR 27615).

DATES: Comments must be submitted on or before December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James Getzewich, (202) 366–0175, Highway Systems Performance, Office of Highway Policy Information, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Performance Monitoring System (HPMS)—Field Manual.

OMB Number: 2125–0028.

Type of Request: Renewal of a currently-approved information collection.

Affected Public: State governments of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, and the four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Abstract: The HPMS data which is collected is used for management decisions affecting transportation, such as estimates of future highway needs of the Nation and assessments of the highway system performance. This data is essential to FHWA and Congress in evaluating effectiveness of the Federal-aid highway program providing miles, lane-miles, and travel components of apportionment formulae. The information is used by FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. A recently completed reassessment of the HPMS resulted in the elimination and/or streamlining of approximately 20 percent of the required data. Therefore, a reduction in burden hours for this currently-approved information collection is anticipated.

Frequency: Annually.

Estimated Burden: The estimated average burden per response for the annual collection and processing of the HPMS data is 1,440 hours for the States, the District of Columbia and the Commonwealth of Puerto Rico; and 20 hours for each of the four territories. The estimated total annual burden for all respondents is 74,960 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: November 22, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–30987 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[Docket No. OMCS–96–6488, (formerly Docket No. MC–96–32)]

Notice of Request for Renewal of a Currently-Approved Information Collection: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (Section 3506(c)(2)(A)), this notice announces the agency's intention to request the Office of Management and Budget (OMB) to renew its clearance of a currently approved information collection identified below under Supplementary Information. In this regard, the agency is requesting OMB approval to combine two information collections (formerly authorized under Federal Highway Administration OMB approval numbers 2125–0074 and 2125–0518) into one information collection authorized under OMB Approval Number 2126–0518. The two collections cover similar requirements for motor carriers to document their minimum levels of financial responsibility. The only difference is the regulated audiences who are required to provide information—motor carriers of property and motor carriers of passengers. Combining these two collections will not result in increased burdens.

DATES: Comments must be submitted on or before January 31, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mrs. Valerie Height, (202) 366–1790, Office of Motor Carrier Safety, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Revised Title: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.

OMB Number: 2126–0518.

The Secretary of Transportation has rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation [64 FR 56270, October 19, 1999]. This is the reason for the revised information collection prefix number (being changed from 2125 to 2126) and the docket transfer.

The new OMCS assumes the motor carrier functions previously performed by the FHWA's Office of Motor Carrier and Highway Safety (OMCHS). Ongoing rulemaking, enforcement, and other activities of the OMCHS, initiated while part of the FHWA, will be continued by the new OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers.

Background: Sections 29 and 30 of the Motor Carrier Act of 1980 (codified at 49 U.S.C. 31139) require the Secretary of Transportation to promulgate regulations which establish minimal levels of financial responsibility for motor carriers of property to cover public liability, property damage, and environmental restoration. Sections 18 of the Bus Regulatory Reform Act of 1982 (codified at 49 U.S.C. 31138) requires the Secretary of Transportation to establish regulations to require minimal levels of financial responsibility for for-hire motor carriers of passengers to cover public liability and property damage.

The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Form MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Form MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; motor carriers of passengers—49 CFR 387.33). The information within these documents is used by the OMCS and the public to verify that a motor carrier of property or passengers has obtained and has in effect the required minimum levels of financial responsibility.

Respondents: Insurance and surety companies of motor carriers of property (Form MCS–90 and Form MCS–82) and motor carriers of passengers (Form MCS–90B and Form MCS–82B).

Average Burden per Response: Two minutes to complete the Endorsement for Motor Carrier Policies of Insurance for Public Liability or the Motor Carrier Public Liability Surety Bond; one minute to file the Motor Carrier Public Liability Surety Bond; one minute to have either document on board the vehicle (foreign-domiciled motor carriers only).

Estimated Total Annual Burden: 3,658 hours.

Frequency: Upon creation, change, or replacement of an insurance policy or surety bond.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the OMCS; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office electronic bulletin board service (telephone: 202–512–1661). It may also be downloaded over the Internet, from the home page of the **Federal Register** at: *http://www.nara.gov/fedreg,* or the database of the Government Printing Office at: *http://www.access.gpo.gov/nara.* Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* This service is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: 23 U.S.C. 315; 44 U.S.C. 3506(c)(2)(A); 49 CFR 1.73.

Issued on: November 22, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–30988 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. 99–5748 (formerly FHWA Docket No. 99–5748)]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of final disposition.

SUMMARY: The OMCS announces its decision to exempt 33 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The Secretary has rescinded the authority previously delegated to the Federal Highway Administration to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999). This explains the docket transfer. The new OMCS assumes the motor carrier functions previously performed by the FHWA's Office of Motor Carrier and Highway Safety (OMCHS). Ongoing rulemaking, enforcement, and other activities of the OMCHS, initiated while part of the FHWA, will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers.

Thirty-three individuals petitioned the FHWA for an exemption of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. The OMCS is now responsible for processing the vision exemption applications of the 33 drivers. They are Terry James Aldridge, Jerry D. Bridges, Michael L. Brown, Duane D. Burger, Charlie Frank Cook, Greg L. Dinsmore, Donald D. Dunphy, Ralph E. Eckels, Jerald C. Eyre, Russell W. Foster, Arnold D. Gosser, Eddie Gowens, Gary R. Gutschow, Richard J. Hanna, Jack L. Henson, Richard K. Jensrud, David R. Jesmain, Albert E. Malley, Clifford E. Masink, Tyrone O. Mayson, Rodney M. Mimbs, Charles E. O'Dell, Richard W. O'Neill, Jerry L. Reese, Frances C. Ruble, Johnny L. Stiff, Robert J. Townsley, Thomas R. Trumpeter, Steven M. Veloz, Thomas E. Walsh, James T. White, Harry Ray Littlejohn, and Mark K. Cheely. Under 49 U.S.C. 31315 and 31136(e), the OMCS (and previously the FHWA) may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the OMCS evaluated the petitions on their merits and made a preliminary determination that the waivers should be granted. On July 26, 1999, the agency published notice of its preliminary determination and requested comments from the public (64 FR 40404). The comment period closed on August 25, 1999. Three comments were received, and their contents were carefully considered by the OMCS in reaching the final decision to grant the petitions.

Vision And Driving Experience of the Applicants

The vision requirement in 49 CFR 391.41(b)(10) provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket). The panel's conclusion supports the OMCS' (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The OMCS also recognizes that some drivers do not meet the vision standard but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 33 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, macular defect, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but seven applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 34 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL). Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL, these 33 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from

4 to 45 years. In the past 3 years, the 33 drivers had only one conviction for a traffic violation among them and that was a non-moving offense. Five drivers were involved in accidents in their CMVs, but there were no injuries and only one of the CMV drivers received a citation which was later dismissed under local authority.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a July 26, 1999, notice (64 FR 40404). Since the docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group, however, is supported by the information published at 64 FR 40404.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the OMCS may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the OMCS considered not only the medical reports about the applicants' vision but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). That experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions to those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 33 applicants, we note that cumulatively the applicants have had only six accidents and one non-moving traffic violation in the last 3 years. None of the violations involved a serious traffic violation as defined in 49 CFR 383.5, and neither of the accidents resulted in bodily injury. In one of the accidents, a citation was issued, but was later dismissed under local authority. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the OMCS concludes their ability to drive safely can be projected into the future.

We believe applicants' intrastate driving experience provides an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 4 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the OMCS finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the OMCS will impose requirements on the 33 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) By a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) That each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) That each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The OMCS received three comments in this proceeding. Each comment was considered and is discussed below.

The wife of a Florida truck driver supports a change to the Federal vision requirements for operating CMVs in interstate commerce citing the economic hardship imposed on her family because her husband is restricted to driving only in Florida. In support of her position, she cites her husband's good driving record and suggests that his vision problem has made him a more vigilant driver. As stated above, the OMCS believes that the present standard is reasonable and necessary as a general standard to ensure highway safety. The OMCS recognizes, however, that some drivers who do not meet the vision standard have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely and therefore, supports the granting of individual exemptions from 49 CFR 391.41(b)(10) on a case-by-case evaluation.

In another comment, Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FHWA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) including the driver qualification standards. Specifically, the AHAS: (1) Asks the agency to clarify the consistency of the exemption application information provided at 64 FR 40404, (2) Objects to the agency's reliance on conclusions drawn from the vision waiver program, (3) Suggests that the criteria used by the FHWA for considering exemptions is flawed, (4) Raises procedural objections to this proceeding, (5) Claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (6) Suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

On the first issue regarding clarification of exemption application information, the AHAS points to what it sees as ''inconsistencies and differences in the types of information'' provided in individual applications. The AHAS questions why the FHWA omitted information on mileage driven for 11 of the 33 applicants, total years of experience for applicant 32 (Harry Ray Littlejohn), and the vision in the better eye for applicant 3 (Michael L. Brown). In the case of applicant 3, the agency inadvertently left out the information on the vision in the better eye which was 20/30 with correction. Otherwise, this difference in the presentation of information simply reflects the OMCS' case-by-case assessments of individual applications. Total mileage driven was provided as an indicator of overall CMV experience. The omission of total mileage information for 11 of the 33 applicants is not significant since all 33 applicants have 3 years of experience operating a CMV with their vision deficiency in a period recent enough for the OMCS to verify their safety records. Applicant 32, whose application information on total years of experience was left out, has 27 years experience operating a CMV.

Other apparent inconsistencies identified by the AHAS, such as, the use of different terminology describing the driving records of applicants, reflects the agency's case-by-case assessments of individual applications as to whether there were any accidents or traffic violations in CMV in the past 3 years. Regardless of how the agency states this information—that is, in a CMV, in any vehicle or no accidents or violations, it indicates that the applicant has not had an accident or traffic violation in a CMV in the last 3 years. The use of different terminology is not, as the AHAS suggests, an attempt by the OMCS to manipulate information in such a way as to ''put the best possible appearance on each petition for exemption.''

Specific information provided on the 6 accidents and one non-moving violation of the 33 applicants is a presentation of the facts as we know them and not any attempt to downplay or explain away accidents and citations as the AHAS suggests. Regarding applicant 16 (Richard K. Jensrud) who was initially cited for an accident which was later dismissed under local authority, the FHWA is not questioning the judgment of the police officer at the scene of the accident or the validity of the citation, as AHAS suggests, but merely reporting the facts of the case. Furthermore, information presented indicating that applicant 16 drove 1.8 million miles in 6 years is an error. The information at 64 FR 40404 should have indicated that this applicant drove 50,000 per year for a total of 300,000 miles.

The second issue raised by the AHAS, which questions the agency's reliance on conclusions drawn from the vision waiver program, was addressed at length in the agency's final decision to exempt 32 individuals from the vision requirement in 49 CFR 391.41(b)(10). (64 FR 51568, September 23, 1999) In that notice, the FHWA's position, based on various assessments of external and internal validity, was that the results generated by the waiver program have a high degree of validity and therefore, support inferences drawn from the results of the waiver program. The notice also clarifies that the target of inference in the waiver program was the process of granting waivers, and that if the inferences drawn from these results focus on the process tested, the conclusions are valid. Thus, the application of the waiver program to future screening is also justified.

In its third point, the AHAS contends that the criteria used by us for considering exemptions is flawed because the exemption criteria includes consideration of an applicant's driving history for a three-year period and disregards FMCSRs which would require reliance upon a ten-year driving history. The AHAS believes that drivers exempted from the Federal vision standard are ''also exempted from reporting convictions for disqualifying offenses that took place more than 3 years prior to the application.'' As the agency has already discussed at 64 FR 51568, there is no basis for that belief. The exemption granted to these applicants applies only to the qualification standard in 49 CFR 391.41(b)(10). The exempted drivers are subject to all other regulations including all the CDL and other qualification standards.

In its fourth point, the AHAS raises procedural objections to this proceeding, claiming that there is no statutory basis for making a preliminary determination which tends to pre-judge the outcome. We believe, as previously stated at 64 FR 51568, that its preliminary determination is analogous to a notice of proposed rulemaking, where the agency evaluates the basis for new or amended regulation and then proposes that new rule. Under the agency's vision exemption process, completed applications are evaluated and only when the agency proposes to grant a petition is the proposal and the analysis in support of the application published for public comment. More that 170 applications have been denied outright. Denials will be summarized periodically and published in the **Federal Register**, consistent with 49 U.S.C. 31315 and 31136(e).

In its fifth point, the AHAS argues that the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)) by considering them slightly more lenient than the previous law. As previously stated in 64 FR 51568, this was unquestionably the intention of Congress in drafting section 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107, (See 63 FR 67601, quoting from H.R. Conf. Rep. No. 105–550, at 489–490).

The AHAS' final point suggesting that the recent Supreme Court decision, *Albertsons, Inc.* v. *Kirkingburg,* 119 S.Ct. 2162 (June 22, 1999) affects the legal validity of vision exemptions is without

support. This case is significant because of the Court's treatment of various provisions of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 *et seq.*), and the fact that this decision significantly narrows application of the ADA. In this case, Mr. Kirkingburg was fired by his employer, Albertsons, after a re-examination in 1992 determined that he did not meet the Federal vision requirements. Mr. Kirkingburg obtained a waiver of the vision standard from the FHWA in 1993, which allowed him to operate a CMV in interstate commerce. However, Albertsons would not rehire him because it did not view the vision waiver as a substitute for the vision standard. Mr. Kirkingburg sued Albertsons claiming his firing violated the ADA. Since the ADA does not apply to the Federal regulations, the decision did not directly affect the agency's motor carrier safety program. Under the court's ruling, a motor carrier may require that its drivers meet all physical qualification requirements in 49 CFR 391 as a condition of employment. The employer is not required to accept an OMCS exemption as a substitute for compliance with a physical qualification standard. This finding is consistent with 49 CFR 390.3(d) of the FMCSRs which allows carriers to establish more stringent safety requirements. As a result, the OMCS will continue to issue exemptions from the vision standard to drivers who demonstrate an ability to drive safely with their vision condition. However, after making that safety determination, the OMCS has no power to require motor carriers to hire drivers with vision exemptions.

In its comments, the American Trucking Associations, Inc. (ATA) opposes the agency's preliminary determination to grant these 33 exemptions. The ATA states that its opposition has been continuous and cites written comments to the docket in support of its position. Although the ATA expressed opposition to the broad issuance of vision waivers in its comments to the FHWA docket MC–96–2 (61 FR 13338, March 26, 1996), the ATA stated, ''it would support a case-by-case evaluation that considered the merits of individual waived drivers.'' That is precisely what the agency has done in the case of these 33 applicants for exemptions from 49 CFR 391.41(b)(10). The previous discussion explains that the agency's preliminary determination that these individuals have demonstrated an ability to drive safely with their vision deficiency is based on a case-by-case evaluation of the merits of each applicant. Current medical reports about each applicant's vision, driving records and experience have been evaluated for each applicant.

Notwithstanding its opposition to the granting of vision exemptions, the ATA recommends that if the agency decides to exempt drivers from the vision requirements that it require exempted drivers to have ''annual medical examinations and annual vision checks by an optometrist or ophthalmologist.'' The previous discussion states specifically that, as a condition of the exemption, a driver must be examined every year by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41.

The ATA further recommends, in the case of recordable accident involvement, that exempted drivers report such involvement directly to the agency and undergo a medical examination prior to returning to driving a CMV. Although the OMCS does not require the reporting of accidents by exempted drivers, it does monitor the performance of these drivers through periodic checks of their motor vehicle records and, if necessary, can take action relative to a particular accident. Regarding a post-accident medical examination, current regulations, specifically 49 CFR 391.45(c), already require drivers operating in interstate commerce, including these exempted drivers, to be medically examined and certified as qualified to operate a CMV any time their ability to perform their duties is impaired by a physical or mental condition.

In its final comment, the ATA recommends that the agency ''clarify its predominance over the Americans with Disabilities Act as it applies to safety-sensitive jobs and tasks by: (1) Issuing a notice in (the) **Federal Register** summarizing the aforementioned Supreme Court case (*Albertsons, Inc.* v. *Kirkingburg,* 119 S.Ct. 2162 (June 22, 1999)), as it applies to FHWA's vision waiver/exemption program; and (2) amending 49 CFR 391.64 to clarify that a employer still retains the right to consider a driver who fails FHWA's vision requirements, as medically unqualified to operate a CMV in interstate commerce.''

As previously discussed, the decision in *Albertsons, Inc.* v. *Kirkingburg* significantly narrows the application of the ADA. Since the ADA does not apply to the FMCSRs, this decision does not affect the OMCS' motor carrier safety programs, including its process for granting vision exemptions. Moreover, the agency does not require employers to incorporate the exemptions in their employment practices. In fact, current regulations allow employers to establish more stringent safety requirements than those of the agency (49 CFR 390.3(d)), making an amendment to 49 CFR 391.64, as ATA suggests, unnecessary.

Notwithstanding the OMCS' ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in this docket, the OMCS must comply with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 33 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion

After considering the comments to the docket and based upon its evaluation of the 33 waiver applications in accordance with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration, supra,* the OMCS exempts Terry James Aldridge, Jerry D. Bridges, Michael L. Brown, Duane D. Burger, Charlie Frank Cook, Greg L. Dinsmore, Donald D. Dunphy, Ralph E. Eckels, Jerald C. Eyre, Russell W. Foster, Arnold D. Gosser, Eddie Gowens, Gary R. Gutschow, Richard J. Hanna, Jack L. Henson, Richard K. Jensrud, David R. Jesmain, Albert E. Malley, Clifford E. Masink, Tyrone O. Mayson, Rodney M. Mimbs, Charles E. O'Dell, Richard W. O'Neill, Jerry L. Reese, Frances C. Ruble, Johnny L. Stiff, Robert J. Townsley, Thomas R. Trumpeter, Steven M. Veloz, Thomas E. Walsh, James T. White, Harry Ray Littlejohn, and Mark K. Cheely from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) By a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) That each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual

medical examination; and (3) That each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the OMCS. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the OMCS for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–31062 Filed 11–29–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0536.

Form Number: None.

Type of Review: Extension.

Title: Notification to Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

Description: Title 18 U.S.C., Chapter 40, gives the Secretary of Treasury authority to issue regulations intended to help prevent accidents involving explosives. The collection of information contained herein is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored.

Respondents: Business or other for-profit, Individuals or households, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 10,057.

Estimated Burden Hours Per Respondent: 90 minutes.

Frequency of Response: Semi-annually.

Estimated Total Reporting Burden: 60,342 hours.

OMB Number: 1512–0537.

Form Number: ATF F 5154.3.

Type of Review: Extension.

Title: Bond for Drawback Under 26 U.S.C. 5131.

Description: Businesses that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance). Claims may be filed monthly or quarterly. Monthly claimants must file a bond on ATF F 5154.3 to protect the Government's interest.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 12 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 99–30976 Filed 11–29–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 1999 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0052.

Form Number: PD F 1011.

Type of Review: Extension.

Title: Resolution Authorizing (1) Disposition of Securities Held by Organization, and (2) Execute and Delivery of Bonds of Indemnity.

Description: Form PD F 1011 is used by an organization to dispose of securities and/or execute bonds of indemnity.

Respondents: Not-for-profit institutions, business or other for-profit.

Estimated Number of Respondents: 485.

Estimated Burden Hours per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 243 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 99–31010 Filed 11–29–99; 8:45 am]

BILLING CODE 4810–40–P

Corrections

Federal Register

Vol. 64, No. 229

Tuesday, November 30, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–34

RIN 3090–AG12

[FPMR Amendment G–114]

Motor Vehicle Management

Correction

In document 99–27747 beginning on page 59592 in the issue of Tuesday, November 2, 1999, make the following correction:

§102–34.170 [Corrected]

On page 59598, in the second column, in the amendatory text for § 102–34.170, add the following sentence to the end of paragraph (d): ''Inspections and stickers are free.''

[FR Doc. C9–27747 Filed 11–29–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
November 30, 1999

Part II

Department of Health and Human Services

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of l974; Annual Publication of Systems of Records

AGENCY: National Institutes of Health, DHHS.

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the resulting revisions. None of the revisions meet the OMB criteria for a new or altered system of records requiring an advance period for public comment. These changes are in compliance with Circular A–130, Appendix 1. The notices republished below are complete and accurate as of October 16, 1999.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of systems of records which had minor modifications during 1998 and lists all systems maintained by NIH:

A. System Name

The following systems have been updated to reflect a change in the name of the system:

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS.

09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.

09–25–0161, Administration: NIH Consultant File, HHS/NIH/CSR.

09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.

B. System Location

The following systems have been updated to reflect a change in the system location or location address. These changes do not affect the access by the individual to the individual's records.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD.

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

09–25–0054, Administration: Property Accounting, HHS/NIH/ORS.

09–25–0087, Administration: Senior Staff, HHS/NIH/NIAID.

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS.

09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.

09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI.

09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.

09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC.

09–25–0202, Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA.

09–25–0203, National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA.

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA.

09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA.

C. Categories of Individuals Covered by the System

The following systems have been updated to reflect a change in the categories covered by the system. This change does not alter the character or purpose of the system.

09–25–0054, Administration: Property Accounting, HHS/NIH/ORS.

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS.

09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA.

D. Categories of Records

The following systems have been updated to reflect a change in the categories of records in the system. This change does not alter the character or purpose of the system.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD.

09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.

09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.

E. Authority

The following system has been updated to reflect a change in the authority. This change does not alter the character or purpose of the system.

09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.

09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD.

F. Storage

The following systems have been updated to reflect a change in system storage practices:

09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

G. Retrieval

The following systems have been updated to reflect a change in retrieval practices.

09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.

H. Safeguards

The following systems have been updated to reflect a change in safeguard practices.

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC.

09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.
09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA.

I. Retention and Disposal

The following systems have been updated to reflect a change in retention and disposal:

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.
09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.
09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
09–25–0165, National Institutes of Health Loan Repayment Program, HHS/NIH/OD.
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.
09–25–0203, National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA.

J. System Manager(s) and Address(es)

The following systems have been updated to reflect a change in the system manager or the address of the system manager. These changes do not affect the access by the individual to the individual's records.

09–25–0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD.
09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.
09–25–0014, Clinical Research: Student Records, HHS/NIH/CC.
09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC.
09–25–0054, Administration: Property Accounting, HHS/NIH/ORS.
09–25–0087, Administration: Senior Staff, HHS/NIH/NIAID.
09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC.
09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.
09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI.
09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.
09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.
09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.
09–25–0161, Administration: NIH Consultant File, HHS/NIH/CSR.
09–25–0166, Administration: Radiation and Occupational Safety and Health Management Information Systems, HHS/NIH/ORS.
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.
09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC.
09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD.
09–25–0207, Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA.
09–25–0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.
09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA.
09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA.

K. Record Access

The following systems have been updated to reflect a change in the record access procedure.

09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

L. Notification Procedure

The following systems have been updated to reflect a change in the office, official, and/or address to write to in order to determine whether or not the system contains a record about the individual.

09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.
09–25–0200, Clinical, Epidemiologic and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD.

M. The Following Systems Have Been Changed for Clarity and Editing Purposes

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC.
09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.
09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.
09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.
09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC.

N. Organization Name Change

There are no changes in this category.

O. Deleted Systems of Records

The following systems of records which appeared in the last annual publication are now being deleted because:

09–25–0035, International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC.

The records have been destroyed
09–25–0091, Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI.

The records have been destroyed
09–25–0102, Administration: Grants Associates Program Working Files, HHS/NIH/OER.
The records have been destroyed.

The following is a list of active systems of records maintained by NIH.

Table of Contents

09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee Information), HHS/NIH/CSR and HHS/NIH/CMO, published **Federal Register**, Vol. 63, No. 122, June 25, 1998.

09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0054, Administration: Property Accounting, HHS/NIH/ORS, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0087, Administration: Senior Staff, HHS/NIH/NIAID, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0093, Administration: Authors, Reviewers, Editorial Board, and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0106, Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/OHRM, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0161, Administration: NIH Consultant File, HHS/NIH/CSR, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0165, National Institutes of Health Loan Repayment Program, HHS/NIH/OD, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0166, Administration: Radiation and Occupational Safety and Health Management Information Systems, HHS/NIH/ORS, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0167, National Institutes of Health (NIH) TRANSHARE Program, HHS/NIH/OD, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0168, Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/NIH/OTT, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0169, Medical Staff-Credentials Files, HHS/NIH/CC, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0200, Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD, published **Federal Register**, Vol. 62, No. 66, Monday, April 7, 1997.

09–25–0202, Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0203, National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0207, Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0209, Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

09–25–0211, Intramural Research Program Records of In-and Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/NIH/NIAAA, publ. Privacy Act Issuances, 1997 Compilations Online via GPO Access.

Dated: November 17, 1999.

Timothy J. Wheeles,

Director, Division of Management Support, OMA, OA, National Institutes of Health.

09–25–0005

SYSTEM NAME:

Administration: Library Operations and User I.D. File, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate system manager listed below for list of current contractor locations.

National Institutes of Health, Building 10, Room 1L07, 9000 Rockville Pike, Bethesda, MD 20892 and

National Institutes of Health, Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894 and

National Institutes of Health, Building 38, Room 1N21, 8600 Rockville Pike, Bethesda, MD 20894 and

National Institutes of Health, Building 38, Room B1E21, 8600 Rockville Pike, Bethesda, MD 20894 and

National Institutes of Health, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894 and

National Technical Information Service, Accounting Department, 8001 Forbes Place, Room 208F, Springfield, VA 22151.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Library Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, organization, address, phone number, photographs, issue date, email address, signature, user code and identification number; and when applicable, credit card number and billing information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation (42 U.S.C. 241).

PURPOSE(S):

1. To monitor library material, services, and circulation control.
2. To provide user documentation.
3. To provide copying services (duplication of library materials).
4. To manage invoice and billing transactions for library services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors and staff to monitor library material, services, circulation control; to provide user documentation; and to process or refine the records. Recipients are required to maintain Privacy Act safeguards with respect to those records.

4. Disclosure may be made for billing purposes to: (a) contractors providing copying services: and (b) NTIS for Medlars Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer tape and disk, microfiche, paper and file cards.

RETRIEVABILITY:

Records are retrieved by name, user code and/or identification number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to Library staff members who need to verify that Library identification cards have been issued to those Library users requesting services such as MEDLINE and other computer online bibliographic searches, translations and interlibrary loans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. The contractor maintains a list of personnel having authority to access records to perform their duties.

2. *Physical Safeguards:* The offices housing the cabinets and file drawers for storage of records are locked during all library off-duty hours. During all duty hours offices are attended by employees who maintain the files. The contractor has secured records storage areas which are not left unattended during the working hours and file cabinets which are locked after hours.

3. *Procedural Safeguards:* Access to the file is strictly controlled by employees who maintain the files. Records may be removed from files only at the request of the system manager or other authorized employees. Access to computerized records is controlled by the use of security codes known only to authorized users. Contractor personnel receive instruction concerning the significance of safeguards under the Privacy Act.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 8000–D–2, which allows records to be kept until superseded or for a maximum period of six years. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

The Policy Coordinating Official for this system is the Management Analyst, Office of Administration, National Library of Medicine, Building 38, Room 2N21, 8600 Rockville Pike, Bethesda, MD 20894.

Chief, Reference and Bibliographic Services Section, Library Branch, National Center for Research Resources, National Institutes of Health, Building 10, Room 1L21, 9000 Rockville Pike, Bethesda, MD 20892.

Head, Quality Assurance Unit, Preservation and Collection Management Section, Public Services Division, Library Operations, National Library of Medicine, National Institutes of Health, Building 38, Room B1E21, 8600 Rockville Pike, Bethesda, MD 20894.

Chief, Public Services Division, Library Operations, National Library of Medicine, National Institutes of Health, Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894.

Librarian, History of Medicine Division, NLM, NIH, Building 38, Room 1N21, 8600 Rockville Pike, Bethesda, MD 20894.

Chief, Medlars Management Section, Bibliographic Services Division, Library Operations, National Institutes of Health, National Library of Medicine, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being

sought. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under Notification Procedure above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, NIH Library ID card data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0007

SYSTEM NAME:

Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 13, Room G904, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for safety glasses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Explanation of eye impact and hazard occupation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902.

PURPOSE(S):

Records are used for proper distribution of safety glasses and for proof of delivery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized Users:* Access is limited to personnel involved in safety glasses issuance program, to supervisors of employees who have requested glasses, and to personnel involved in accounting.

2. *Physical Safeguards:* Record storage locations are locked when unattended.

3. *Procedural Safeguards:* Access to file rooms and files is controlled by system manager or designee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1300–B–3, which allows records to be kept for a maximum period of five years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Safety, ORS, Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under Notification Procedure above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting information to how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Previous employer and education institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0011

SYSTEM NAME:

Clinical Research: Blood Donor Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Transfusion Medicine Department, 10 Center Drive, MSC 1184, Bethesda, MD 20892–1184.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of blood and blood components to be used in the NIH Clinical Center for patient infusions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Past donations, blood types, phenotypes. Laboratory results of hepatitis testing, serologic reactions on all blood samples, donations of blood or blood components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

''Preparation of Biological Products'' of the Public Health Service Act (42 U.S.C. 263).

PURPOSE(S):

1. To provide a means for contacting blood donors for patient care and research.

2. To provide a medical history of all donors for the transfusion records of each blood unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and their staff in order to accomplish the purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Certain diseases and conditions, including infectious diseases, may be reported to State or Federal government as required by State or Federal law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

5.(a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer file, on donor cards, and on microfilm.

RETRIEVABILITY:

Records are retrieved by a unique control number assigned to each individual donor.

SAFEGUARDS:

Access is granted only to authorized employees in the Department of Transfusion Medicine including physicians, nurses, technologists, computer operators, and the department's administrative officer.

1. *Authorized Users:* Access is granted only to authorized employees of the Department of Transfusion Medicine including physicians, nurses technologists, computer operators and the secretary to the Chief.

2. *Physical Safeguards:* Record facilities are locked when system personnel are not present.

3. *Procedural Safeguards:* Access to manual files is limited to authorized users. Access to computerized records is controlled by the use of security codes known only to the authorized users.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 3000–E–50. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transfusion Medicine Department, National Institutes of Health, 10 Center Drive, MSC 1184, Bethesda, MD 20892–1184.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the system manager at the address specified above. Requesters should provide the same information as is required under the Notification Procedure above. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data are collected from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0012

SYSTEM NAME:

Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Clinical Research Volunteer Program, 10 Cloister Ct., Bldg. 61, Bethesda, MD 20892–4754.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normally healthy individuals who volunteer to participate in NIH studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Program application, health questionnaire and record of participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 263.

PURPOSE(S):

1. To determine suitability for participation in the normal volunteer program.

2. To document remuneration of normal volunteers.

3. To provide a record of participation to be used (a) in writing letters of recommendation/reference for the volunteer, and (b) preparing reports on the normal volunteer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Program applications and health questionnaires are stored in file folders. Records of participation are stored on index cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. *Authorized Users:* Access is granted only to the Normal Volunteer Program staff and to NIH physicians who have requested the recruitment of volunteers for their clinical research projects.

2. *Physical Safeguards:* Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees. Record facilities are locked when system personnel are not present.

3. *Procedural Safeguards:* Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 3000–E–61, which allows records to be kept for a maximum period of three years after the volunteer period ends. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Clinical Research Volunteer Program, 10 Cloister Ct., Bldg. 61, Bethesda, MD 20892–4745.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact: Chief, Social Work Department, National Institutes of Health, Social Work Department, 10 Center Drive, MSC 1160, Bethesda, MD 20892–1160 and provide the information described under Notification Procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under Notification Procedure above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Volunteer, sponsoring contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0014

SYSTEM NAME:

Clinical Research: Student Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Office of Education, 10 Center Drive, MSC 1158, Bethesda, MD 20892–1158.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential and accepted Medical Staff and Research Fellows, medical students, and other students in NIH training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application form, transcripts, references, evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE(S):

1. To identify candidates for clinical and research fellow, clinical elective, and other training positions.

2. To maintain a permanent record of those individuals who have received clinical research training at the NIH for historical and reference uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to congressional inquiries regarding constituents who have applied for training programs.

2. Information may be used to respond to prospective employers who seek training verification on NIH alumni.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and year.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to health care personnel of the NIH who are involved in the evaluation and selection of candidates for training programs.

2. *Physical Safeguards:* Records are maintained in locked cabinets with access limited to authorized personnel, including the systems manager and staff in the Office of Education.

3. *Procedural safeguards:* Access to the files is strictly controlled by the staff. Records may be removed from the file only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), items 2300–320–1–13, which allows records to be kept up to a maximum period of ten years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Education, National Institutes of Health, Bldg. 10, Room 1C129, 10 Center Drive, MSC 1158, Bethesda, MD 20892–1158.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the system manager at the above address and provide the information described under Notification Procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the system manager at the address specified above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicants, universities and teachers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0033

SYSTEM NAME:

International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room B2C29, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens qualified in health-related sciences submitting applications through NIH for fellowships for study abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

PURPOSE(S):

To perform scientific reviews and evaluations of applicants' suitability of referral to awarding organization in foreign countries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards.

2. In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective

representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

3. *Procedural Safeguards:* Access to file rooms and files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), items 2300–320–5, which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Fogarty International Center, Chief, International Research Awards Branch, National Institutes of Health, Building 31, Room B2C29, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants and persons supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0034

SYSTEM NAME:

International Activities: Scholars-in-Residence Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 16, Room 202, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Distinguished scientists and scholars invited to accept NIH scholarships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and education histories; references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421, ''International Cooperation'' of the PHS Act.

PURPOSE(S):

To administer and award scholarships to distinguished scientists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Records are kept in file cabinets. Offices are locked during off-duty hours.

3. *Procedural safeguards:* Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–320–7 which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific retention instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Acting Director, Division of International Advanced Studies, Fogarty International Center, National Institutes of Health, Building 16, Room 202, 31 Center Drive, MSC 6705, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information is obtained from invitees, reference sources, and persons supplying recommendations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0036

SYSTEM NAME:

Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Rockledge Centre II, 6701 Rockledge Drive, Bethesda, MD 20817.

Building 12, NIH Computer Center, 9000 Rockville Pike, Bethesda, MD 20892.

Building 31, Room 3B–59, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators; program directors; program and projects staff and others named in the application; National Research Service Awards (NRSA) trainees and fellows; research career awardees; chartered advisory committee members; contractor personnel; subcontractor personnel; and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Funding applications, awards, associated records, trainee appointments, current and historical information pertaining to chartered advisory committees, and past performance information pertaining to contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 217a, 241, 282(b)(6), 284a, and 288. 48 CFR subpart 15.3 and subpart 42.15.

PURPOSE(S):

1. To support centralized grant programs of the Public Health Service. Services are provided in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting. The database is used to provide complete, accurate, and up-to-date reports to all levels of management.

2. To maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program.

3. To maintain current and historical information pertaining to the establishment of chartered advisory committees of the National Institutes of Health and the appointment or designation of their members.

4. To maintain current and historical information pertaining to contracts awarded by the National Institutes of Health, and performance evaluations on NIH contracts and contracts awarded by other Federal agencies that participate in the NIH Contractor Performance System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards (abstract of research projects and relevant administrative and financial data).

2. Disclosure may be made to the cognizant audit agency for auditing.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department regulations for opinions as a part of the application review process.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

6. Disclosure of past performance information pertaining to contractors may be made to a Federal agency upon request. In addition, routine access to past performance information on contractors will be provided to Federal agencies that subscribe to the NIH Contractor Performance System.

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) justifies the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the

individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining that information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosure may be made to a private contractor or Federal agency for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. The contractor or Federal agency will be required to maintain Privacy Act safeguards with respect to these records.

9. Disclosure may be made to a grantee or contract institution in connection with performance or administration under the conditions of the particular award or contract.

10. Disclosure may be made to the Department of Justice, or to a court or other adjudicative body, from this system of records when (a) HHS, or any component thereof; or (b) any HHS officer or employee in his or her official capacity; or (c) any HHS officer or employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the officer or employee; or (d) the United States or any agency thereof where HHS determines that the proceeding is likely to affect HHS or any of its components, is a party to proceeding or has any interest in the proceeding, and HHS determines that the records are relevant and necessary to the proceeding and would help in the effective representation of the governmental party.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are retrieved by name, application, grant or contract ID number, and contractor tax ID number.

RETRIEVABILITY:

Records are retrieved by name, application, grant or contract ID number, and contractor tax ID number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to NIH extramural and committee management staff, NIH contract management staff, and Federal acquisition personnel. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* Physical access to Office of Extramural Research (OER) work areas is restricted to OER employees. Physical access to Office of Contracts Management (OCM) work areas is restricted to OCM employees. Physical access to Committee Management Office (CMO) work areas is restricted to CMO employees. Access to the contractor performance files is restricted through the use of secure socket layer encryption and through an IBM password protection system. Only authorized government contracting personnel are permitted access. Access is monitored and controlled by OCM.

3. *Procedural Safeguards:* Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, and similar limited access systems.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 4000–A–2, which allows records to be destroyed when no longer needed for administrative purposes. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

For extramural awards: Director, Extramural Information Systems, OD/OER/OPERA, Rockledge II, Room 2172, Bethesda, MD 20892.

For chartered Federal advisory committees of the National Institutes of Health: NIH Committee Management Officer, Building 31, Room 3B–59, 31 Center Drive, Bethesda, MD 20892.

For contracts: Office of Contracts Management, 6100 Executive Boulevard, Room 6D01, Rockville, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicant institution, individual, individual's educational institution and references, and participating Federal acquisition personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0041

SYSTEM NAME:

Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, Room 605, NIH, 5333 Westbard Avenue, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Scientists requesting hormones from the National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK).

CATEGORIES OF RECORDS IN THE SYSTEM:

Justification for request for hormones, including requester's competence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 263, 289a, 289c.

PURPOSE(S):

1. For review of applications requesting hormones and antibodies for research purposes, prior to awarding these substances.

2. To determine if the requester is qualified to receive these materials.

3. To determine if requests for human hormones for clinical research follow acceptable protocols. In this connection, records may be disclosed to the Food and Drug Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to NIDDK Contractors for distribution of various hormones to requesters.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to staff working for the contractor who need the records for hormone distribution, to NIH staff who supervise the Hormone Distribution Program, and, as approved by the system manager, to scientists and physicians who may have need of the information for research.

2. *Physical Safeguards:* Records are kept in cabinets in offices which are locked during off-duty hours and which have alarms.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Files may be obtained only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Hormone Distribution Officer, Westwood Building, Room 605, NIH, 5333 Westbard Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Administrative Officer, NIDDK, Building 31, Room 9A46, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0054

SYSTEM NAME:

Administration: Property Accounting, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Computer Center, Building 12, 9000 Rockville Pike, Bethesda, MD 20892 and

National Institutes of Health, Building 31, Room B3B16, 31 Center Drive, MSC 2012, Bethesda, MD 20892 and

National Institute of Environmental Health Sciences, Office of Facilities Engineering, 102–01, P.O. Box 12233, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE(S):

Used for card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a

routine use, to the appropriate agency, whether federal or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* Textual records are stored in offices which are locked when not in use.

3. *Procedural Safeguards:* Computer files are password protected.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1300–C–14, which allows records to be destroyed after all listed credentials are accounted for or three months after the return of credentials to the issuing office. Refer to the NIH Manual Chapter for specific instructions.

SYSTEM MANAGER(S) AND ADDRESS(ES):

For card keys: National Institutes of Health, Chief, Crime Prevention Branch, Division of Public Safety, ORS, Building 31, Room B3B16, 31 Center Drive, MSC 2012, Bethesda, MD 20892; or

National Institute of Environmental Health Sciences, Chief, Office of Facilities Engineering, 102–01, P.O. Box 12233, Research Triangle Park, NC 27709.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

69–25–0078

SYSTEM NAME:

Administration: Consultant File, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

List of consultants available for use in evaluation of National Heart, Lung, and Blood Institute special grants and contracts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and resumes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 281.

PURPOSE(S):

1. To identify and select experts and consultants for program reviews and evaluations.

2. For use in evaluation of NHLBI special grants and contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk and file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use.

3. *Procedural Safeguards:* During regular business hours, rooms are unlocked but are controlled by on-site personnel.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Review Branch, National Heart, Lung, and Blood Institute, Westwood Building, Room 557A, 5333 Westbard Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Privacy Act Coordinator, NHLBI, National Institutes of Health, 31/5A10, 31 Center Drive, MSC 2490, Bethesda, MD 20892–2490.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0087

SYSTEM NAME:

Administration: Senior Staff, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A50, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curricula vitae, nominations for awards, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 289a.

PURPOSE(S):

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases (NIAID) research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* Records in this system are stored in file folders which are kept in locked cabinets. The room is locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Public Liaison, National Institutes of Health, Building 31, Room 7A–50, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: National Institutes of Health, Privacy Act Coordinator, NIAID, Solar Bldg., Room 3C–23, 6003 Executive Blvd., Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager at the address above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0093

SYSTEM NAME:

Administration: Authors, Reviewers, Editorial Board, and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 82, Room 239, 9030 Old Georgetown Road, Bethesda, MD 20814.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authors and manuscript reviewers and members of the Journal of the National Cancer Institute (JNCI) editorial board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accepted, rejected and pending manuscripts and review comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281.

PURPOSE(S):

Manuscript review by NCI staff of manuscripts submitted for possible publication in the Journal of the National Cancer Institute (JNCI) or JNCI Monographs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to qualified experts not within the definition of Department employees for opinions as a part of the review of manuscripts.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and manuscript number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant access only to JNCI staff personnel, the Editor in Chief, and members of the Board of Editors whose duties require the use of such information.

2. *Physical Safeguards:* Records are kept in a limited access area where an employee is present at all times during working hours. The building is locked during off-duty hours.

3. *Procedural Safeguards:* Access to manual files is tightly controlled by office staff. Only authorized users may have access to the files.

Information that identifies reviewers is not maintained in computer files.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 8000–A–1(b), which allows records to be kept for a maximum period of one year after year in which published or presented. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Specialist, Scientific Publications Branch, Building 82, Room 239, 9030 Old Georgetown Road, Bethesda, MD 20814.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Authors and reviewers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0099

SYSTEM NAME:

Clinical Research: Patient Medical Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Medical Record Department, 10 Center Drive, MSC 1192, Bethesda, MD 20892–1192 and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Clinical Center patients. Some individuals not registered as patients but seen in Clinical Center for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 248: ''Research and Investigation,'' and ''Hospitals, Medical Examinations, and Medical Care.''

PURPOSE(S):

1. To provide a continuous history of the treatment afforded individual patients in the Clinical Center.

2. To provide a data base for the clinical research conducted within the hospital.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to Congressional inquiries for

constituents concerning their admission to NIH Clinical Center.

2. Social Work Department may give pertinent information to community agencies to assist patients or their families.

3. Referring physicians receive medical information for continuing patient care after discharge.

4. Information regarding diagnostic problems, or having unusual scientific value may be disclosed to appropriate medical or medical research organizations or consultants in connection with treatment of patients or in order to accomplish the research purposes of this system. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; X-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology. The recipients are required to maintain Privacy Act safeguards with respect to these records.

5. Records may be disclosed to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections to ensure that the quality of Clinical Center medical record-keeping meets established standards.

6. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

7. Medical information may be disclosed to tumor registries for maintenance of health statistics.

8. The Department contemplates that it may contract with a private firm for transcribing, updating, copying, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

9. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

10. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and/or on microfiche, and on computer tapes.

RETRIEVABILITY:

Records are retrieved by unit number and patient name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees maintaining records in this system are instructed to grant regular access only to physicians and dentists and other health care professionals officially participating in patient care, to contractors, or to NIH researchers specifically authorized by the system manager.

2. *Physical Safeguards:* All record facilities are locked when system personnel are not present.

3. *Procedural Safeguards:* Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user-and function-specific.

Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 3000–E–22, which allows records to be kept until no longer needed for scientific reference. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGERS(S) AND ADDRESS:

Director, Medical Record Department, National Institutes of Health, 10 Center Drive, MSC 1192, Bethesda, MD 20892–1192.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the above address. The requester must provide tangible proof of identity, such as a driver's license. If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the

request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, or other health professional, or other responsible individual. The subject individual will be granted direct access unless it is determined that such access is likely to have an adverse effect on him or her. In that case, the medical/dental record will be sent to the designated representative. The individual will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of or access to a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent personas as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably identify the specific reports and related dates pertaining to the information to be released. There may be a fee for reproducing more than 20 pages of material. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0105

SYSTEM NAME:

Administration: Health Records of Employees, Visiting Scientists, Fellows, and Others Who Receive Medical Care Through the Employee Health Unit, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Buildings 10 and 13, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Rocky Mountain Laboratories, Hamilton, Montana 59840.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, fellows, visiting scientists, relatives of inpatients, visitors, and others who receive medical care through the Employee Health Unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE(S):

1. For medical treatment.

2. Upon researcher request with individual's written permission, release of record for research purposes to medical personnel.

3. Upon request by HHS personnel offices for determination of fitness for duty, and for disability retirement and other separation actions.

4. For monitoring personnel to assure that safety standards are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to Federal, State, and local government agencies for adjudication of benefits under workman's compensation, and for disability retirement and other separation actions.

2. To district office of OPEC, Department of Labor with copies to the U.S. Office of Personnel Management for processing of disability retirement and other separation actions.

3. Upon non-HHS agency request, for examination to determine fitness for duty with copies to requesting agency and to the U.S. Office of Personnel Management.

4. Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of the individual.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and social security number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized Users:* Access is limited to authorized personnel (system manager and staff; Occupational Medicine Service staff; and personnel and administrative officers with need for information for fitness for duty, disability, and other similar determinations).

2. *Physical Safeguards:* Files are maintained in locked cabinets.

3. *Procedural Safeguards:* Access to files is strictly controlled by authorized staff.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B–361), item 2300–792–3.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Safety, NIH, Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, MD 20892.

Chief, Rocky Mountain Operations Branch, Rocky Mountain Laboratories (RML), National Institutes of Health, Hamilton, MT 59840.

NOTIFICATION PROCEDURE:

Contact system manager at appropriate treatment location listed above, to determine if a record exists.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requester should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Records contain data resulting from clinical and preventative services provided at treatment location, and data received from individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0106

SYSTEM NAME:

Administration: Office of the NIH Director and Institute/Center Correspondence Records, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Executive Secretariat, Office of the Director, Building 1, Room B1–55, 9000 Rockville Pike, Bethesda, MD 20892 and

Office of Legislative Policy and Analysis, Office of the Director, Building 1, Room 244, 9000 Rockville Pike, Bethesda, MD 20892 and

Office of Science Education, Office of the Director, 6100 Executive Blvd., Suite 5H01, Bethesda, MD 20892 and

Institute/Center staff offices that retain correspondence files.

Write to the appropriate system manager listed in Appendix I for a list of current locations and for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted the NIH Director or his/her subordinates, or have been contacted in writing by one of these officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and other supporting documents; mailing lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

1. To control, address, and track all correspondence documents addressed or directed to the NIH Director or his/her subordinates, as well as documents/supporting documents initiated by them, in order to assure timely and appropriate attention.

2. Incoming correspondence and supporting documentation is forwarded to other HHS components when a response from them is warranted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made from this system of records by the Department of Health and Human Services (HHS) to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored by computer index, optical image and in file folders.

RETRIEVABILITY:

Records are retrieved by name, document number, date, and subject.

SAFEGUARDS:

1. *Authorized Users:* Access to textual records is limited to authorized personnel (system managers and staff).

2. *Physical Safeguards:* Physical access to records is restricted to authorized personnel.

3. *Procedural Safeguards:* Access to textual records is strictly controlled by system managers and staff. Records may be removed from files only at the request of system managers or other authorized employees. Computer files are password protected.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1700–C, which allows records to be kept for a maximum period of ten years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS

System managers are listed in Appendix I; each maintains full responsibility for their specific correspondence system.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed in Appendix I. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Assistant to the Director, Executive Secretariat, Office of the Director, Building 1, Room B146, 9000 Rockville Pike, Bethesda, MD 20892.
Acting Associate Director, Office of Legislative Policy and Analysis, Office of the Director, Building 1, Room 244, 9000 Rockville Pike, Bethesda, MD 20892.
Privacy Act Systems Manager, Office of Science Education, 6100 Executive Blvd., Suite 5H01, Bethesda, MD 20892.
National Cancer Institute (NCI), Secretary to the Director, Building 31, Room 11A48, Bethesda, MD 20892.
National Heart, Lung and Blood Institute (NHLBI), Secretary to the Director, OD, Director's Office, Building 31, Room 5A52, 31 Center Drive, MSC 2486, Bethesda, MD 20892–2486.
National Institute of Diabetes and Digestive and Kidney (NIDDK), Director, OHRR, Building 31, Room 9A04, Bethesda, MD 20892.
National Institute of Environmental Health Sciences (NIEHS), Executive Secretariat, PO Box 12233, South Campus, Building 2, Room B201, Research Triangle Park, NC 27709.
National Eye Institute (NEI), Administrative Officer, Building 31, Room 6A–03, 31 Center Drive, MSC 2510, Bethesda, MD 20892–2510.
National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Executive Officer, Building 31, Room 4C32, 31 Center Drive, MSC 2350, Bethesda, MD 20892–2350.
National Institute on Deafness and Other Communication Disorders (NIDCD), Chief, Administrative Management Branch, Building 31, Room 3C21, Bethesda, MD 20892.
National Institute of General Medical Sciences (NIGMS), Secretary to the Director, Natcher Building, Room 2AN.12D, 45 Center Drive, Bethesda, MD 20892.
National Library of Medicine (NLM), Secretary to the Director, Office of the Director, Building 38, Room 2E17, Bethesda, MD 20894.
Fogarty International Center (FIC), Secretary to the Director, Building 31, Room B2C06, Bethesda, MD 20892.
Office of AIDS Research (OAR), Special Assistant for Liaison Activities, Building 31, Room 5C12, Bethesda, MD 20892.
National Institute on Drug Abuse (NIDA), Executive Secretariat, Neuroscience Center, 6001 Executive Blvd., Room 5101, MSC 9585, Rockville, MD 20892–9585.
National Institute on Alcohol Abuse and Alcoholism (NIAAA), Secretary to the Director, Willco Building, Suite 400, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.
National Institute of Mental Health (NIMH), Executive Secretariat, Neuroscience Center, 6001 Executive Blvd., Room 8213, Rockville, MD 20852.
Washington National Records Center, 4205 Suitland Road, Washington, DC 20857.

09–25–0108

SYSTEM NAME:

Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/OHRM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is located in the personnel/administrative offices of individual Institutes/Centers of the National Institutes of Health.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using NIH facilities who are not NIH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which NIH facilities are desired, outside sponsor, and NIH sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(a)(2), 42 U.S.C. 282(b)(10), and 42 U.S.C. 284(b)(1)(k).

PURPOSE(S):

To determine eligibility to use NIH facilities, to document the individual's presence at NIH, and to record that the individual is not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to U.S. Office of Personnel Management for program evaluation purposes; to General Accounting Office for fund disbursement determinations.

2. Disclosure may be made to institutions providing financial support.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to the Department of Justice or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

For each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized Users:* Access is granted only to personnel staff, administrative office staff, and management officials directly involved in the administration of the Guest Researcher, Special Volunteer, and Scientist Emeriti programs.

2. *Physical Safeguards:* Record facilities are locked when system personnel are not present.

3. *Procedural Safeguards:* Access to files is strictly controlled by system personnel. Records may be removed from the file only with the approval of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records

Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–320–3(a), which allows records to be destroyed after a maximum period of two years after the individual completes work at NIH. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel/Administrative Officers of National Institutes of Health Institutes/Centers.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact:

National Institutes of Health, Office of Human Resources Management, Privacy Act Coordinator, Building 31, Room 1C39, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Contact the Personnel Officer or Administrative Officer in whose office the record is located and provide verification of identity as described under Notification Procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, NIH sponsor, funding institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0112

SYSTEM NAME:

Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant applicants and Principal Investigators; Program Directors; Institutional and Individual Fellows; Research Career Awardees; and other employees of Applicant and/or grantee institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant and cooperative agreement applications and review history, awards, financial records, progress reports, payback records, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

''Research and Investigation,'' ''Appointment and Authority of the Directors of the National Research Institutes,'' ''National Institute of Mental Health,'' ''National Institute on Drug Abuse,'' ''National Institute on Alcohol Abuse and Alcoholism,'' ''National Cancer Institute,'' ''National Heart, Lung and Blood Institute,'' ''National Institute of Diabetes, and Digestive and Kidney Diseases,'' ''National Institute of Arthritis and Musculoskeletal and Skin Diseases,'' ''National Institute on Aging,'' ''National Institute on Allergy and Infectious Diseases,'' ''National Institute of Child Health and Human Development,'' ''National Institute of Dental and Craniofacial Research,'' ''National Eye Institute,'' ''National Institute of Neurological Disorders and Stroke,'' ''National Institute of General Medical Sciences,'' ''National Institute of Environmental Health Sciences,'' ''National Institute on Deafness and Other Communication Disorders,'' ''National Institute of Nursing Research,'' ''National Library of Medicine,'' and the ''National Center for Research Resources'' of the Public Health Service Act. (42 U.S.C. 241, 284, 285, 285(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), 286b–286b–7, 287a–2, 287a–3.)

PURPOSE(S):

1. Information provided is used by NIH staff for review, award, and administration of grant programs.

2. Information is also used to maintain communication with former fellows who have incurred an obligation through the National Research Service Award Program.

3. Staff may also use curricula vitae to identify candidates who may serve as ad hoc consultants or committee and council members in the grant peer review process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.

2. Disclosure may be made to the cognizant audit agency for auditing.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department Regulations, 45 CFR 56.2, for opinions as a part of the application review and award administration processes.

6. Disclosure may be made to a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or

policy limitations under which the record was provided, collected; or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

9. Disclosure may be made to the grantee institution in connection with the review of an application or performance or administration under the terms and conditions of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant proposal.

10. Disclosure may be made to the profit institution's president or official responsible for signing the grant application in connection with the review or award of a grant application and in connection with the administration and performance of a grant under the terms and conditions of the awards.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The Department may disclose to consumer reporting agencies information on individuals who have failed to meet payback obligations incurred under awards made under authority of the National Research Service Awards Program (41 U.S.C. 289l–1). Information disclosed includes data identifying the individual, the amount, status and history of the obligation, and that the obligation arose from an award made under the National Research Service Awards Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders, on computer tapes and disks, cards and in notebooks.

RETRIEVABILITY:

Retrieved by name and grant number.

SAFEGUARDS:

A variety of physical and procedural safeguards are implemented, as appropriate, at the various locations of this system:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. These officials include review groups, grants management staff, other extramural program staff, health scientist administrators, data processing and analysis staff and management officials with oversight responsibilities for extramural programs. Other one-time and special access is granted on an individual basis as specifically authorized by the system manager. Authorization for access to computerized files is controlled by the system manager or designated official and is granted on a need-to-know basis. Lists of authorized users are maintained.

2. *Physical Safeguards:* Secured facilities, locked rooms, locked cabinets, personnel screening; records stored in order of grant numbers which are randomly assigned.

3. *Procedural Safeguards:* Access to file rooms and files is strictly controlled by files staff or other designated officials; charge-out cards identifying users are required for each file used; inactive records are transferred to controlled storage in Federal Records Center in a timely fashion; retrieval of records from inactive storage is controlled by the system manager or designated official and by the NIH Records Management Officer; computer files are password protected and access is actively monitored by the Computer Center to prevent abuse. Employees are given specialized training in the requirements of the Privacy Act as applied to the grants program.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), items: 4000–B–1; 4000–B–4; 4000–C–1 and, 4000–D–1. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix II.

NOTIFICATION PROCEDURE:

Write to official at the address specified in Appendix II to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the official at the address specified in Appendix IV to obtain access to a record, and provide the same information as is required under the Notification Procedure above. Requesters should also reasonably specify the record contents being sought.

Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified in Appendix II, and reasonably identify the record and specify the information being contested, the corrective action sought, and your

reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information submitted by applicant; supplemented by outside reviewers and internal staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Location

National Cancer Institute, Executive Plaza South, Suite T–42, 6120 Executive Boulevard, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, Westwood Building, Room 4A09, 5333 Westbard Avenue, Bethesda, MD 20892.
National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817.
National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, DEA, Solar Bldg., Room 4C–09, 6003 Executive Blvd., Rockville, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Management Information Systems Section, FMISB, OAM, Solar Building, Room 4A–03, 6003 Executive Blvd., Rockville, MD 20892.
National Institute of Diabetes and Digestive and Kidney Diseases, Westwood Building, Room 610, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, Room 5A352, Bethesda, MD 20892–6500.
National Institute of Child Health and Human Development, 6100 Executive Blvd., Room 8A–01, Bethesda, MD 20892–7510.
National Institute on Aging, Gateway Building, Room 2N–212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Dental and Craniofacial Research, Grants Management Officer, Natcher Building, Room 4AS–55, 45 Center Drive, MSC 6402, Bethesda, MD 20892–6402.
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences, Grants Management Officer, Natcher Building, Room 2AN52, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Executive Plaza South, Room 400B, 6120 Executive Boulevard, Rockville, MD 20892–7180.
National Eye Institute, Executive Plaza South, Room 350, 6120 Executive Boulevard, Bethesda, MD 20892.
National Center for Research Resources, 6705 Rockledge Drive, Room 6086, Bethesda, MD 20892.
National Institute of Nursing Research, Building 45, Room 3AN32, MSC 6301, Bethesda, MD 20892–6301.
Fogarty International Center, Building 31, Room B2C32, 9000 Rockville Pike, Bethesda, MD 20892.
Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.
National Institute on Drug Abuse, Grants Management Branch, 6001 Executive Blvd., Room 3131, MSC 9541, Bethesda, MD 20892–9541.
National Institute on Alcohol Abuse and Alcoholism, Grants Management Branch, Willco Building, Suite 504, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.
National Institute of Mental Health, Grants Management Branch, ORM, Neuroscience Center, 6001 Executive Blvd., Room 6122, Bethesda, MD 20892.

Appendix II: System Manager(s) and Address(es)

National Cancer Institute, Grants Management Analyst, Executive Plaza South, Suite 234, 6120 Executive Boulevard, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, Chief, Grants Operations Branch, Division of Extramural Affairs, Westwood Building, Room 4A10, 5333 Westbard Avenue, Bethesda, MD 20852.
National Library of Medicine, Associate Director for Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817.
National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, DEA, Solar Bldg., Room 4B–21, 6003 Executive Blvd., Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Management Information Systems Section, FMISB, OAM, Solar Building, Room 4A–03, 6003 Executive Blvd., Bethesda, MD 20892.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, Grants Management Officer, Natcher Building, Room 5AS49, Bethesda, MD 20892–6500.
National Institute of Diabetes and Digestive and Kidney Disease, Grants Management Officer, Room 637, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Child Health and Human Development, Chief, Grants Management Branch, 6100 Executive Blvd., Room 8A01, Bethesda, MD 20892.
National Institute on Aging, Grants Management Officer, Gateway Building, Room 2N–212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Dental and Craniofacial Research, Grants Management Officer, NIDCR, Natcher Building, Room 4AS–55, 45 Center Drive, MSC 6402, Bethesda, MD 20892–6402.
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences, Grants Management Officer, NIGMS, Natcher Building, Room 2AN24, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Grants Management Officer, Federal Building, Room 1004A, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Chief, Grants Management Branch, Executive Plaza South, Room 400B, MSC 7180, 6120 Executive Boulevard, Bethesda, MD 20892–7180.
National Institute of Nursing Research, Grants Management Officer, Building 45, Room 3AN32, MSC 6301, Bethesda, MD 20892–6301.
National Eye Institute, Grants Management Officer, Executive Plaza South, Room 350, 6120 Executive Boulevard, Bethesda, MD 20892.
National Center for Research Resources, Office of Grants Management, 6705 Rockledge Drive, Room 6086, Bethesda, MD 20892.
Fogarty International Center, Scientific Review Administrator, International Studies Branch, Building 31, Room B2C32, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute on Drug Abuse, 6001 Executive Blvd., Room 3131, MSC 9541, Bethesda, MD 20892–9541.
National Institute on Alcohol Abuse and Alcoholism, Chief, Grants Operation Section, Willco Building, Suite 504, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.
National Institute of Mental Health, Grants Management Officer, ORM, Neuroscience Center, 6001 Executive Blvd., Room 6122, Bethesda, MD 20892.

Appendix III: Notification Procedure

National Cancer Institute, see Appendix II.
National Heart, Lung, and Blood Institute, Privacy Act Coordinator, Building 31, Room 5A10, 31 Center Drive, MSC 2490, Bethesda, MD 20892–2490.
National Library of Medicine, see Appendix II.
National Institute of Allergy and Infectious Diseases, see Appendix II.
National Institute of Diabetes and Digestive and Kidney Diseases, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Child Health and Human Development, see Appendix II.
national Institute of Aging, see Appendix II.
National Institute of Dental and Craniofacial Research (NIDCR), Privacy Act Coordinator, Natcher Building, Room 4AS–43A, 45 Center Drive, MSC 6401, Bethesda, MD 20892–6401.
National Institute of Environmental Health Sciences, see Appendix II.
National Institute of General Medical Sciences, see Appendix II.

National Institute of Neurological Disorders and Stroke, see Appendix II.
National Institute on Deafness and Other Communication Disorders, see Appendix II.
National Eye Institute, see Appendix II.
National Center for Nursing Research, see Appendix II.
National Center for Research Resources, see Appendix II.
Fogarty International Center, see Appendix II.
National Institute on Drug Abuse, see Appendix II.
National Institute on Alcohol Abuse and Alcoholism, see Appendix II.
National Institute of Mental Health, Privacy Act Coordinator, Room 15–81, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, see Appendix II.

Appendix IV: Records Access Procedure

National Cancer Institute, Privacy Act Coordinator, Building 31, Room 10A30, 9000 Rockville Pike, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, see Appendix III.
National Library of Medicine, see Appendix II.
National Institute of Allergy and Infectious Diseases, Privacy Act Coordinator, Solar Bldg., Room 3C–23, Bethesda, MD 20892.
National Institute of Diabetes and Digestive and Kidney Diseases, see Appendix II.
National Institute of Child Health and Human Development, see Appendix II.
National Institute on Aging, see Appendix II.
National Institute of Dental and Craniofacial Research (NIDCR), Grants Management Officer, Natcher Building, Room 4AS–55, 45 Center Drive, MSC 6402, Bethesda, MD 20892–6402.
National Institute of Environmental Health Sciences, see Appendix II.
National Institute of General Medical Sciences, Privacy Act Coordinator, Natcher Building, Room 3AS43, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Chief, Grants Management Branch, Executive Plaza South, Room 400B, 6120 Executive Blvd., Rockville, MD 20892–7180.
National Institute on Deafness and Other Communication Disorders, see Appendix II.
National Eye Institute, Administrative Officer, Building 31, Room 6A17, 9000 Rockville Pike, Bethesda, MD 20892.
National Center for Research Resources, Privacy Act Coordinator, 6705 Rockledge Drive, Room 5142, Bethesda, MD 20892.
Fogarty International Center, see Appendix II.
National Institute on Drug Abuse, see Appendix II.
National Institute on Alcohol Abuse and Alcoholism, see Appendix II.
National Institute of Mental Health, see Appendix II.
National Institute of Nursing Research, see Appendix II.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, see Appendix II.

09–25–0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Solar Bldg., 6003 Executive Blvd., Room 3A37, MSC 7630, Bethesda, MD 20892 and
McKesson BioServices Corporation, 7501 Standish Place, Rockville, MD 20850.

Write to the system manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curricula vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE(S):

1. To maintain a record of the investigators under Investigational New Drug (IND) applications.

2. To appoint consultants to the NIAID Institutional Review Board (IRB).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in books.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Clinical and Regulatory Affairs Branch, Division of Microbiology and Infectious Diseases, NIAID. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* Building is locked during off-duty hours.

3. *Procedural safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Clinical and Regulatory Affairs Branch, DMID, NIAID, Solar Bldg., Room 3A–01, 6003 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator,

Solar Bldg., Room 3C–23, 6003 Executive Blvd., Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0118

SYSTEM NAME:

Contracts: Professional Services Contractors, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under contract with the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Professional services contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 281.

PURPOSE(S):

Used by staff for general administrative purposes to assure compliance with contract program requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Access is limited to authorized personnel (system manager and staff).

2. *Physical Safeguards:* Records are maintained in offices which are locked when not in use.

3. *Procedural Safeguards:* Access to files is strictly controlled by system manager and staff.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2600–A–4, which allows records to be destroyed after a maximum period of six years and three months after final payment. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

ARC Manager, NCI/DCTD, Building 31, Room 3A44, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/OD–31, Building 31, Room 11A33, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/OD–EP, Executive Plaza South, Room 531, 6120 Executive Blvd., Rockville, MD 20852.

ARC Manager, NCI/6116, Executive Plaza South, Room 531, 6120 Executive Blvd., Rockville, MD 20852.

ARC Manager, NCI/DCP, Building 31, Room 10A50, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/DCB, Executive Plaza North, Room 500, 6130 Executive Blvd., Rockville, MD 20852.

ARC Manager, NCI/DCCPS, Executive Plaza North, Room 306, 6130 Executive Blvd., Rockville, MD 20852.

ARC Manager, NCI/Bldg. 41, Building 41, Room A101, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/Bldg. 37, Building 37, Room 5A15, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/FCRDC, FCRDC, Building 428, Room 43, Frederick, MD 21702.

ARC Manager, NCI/DCEG, Executive Plaza South, Room 8086, 6120 Executive Blvd., Rockville, MD 20852.

ARC Manager, NCI/31–DBS, Building 31, Room 3A20, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/31–DCS, Building 31, Room 3A11, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/10A, Building 10, Room 12N210, 9000 Rockville Pike, Bethesda, MD 20892.

ARC Manager, NCI/10B, Building 10, Room 12N210, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the appropriate system manager listed above to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably

identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0121

SYSTEM NAME:

International Activities: Senior International Fellowships Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room B2C39, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Senior International Fellowships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242e.

PURPOSE(S):

For award and administration of fellowships to outstanding faculty members in mid-career from U.S. biomedical research and educational institutions for study abroad.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Each fellow's home institution receives a notice of award and funding for the fellowship.

2. Applications are made available to authorized employees and agents of the U.S., including the General Accounting Office for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for proper action under civil and criminal laws.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computer disks.

RETRIEVABILITY:

Name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to Fogarty International Center (FIC) program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* The records are stored in locked file cabinets and offices are locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records access is controlled by the use of security codes known to authorized users and access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–320–7, which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, International Research Awards Branch, Fogarty International Center, National Institutes of Health, Building 31, Room B2C39, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information obtained from applicants and persons supplying

recommendations through the Center for Scientific Review.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0124

SYSTEM NAME:

Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Director, PRAT Program, Pharmacological Sciences, NIGMS, Natcher Building, Room 2AS.43D, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions as Pharmacology Research Associates with the National Institute of General Medical Sciences (NIGMS) and current and former Pharmacology Research Associates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual application forms, addresses, telephone numbers, lists of awards received, research keywords, preceptor and institute during time of fellowship for former fellows, academic transcripts, reprints and references, curricula vitae, and salary adjustment memorandum for fellows.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 209.

PURPOSE(S):

For review, award and administration of the Pharmacology Research Associate Program (PRAT).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of applicant.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Employees who maintain the system are instructed to grant access only to authorized personnel (system manager and staff assigned to the program).

2. *Physical Safeguards:* The records are maintained in locked file cabinets when not in use and system location is locked during non-working hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by responsible individuals who have been instructed in the Privacy Act requirements. Records are returned to the locked cabinets when not in use.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–320–2(a). Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, PRAT Program, Pharmacological Sciences, NIGMS, Natcher Building, Room 2AS.49K, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to system manager and provide the following information: Applicant's name and date of application. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above, and reasonably identify the record and specify the information to be contested, the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information obtained from applicants, university registrars, and persons supplying recommendations through the PRAT Program. Salary adjustment memos from preceptors. Information on former fellows obtained from former fellows.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fogarty International Center, Building 16A, Room 101, 9000 Rockville Pike, Bethesda, MD 20892, and

Center for Information Technology, Building 12A, Room 3061, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Ancillary records are located in the Office of the Associate Director for Intramural Affairs, laboratories, administrative and personnel offices where participants are assigned. Write to system manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health scientists at all levels of their pre- and postdoctoral or equivalent research careers who are invited to the National Institutes of Health to conduct research related to their doctoral studies, for further postdoctoral training, or to conduct research in their biomedical specialties under the auspices of FIC's administration of International Activities. Most of these scientists are foreign; however, some may be resident aliens.

Individuals in these categories include the following: Visiting Scientists (*i.e.,* Title 42 employees) and Foreign Special Experts (also employees) and Visiting Fellows, Guest Researchers, Exchange Scientists, International Research Fellows, Fogarty Scholars, and Special Volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of fellowship, employment and/or stay at NIH; education, previous institution of affiliation, immigration data, and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242l and Section 307 of the Public Health Service Act.

PURPOSE(S):

To document the individual's presence at the NIH, to record immigration history of the individual in order to verify continued eligibility in existing programs, and to meet requirements in the code of Federal Regulations (8 CFR, ''Aliens and Nationality,'' and 22 CFR, ''Foreign Relations'').

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the U.S. Government including, but not limited to, the General Accounting Office, the Internal Revenue Service, the FBI and Immigration and Naturalization Service, Department of Justice, and the Department of State for purposes of investigations, inspections and audits.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, computer hard disks and tapes, and computer diskettes.

RETRIEVABILITY:

By name, country of citizenship, country of birth, gender, fellowship case number, visa and immigration status, program category, NIH institute and lab, sponsor, degree attained, stipend or salary level, dates of stay at NIH, termination date, work address and telephone number, and home address.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records included under this system according to the sensitivity of the data they contain.

1. *Authorized Users:* NIH administrative and personnel staff screened by FIC staff to access information on a need-to-know basis. Only FIC staff are authorized to add, change, or delete data. Access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical Safeguards:* The records are maintained in file cabinets in offices that are locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records, access is controlled by the use of security codes known only to authorized users; access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–320, which allows records to be destroyed after a maximum period of six years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, International Services Branch, National Institutes of Health, Fogarty International Center, Building 16A, Room 101, 16A Center Drive, MSC 6710, Bethesda, MD 20892–6710.

NOTIFICATION PROCEDURE:

Write to the system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official listed under Notification Procedure above, and reasonably identify the record, and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individuals and other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include Public Health Service (PHS) facilities, or facilities of contractors of the PHS. Write to the appropriate system manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the PHS other persons who have participated in or benefitted from PHS programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by PHS; (6) persons who provide feedback about the value or usefulness of information they receive about PHS programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions; (8) persons who have worked or studied at U.S. institutions that receive(d) institutional support from PHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables PHS to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, social security number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of PHS programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 2891–1 and 44 U.S.C. 3101), and Section 301 and 493 of the Public Health Service Act.

PURPOSE(S):

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by PHS in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2) support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits, or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department may disclose information from this system of records to the Department of Justice, to court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes, disks, cartridges, CD–ROMs, etc.).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity.

Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. *Authorized Users:* Regular access to information in a given set of records is limited to PHS or to contractor employees who are conducting, reviewing, or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. *Physical Safeguards:* Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. *Procedural Safeguards:* Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in mainframe computers is accessed only through the use of keywords known only to authorized personnel. When personal computers are used, magnetic media (e.g. diskettes, CD–ROMs, etc.) are protected as under *Physical Safeguards.* When data is stored within a personal computer (i.e., on a ''hard disk''), the machine itself is treated as though it were a record, or records, under *Physical Safeguards.* Contracts for operation of this system of records require protection of the records in accordance with these safeguards; PHS project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1100–C–2. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix I.

Policy coordination for this system is provided by: Acting Director, Office of Reports and Analysis, Office of Extramural Research, Office of the Director, National Institutes of Health, Bldg. 1, Room 252, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix II. If you are not certain which component of PHS was responsible for the evaluation study, or if you believe there are records about you in several components of PHS, write to: NIH Privacy Act Officer, 6011 Executive Blvd., Room 601L, MSC 7669, Rockville, MD 20852.

Requesters must provide the following information:

1. Full name, and name(s) used while studying or employed;

2. Name and location of the evaluation study or other PHS program in which the requester participated or the institution at which the requester was a student or employee, if applicable;

3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, ''Extramural Awards and Chartered Advisory Committees: IMPAC (Grants/Contract Information/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO;'' 09–25–0112, ''Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD;'' NSF–6, ''Doctorate Record File'', NSF–43, ''Doctorate Work History File'' (previously entitled NSF–43, ''Roster and Survey of Doctorate Holders in The United States'' and other records maintained by the operating programs of NIH; the National Academy of Sciences, professional associations such as the AAMC and ADA, and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Office of Reports and Analysis, Office of Extramural Research, Office of the Director, National Institutes of Health, RKL2, 6701 Rockledge Drive, Room 6212, Bethesda, MD 20892.

National Institutes of Health, Office of the Director, Director, Division of Personnel Management, Building 1, Room B1–60, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute (NHLBI), NHLBI Minority Coordinator, OD, OPPE, Building 31, Room 5A03/5A06, 31 Center Drive, MSC 2482, Bethesda, MD 20892–2482.

National Library of Medicine (NLM), Associate Director for Health Information Programs Development, Building 38, Room 2S20, Bethesda, MD 20894.
National Eye Institute (NEI), Associate Director for Science Policy and Legislation, Building 31, Room 6A25, Bethesda, MD 20892.
National Cancer Institute (NCI), Public Health Educator, OCC, NCI, National Institutes of Health, Building 31, Room 10A03, Bethesda, MD 20892.
National Institute on Aging (NIA), Chief, Office of Planning, Analysis, Technical Information and Evaluation, Federal Building, Room 6A09, 7550 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Child Health and Human Development (NICHD), Associate Director for Science Policy, Analysis, and Communication, Building 31, Room 2A18, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Chief, Program Planning and Health Reports Branch, Building 31, Room 3C35, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Dental and Craniofacial Research (NIDCR), Evaluation Officer, Office of Science Policy and Analysis, Building 31, Room 5B55, 31 Center Drive, MSC 2190, Bethesda, MD 20892–2190.
National Institute of Environmental Health Sciences (NIEHS), Program Analyst, Office of Program Planning and Evaluation, P.O. Box 12233, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences (NIGMS), Chief, Office of Program Analysis and Evaluation, Natcher Building, Room 2AS–55F, 9000 Rockville Pike, Bethesda, MD 20892.
Fogarty International Center (FIC), National Institutes of Health, Assistant Director for International Science Policy and Analysis, Building 31, Room B2C08, Bethesda, MD 20892.
Center for Scientific Review (CSR), Information Officer, Rockledge Centre II, Room 6160, 6701 Rockledge Drive, Bethesda, MD 20817.
National Center for Research Resources (NCRR), Director, Office of Science Policy, Rockledge Building, Room 5046, Bethesda, MD 20892.
National Institute of Nursing Research (NINR), Chief, Office of Planning, Analysis and Evaluation, Building 31, Room 5B09, Bethesda, MD 20892.
Office of Research Integrity, Policy Analyst, Division of Policy and Education, U.S. Public Health Service, 5515 Security Lane, Suite 700, Rockwall-II Building, Rockville, MD 20852.

Appendix II: Notification and Access Officials

NIH, Office of the Director, Office of Extramural Research, Acting Director, Office of Reports and Analysis, Building 1, Room 252, 9000 Rockville Pike, Bethesda, MD 20892.
National Institutes of Health, Office of the Director, Director, Division of Personnel Management, Building 1, Room B1–60, 9000 Rockville Pike, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute (NHLBI), Privacy Act Coordinator, Building 31, Room 5A29, Bethesda, MD 20892.
National Library of Medicine (NLM), Assistant Director for Planning and Evaluation, Building 38, Room 2S18, Bethesda, MD 20894.
National Eye Institute (NEI), Executive Officer, Building 31, Room 6A25, Bethesda, MD 20892.
Fogarty International Center (FIC), National Institutes of Health, Assistant Director for International Science Policy and Analysis, Building 31, Room B2C08, Bethesda, MD 20892.
Center for Scientific Review (CSR), Information Officer, Rockledge Centre II, Room 6160, 6701 Rockledge Drive, Bethesda, MD 20817.
National Center for Research Resources (NCRR), Director, Office of Science Policy, Rockledge Bldg., Room 5046, Bethesda, MD 20892.
National Cancer Institute, Privacy Act Coordinator, National Institutes of Health, Building 31, Room 10A30, Bethesda, MD 20892.

09–25–0158

SYSTEM NAME:

Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is located in each of the intramural offices and laboratories where the Intramural Research Training Awards (IRTA) Fellow is located and assigned, including the respective Scientific Director's office, the administrative and personnel offices, and in Division of Personnel Management branches responsible for administering the IRTA Program, and the Office of Education, Building 10, Room 1C125, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for IRTA Fellowships, current IRTA Fellows, and former IRTA Fellows.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, scientific publications; research goals; letters of reference; and personal information such as name, date of birth, social security number, home address and citizenship; and information related to fellowship awards such as stipend levels, training assignments, training expenses and travel allowances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 284(b)(1)(C), 286b–3, and 287c–1 authorizes PHS to make awards for biomedical research and research training.

PURPOSE(S):

Records in this system are used to determine individuals' eligibility and evaluate their qualifications for IRTA Fellowships; to document the basis for management actions relating to Fellowships that are awarded; and to provide data for program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the Office of Personnel Management for evaluation of NIH Personnel programs.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual.

3. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the selection or retention of a fellow.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with hiring or

retention of an employee, the issuance of a security clearance, an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic tapes and disks.

RETRIEVABILITY:

Records are retrieved by name, social security number, or institute list number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted only to NIH scientists, administrative office staff, personnel staff, and financial management staff directly involved in the administration of the IRTA Program.

2. *Physical Safeguards:* File folders are kept in locked drawers or locked rooms when system personnel are not present.

3. *Procedural Safeguards:* Access to file folders is controlled by system personnel. Records may be removed from the files only with the approval of the system manager or other authorized employees. Data stored in the automated system is accessed through the use of keywords known only to authorized personnel.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 4000–E–3. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel/Administrative Officers of the National Institutes of Health Institutes/Centers. Contact the individual listed under Notification Procedure for the name and address of the appropriate system manager.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact: Chief, Staffing Management Branch, Division of Personnel Management, NIH, Building 31, Room 1C31, 9000 Rockville Pike, Bethesda, MD 20892.

The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORDS ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under the Notification Procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is untimely, incomplete, irrelevant or inaccurate. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicants, persons and institutions supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0160

SYSTEM NAME:

United States Renal Data System (USRDS), HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at contractor operated coordinating center. Write to the system manager at address below for address of current location. U.S. Renal Data System, Coordinating Center (CC), 2100 M Street NW, Suite 400, Washington, DC 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with end-stage renal disease (ESRD), providers of ESRD services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health and medical record data; fiscal information; patient names, social security number, Health Care Financing Administration (HCFA) beneficiary ID, patient demographic, epidemiologic and survival characteristics; physician provider characteristics; facility provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241a, 289c, as last amended by Pub. L. 100–607, November 4, 1988 under the Health Omnibus Programs Extension of 1988.

PURPOSE(S):

1. To design and implement a consolidated renal disease system that will provide the biostatistical, data management and analytical expertise necessary to characterize the total renal patient population and describe the distribution of patients by sociodemographic variables across treatment modalities.

2. To report on the incidence, prevalence, and mortality rates of renal disease by primary diagnosis.

3. To identify the modalities of treatment best suited to individual patients. To compare the various treatment alternatives to examine the prevention and progression of renal disease by morbidity, mortality, and quality of life criteria.

4. To identify problems and opportunities for more focused investigations of renal research issues currently unaddressed by the consolidated data system.

5. To share data with other PHS agencies and HCFA for their use in research analysis and program administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure from the record of an individual may be made to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her official capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof

where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the written request of the individual.

3. Disclosure may be made to the HHS contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) Has secured a written statement attesting to the recipients understanding of, and willingness to abide by these provisions.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic medium; selected hard copy backup.

RETRIEVABILITY:

Information will be retrieved by patient identification number such as social security number and HCFA beneficiary ID. Individual patient data provided only as noted above. Statistical data provided as noted above and to the general public as part of periodic published reports.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the records:

1. *Authorized Users:* Regular access is limited to National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), HCFA and contract personnel who have a need for the data in performance of their duties as determined by the system manager.

2. *Physical Safeguards:* Records are stored in areas where access is restricted to areas where data are maintained and processed; data tapes and hard copy data are stored in locked files in secured areas; terminal access controlled by user ID and keywords; off-site data backups in two locations—a remote area of the same building and a separate building; and fire protection secured by Halon fire extinguisher system and fire alarm system present in the computer room.

3. *Procedural Safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act.

Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 3000–G–3(b), which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Epidemiology Program Director, National Institute of Diabetes and Digestive and Kidney Diseases, Division of Kidney, Urologic and Hematologic Diseases, 5333 Westbard Avenue, Westwood Building, Room 621, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address noted above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; and (c) approximate dates of participation.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

The majority of health, medical, fiscal and other demographic information on patients and health care providers is from the end stage renal disease program of the Health Care Financing Administration (HCFA). Additional data comes from other HCFA Medicare patient records, the National Death Index, and other sources of non-Medicare ESRD patient records such as the NIH Continuous Ambulatory Peritoneal Dialysis (CAPD) Registry, the United Network of Organ Sharing (UNOS) transplant patients, the Veteran's Administration, and the Indian Health Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0161

SYSTEM NAME:

Administration: NIH Consultant File, HHS/NIH/CSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH.

Center for Information Technology, Data Management Branch, Building 12A, Room 4041B, National Institutes of Health, Bethesda, MD 20892.

Write to the appropriate system manager listed in Appendix I for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who provide the evaluation of extramural grants and cooperative agreement applications and research contract proposals, including the NIH Reviewers' Reserve and/or advise on policy. Consultants who participate in NIH conferences, workshops, evaluation projects and/or provide technical assistance at site locations arranged by contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, social security numbers, resumes, curricula vitae (C.V.s), areas of expertise, gender, minority status, business status, AREA-eligible status, publications, travel records, and payment records for consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation, and Section 402 of the Public Health Service Act, describing the appointment and authority of the Director of the National Institutes of Health, (42 U.S.C. 241, 282 and 290aa).

PURPOSE(S):

This umbrella system comprises separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH. These records are used: (1) To identify and select experts and consultants for program reviews and evaluations; (2) To identify and select experts and consultants for the review of special grant and cooperative agreement applications and research contract proposals; (3) To obtain and pay consultants who participate in NIH conferences, workshops, evaluation projects and/or provide technical assistance at site locations arranged by contractors; and (4) To provide necessary reports related to payment to the Internal Revenue Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors to process or refine the records. Contracted services may include transcription, collation, computer input, and other records processing.

4. Information in this system of records is used routinely to prepare W–2 and 1099 Forms to submit to the Internal Revenue Service and applicable state and local governments those items to be included as income to an individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, computer tapes and disks, microfiche, and microfilm.

RETRIEVABILITY:

Records are retrieved by name, expertise, gender, minority status, business status, AREA-eligible status and experimental system used.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users who are PHS or contractor employees involved in managing a review or program advisory committee, conducting a review of extramural grant applications, cooperative agreement applications, or research contract proposals, performing an evaluation study or managing the consultant file. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel.

3. *Procedural Safeguards:* Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinator for this system is also the system manager listed for the Center for Scientific Review (CSR).

Chief, Biochemical Sciences Initial Review Group, Division of Molecular and Cellular Mechanisms, Center for Scientific Review, Rockledge Centre II, Room 5150, 6701 Rockledge Drive, Bethesda, Maryland 20817 and

See Appendix I.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed in Appendix I.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is whom he or she claims to be. The request should include: (a) full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under Notification Procedure above, reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Office of the Director (OD), Extramural Programs Management Officer, Building 31, Room 5B31, Bethesda, MD 20892.

National Center for Research Resources (NCRR), Director, Office of Review, 6705 Rockledge Drive, Room 6018, Bethesda, MD 20892.

National Cancer Institute (NCI), Chief, Applied Information Systems Branch, Executive Plaza North, Room 643, Bethesda, MD 20892.

National Eye Institute (NEI), Review and Special Projects Officer, Executive Plaza South, Room 350, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute (NHLBI), Chief, Review Branch, Westwood Building, Room 557A, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute on Aging (NIA), Chief, Scientific Review Office, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases (NIAID), Director, Scientific Review Program, Division of Extramural Activities, Solar Bldg., Room 3C–16, 6003 Executive Blvd., Bethesda, MD 20892.

National Institute of Child Health and Human Development (NICHD), Director, Division of Scientific Review, 6100 Executive Boulevard, Room 5E03H, Bethesda, MD 20892.

National Institute on Deafness and Other Communication Disorders (NIDCD), Chief, Scientific Review Branch, Executive Plaza South, Room 400C, 6120 Executive Boulevard, Rockville, MD 20852.

National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Chief, Review Branch, Natcher Building, Room 6AS–37F, Bethesda, MD 20892.

National Institute of Dental and Craniofacial Research (NIDCR), Chief, Scientific Review Section, Natcher Building, Room 4AN–44F, 45 Center Drive, MSC 6402, Bethesda, MD 20892–6402.

National Institute of Environmental Health Sciences (NIEHS), Chief, Scientific Review Branch, Division of Extramural Research and Training, PO Box 12233, Research Triangle Park, NC 27709.

National Institute of General Medical Sciences (NIGMS), Chief, Office of Scientific Review, Natcher Building, Room 1AS–13F, Bethesda, MD 20892.

National Institute of Neurological Disorders and Stroke (NINDS), Chief, Scientific Review Branch, Federal Building, Room 9C10A, Bethesda, MD 20892.

National Institute of Nursing Research (NINR), Chief, Office of Review, Natcher Building, Room 3AN24, MSC 6302, Bethesda, MD 20892–6302.

National Library of Medicine (NLM), Extramural Programs, Scientific Review Administrator, 6705 Rockledge Drive, Bethesda, MD 20817.

National Center for Human Genome Research (NCHGR), Chief, Office of Scientific Review, Building 38A, Room 604, Bethesda, MD 20892.

National Institute of Mental Health, Committee Management Officer, Division of Extramural Activities, 6100 Executive Blvd., Room 6133, Bethesda, MD 20892.

National Institute on Alcohol Abuse and Alcoholism, Committee Management Officer, Willco Building, Suite 504, 6000 Executive Blvd, MSC 7003, Bethesda, MD 20892–7003.

National Institute on Alcohol Abuse and Alcoholism, Deputy Director, Office of Scientific Affairs, Willco Building, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.

National Institute on Drug Abuse, Office of Extramural Program Review, Neuroscience Center, 6001 Executive Blvd., Room 3158, Bethesda, MD 20892.

09–25–0165

SYSTEM NAME:

National Institutes of Health Loan Repayment Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Loan Repayment Program (LRP), Office of the Director, National Institutes of Health, Federal Building, Room 102, 7550 Wisconsin Avenue, Bethesda, MD 20892–9015.

Center for Information Technology (CIT), National Institutes of Health, Building 12A, Room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892.

Office of Financial Management (OFM), National Institutes of Health, Building 31, Room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

See Appendix I for a listing of other NIH offices responsible for administration of the Loan Repayment Program. Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are receiving, and who have received funds under the NIH LRP; and individuals who are interested in participation in the NIH LRP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number; service pay-back obligations, standard school budgets, educational loan data including deferment and repayment/delinquent/default status information; employment data; professional and credentialing history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 487A (42 U.S.C. 288–1) of the PHS Act, as amended, authorizes the NIH to implement a program of educational loan repayment for qualified health professionals who agree to conduct, as employees of NIH, AIDS research (the NIH AIDS Research LRP). The provisions of section 338B of the PHS Act (42 U.S.C. 254l–1), as amended, governing the NHSC loan repayment program, are incorporated except as inconsistent. Section 487E (42 U.S.C. 288–5) of the PHS Act authorizes

the NIH to establish and implement a program of educational loan repayment for qualified health professionals who agree to conduct, as employees of the NIH, clinical research (the NIH Clinical Research LRP). Eligibility for the Clinical Research LRP is restricted to individuals who are from disadvantaged backgrounds. The provisions of section 338C and 338E of the PHS Act (42 U.S.C. 254l–1), as amended, governing the NHSC loan repayment program, are incorporated except as inconsistent. The Internal Revenue Code at 26 U.S.C. 6109 requires the provision of the social security number for the receipt of loan repayment funds under the NIH LRP.

PURPOSE(S):

1. To identify and select applicants for the NIH LRP.

2. To monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default.

3. To assist NIH officials in the collection of overdue debts owed under the NIH LRP.

Records may be transferred to system No. 09–15–0045, ''Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA,'' for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH LRP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for participation in the NIH LRP.

6. NIH may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosures are limited to the individual's name, address, social security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the applicant or claim is being processed.

7. NIH may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, social security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an unauthorized administrative offset; i.e., withhold money, other than Federal salaries, payable to or held on behalf of the individual.

c. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

8. NIH may disclose information from this system of records to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, social security number, and other information necessary to identify the individual to information about the money payable to or held for the individual, and other information concerning the offset.

9. NIH may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for loan repayment under any loan repayment program authorized by the Public Health Service Act to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, social security number, other information necessary to identify him/her, and the program for which the information is being obtained.

10. NIH may report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. NIH may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, social security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. NIH may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association,

etc., for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

13. NIH may disclose information from this system of records to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

14. NIH may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's or a defaulting participant's name, address, social security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the individual.

15. NIH may disclose information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable NIH to improve the quality of loan repayment decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, social security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, computer tape, disks, and file cards.

RETRIEVABILITY:

Records are retrieved by name, social security number, or other identifying numbers.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users who are NIH employees responsible for implementing the NIH LRP. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

3. *Procedural and Technical Safeguards:* A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see *Authorized Users,* above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–537–1. Participant case files are transferred to a Federal Records Center one year after closeout and destroyed ten years later. Closeout is the process by which it is determined that all applicable administrative actions and loan repayments have been completed by the LRP and service obligations have been completed by the participant. Applicant case files are destroyed three years after disapproval or withdrawal of their application. Official appeal and litigation case files are destroyed six years after the calendar year in which the case is closed. Other copies of these files are destroyed two years after the calendar year in which the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NIH Loan Repayment Program, Office of the Director, National Institutes of Health, Federal Building, Room 102, 7550 Wisconsin Avenue, Bethesda, MD 20892–9015

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. Requesters appearing in person must provide a valid driver's license or passport, including photo, and at least one other form of identification.

RECORD ACCESS PROCEDURE:

Write to the system manager specified above to attain access to records and provide the same information as is required under the Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; participating lending institutions; educational institutions attended; other Federal agencies; consumer reporting agencies/credit bureaus; and third parties that provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Locations

Loan Repayment Program, National Institutes of Health, Federal Building, Room 102, 7550 Wisconsin Avenue, Bethesda, MD 20892–9015.

Center for Information Technology, National Institutes of Health, Building 12A, Room 4018, 9000 Rockville Pike, Bethesda, MD 20892.

Operations Accounting Branch, Division of Financial Management, National Institutes of Health, Building 31, Room B1B55, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Cancer Treatment, National Cancer Institute, National Institutes of Health, Building 31, Room 3A44, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Building 31, Room 11A11, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, National Institutes of Health, Building 31, Room 3A05, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute, National Institutes of Health, Building 10, Room 7N220, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Dental and Craniofacial Research, National Institutes of Health, Building 31, Room 2C23, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Neurological Disorders and Stroke, National Institutes of Health, Building 10, Room 5N220, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 7A05, 9000 Rockville Pike, Bethesda, MD 20892.

Pharmacological Sciences Program, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 2AS, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Child Health and Human Development, National Institutes of Health, Building 31, Room 2A25, 9000 Rockville Pike, Bethesda, MD 20892.

National Eye Institute, National Institutes of Health, Building 10, Room 10N202, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Environmental Health Sciences, National Institutes of Health, South Campus, Building 101, Room B–248, 111 Alexander Drive, Research Triangle Park, NC 27709.

Gerontology Research Center, National Institute on Aging, National Institutes of Health, 4940 Eastern Avenue, Baltimore, MD 21224.

National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C13, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Deafness and Communication Disorders, National Institutes of Health, Building 31, Room 3C02, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute for Nursing Research, National Institutes of Health, Building 31, Room 5B06, 9000 Rockville Pike, Bethesda, MD 20892.

National Center for Research Resources, National Institutes of Health, Building 31, Room 3B36, 9000 Rockville Pike, Bethesda, MD 20892.

Clinical Center, National Institutes of Health, Building 10, Room 1N312, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Parklawn Building, Room 16C05, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Drug Abuse, National Institutes of Health, Parklawn Building, Room 10A38, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Mental Health, National Institutes of Health, Parklawn Building, Room 1599, 5600 Fishers Lane, Rockville, MD 20857.

Clinical Center Nursing Recruitment Office, National Institutes of Health, Building 10, Room 2C206, 9000 Rockville Pike, Bethesda, MD 20892.

09–25–0166

SYSTEM NAME:

Administration: Radiation and Occupational Safety and Health Management Information Systems, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Radiation Safety Branch (RSB), Division of Safety, Office of Research Services, NIH, Building 21, Room 134, 9000 Rockville Pike, Bethesda, MD 20892.

Occupational Safety and Health Branch (OSHB), Division of Safety, National Institutes of Health, Building 13, Room 3K04, 9000 Rockville Pike, Bethesda, Maryland 20892.

Write to appropriate system manager at the address below for the address of contractor locations, including the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radiation Safety Branch (RSB): NIH employees using radioactive materials or radiation producing machinery, contractor employees who provide service to the Radiation Safety Branch, and any other individuals who could potentially be exposed to radiation or radioactivity as a result of NIH operations and who, therefore, must be monitored in accordance with applicable regulations.

Occupational Safety and Health Branch (OSHB): Individuals (including NIH employees and NIH service contract employees) who use or come into contact with potentially hazardous biological or chemical materials, and participants of occupational safety and health monitoring/surveillance programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, title, organizational affiliation, birth date, social security number (optional), work address, work telephone number, name of supervisor, and other necessary employment information; radiation/occupational safety and health training information; medical and technical information pertaining to safety and health related initiatives; research protocols and other related documents used to monitor and track radiation exposure and exposure to potentially hazardous biological or chemical materials; radiation materials usage data; and incident data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, regarding the general powers and duties of the Public Health Service relating to research and investigation; 5 U.S.C. 7902 regarding agency safety programs; and 42 U.S.C. 2201, regarding general duties of the Nuclear Regulatory Commission including the setting of standards to cover the possession and use of nuclear materials in order to protect health.

PURPOSE(S):

1. To provide adequate administrative controls to assure compliance with internal NIH policies, and applicable regulations of the Occupational Safety and Health Administration (OSHA), Department of Labor, and other Federal and/or State agencies which may establish health and safety requirements or standards. Ensure legal compliance with requirements of Nuclear Regulatory Commission to maintain internal and external radiation exposure data.

2. To identify, evaluate and monitor use or contact (including incident follow-up) with:

a. Radiation (exposure maintained at lowest levels reasonable);

b. Biological and/or chemical (potentially hazardous materials).

3. To monitor, track, and assess the use of personal protective equipment in the work place to ensure availability, effectiveness, and proper maintenance.

4. To address emergent safety and health issues or concerns.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors for the purpose of processing or refining the records. Contracted services may include monitoring, testing, sampling, surveying, evaluating, transcription, collation, computer input, and other records processing. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to: (a) Officials of the United States Nuclear Regulatory Commission which, by Federal regulation, licenses, inspects and enforces the regulations governing the use of radioactive materials; and (b) OSHA, which provides oversight to ensure that safe and healthful work conditions are maintained for employees. Disclosure will also be permitted to other Federal and/or State agencies which may establish health and safety requirements or standards.

5. Radiation exposure and/or training and experience history may be transferred to new employer.

6. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file cabinets or in computer databases maintained by the RSB and OSHB. Records may be stored in file folders, binders, magnetic tapes, magnetic disks, optical disks, and/or other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by name, social security number, office address, or unique RSB or OSHB assigned identification number.

SAFEGUARDS:

1. *Authorized Users:* Employees who maintain this system are instructed to grant regular access only to RSB/OSHB staff, authorized contractor personnel, U.S. Nuclear Regulatory Commission Inspectors, Radiation Safety Committee Members, Biosafety Committee members, and other appropriate NIH administrative and management personnel with a need to know. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Individually identifiable records are kept in locked file cabinets or rooms under the direct control of the Project Director.

3. *Procedural Safeguards:* Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) will protect information from public view and from unauthorized personnel entering an unsupervised office. The computer terminals are in secured areas and keywords needed to access data files will be changed frequently.

4. *Additional RSB Technical Safeguards:* Computerized records are accessible only through a series of code or keyword commands available from and under direct control of the Project Director or his/her delegated representatives. The computer records are secured by a multiple level security system which is capable of controlling access to the individual data field level. Persons having access to the computer database can be restricted to a confined application which only permits a narrow ''view'' of the data. Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in work for the program.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361): item 1300–B which applies to Division of Safety records. Refer to the NIH Manual Chapter for specific disposition instructions. Radiation exposure records are retained under item 1300–B–10, which does not allow disposal at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief, Information Technology, Radiation Safety Branch, DS, ORS, Building 21, Room 134, 9000 Rockville Pike, Bethesda, Maryland 20892.

Chief, Occupational Safety and Health Branch, Division of Safety, National Institutes of Health, Building 13, Room 3K04, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed above.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate system manager specified above and reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting documentation. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information is obtained from the subject individual, previous employers and educational institutions, contractors, safety and health monitoring/surveillance records, employee interviews, site visits, or other relevant NIH organizational components.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0167

SYSTEM NAME:

National Institutes of Health (NIH) TRANSHARE Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Employee Transportation Services Office (ETSO), National Institutes of Health, Building 31, Room B3B08, 9000 Rockville Pike, Bethesda, MD 20892.

Recreation and Welfare Association Activities Desk, National Institutes of Health, Building 31, Room B1W30A, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for and participate in the NIH TRANSHARE Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, parking hanger permit number, unique computer identification number, NIH TRANSHARE commuter card number, NIH pay plan, grade level, office phone number, building and room, Institute/Center designation, name of supervisor, commute mode to work, and type of fare media used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 629 of Pub. L. 101–509, ''State or Local Government Programs Encouraging Employee Use of Public Transportation; Federal Agency Participation,'' found at 5 U.S.C. note prec. section 7901.

PURPOSE(S):

1. To manage the NIH TRANSHARE Program, including receipt and processing of employee applications, and coordination of the fare media distribution to employees.

2. To monitor the use of appropriated funds used to support the NIH TRANSHARE Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. NIH may disclose applicant's name, unique computer identification number, NIH TRANSHARE commuter card number, and type of participant's fare media to be disbursed to cashiers of the Recreation and Welfare Association of the National Institutes of Health, Inc. (R&W Association) who are responsible for distribution of fare media. Cashiers are required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

5. NIH may disclose statistical reports containing information from this system of records to city, county, State, and Federal Government agencies (including the General Accounting Office).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and computer disks.

RETRIEVABILITY:

Records are retrieved by name and NIH TRANSHARE commuter card number.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users who are ETSO employees and cashiers of the R&W Association who are responsible for implementing the Program. Cashier access will be limited to applicant's name, unique computer identification number, NIH TRANSHARE computer card number, and type of fare media disbursed. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* A password is required to access the terminal, and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see *Authorized Users*, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1500–A–3. Records are retained for a maximum of two years following the last month of an employee's participation in the NIH TRANSHARE Program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Traffic Management Specialist, Employee Transportation Service Officer, Division of Security Operations, National Institutes of Health, Building 31, Room B3B08, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the system manager specified above to attain access to records and provide the same information as is required under the Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0168

SYSTEM NAME:

Invention, Patent, and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients, and Contractors, HHS/PHS/FDA/NIH/OTT.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Third Floor, Room 325, Rockville, MD 20852.

Office of Financial Management (OFM), National Institutes of Health, Building 31, Room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

Office of Reports and Analysis, Office of Extramural Research, National Institutes of Health, Building 1, Room 252, 1 Center Drive, Bethesda, MD 20892–2184.

Public Health Service (PHS) Technology Development Coordinators and PHS Contract Attorneys retain files supplemental to the records maintained by the Office of Technology Transfer. Write to the system manager at the address below for office locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS employees, grantees, fellowship recipients and contractors who have reported inventions, applied for patents, have been granted patents, and/or are receiving royalties from patents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inventor name, address, social security number (required if inventor is receiving royalties, otherwise optional), title and description of the invention, Employee Invention Report (EIR) number, Case/Serial Number, prior art related to the invention, evaluation of the commercial potential of the invention, prospective licensees' intended development of the invention, associated patent prosecution and licensing documents and royalty payment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 200 and 15 U.S.C. 3710 provide authority to maintain the records; 37 CFR part 401 ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements;'' 37 CFR part 404 ''Licensing of Government Owned Inventions;'' and 45 CFR part 7 ''Employee Inventions.''

PURPOSE(S):

Records in this system are used to: (1) Obtain patent protection of inventions submitted by PHS employees; (2) monitor the development of inventions made by grantees, fellowship recipients and contractors and protect the government rights to patents made with NIH support; (3) grant licenses to patents obtained through the invention reports; and (4) provide royalty payments to PHS inventors, non-government contractors, and nonprofit and educational institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected. Disclosure may also be made to the Department of Justice to obtain legal advice concerning issues raised by the records in this system.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or

implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records for the purpose of obtaining patent protection for PHS inventions and licenses for these patents to: (a) Scientific personnel, both in this agency and other Government agencies, and in non-Governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance; (b) contract patent counsel and their employees and foreign contract personnel retained by the Department for patent searching and prosecution in both the United States and foreign patent offices; (c) all other Government agencies whom PHS contacts regarding the possible use, interest in, or ownership rights in PHS inventions; (d) prospective licensees or technology finders who may further make the invention available to the public through sale or use; (e) parties, such as supervisors of inventors, whom PHS contacts to determine ownership rights, and those parties contacting PHS to determine the Government's ownership; and (f) the United States and foreign patent offices involved in the filing of PHS patent applications.

6. NIH will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the amount of royalty payment paid to PHS inventors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be stored in file folders, computer tapes and computer disks.

RETRIEVABILITY:

Records are retrieved by name of the inventor, EIR number, or keywords relating to the nature of the invention, Case/Serial Number, Licensing Number, internal reference numbers, contractor, agency, Institute, and/or Center.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by password known only to authorized users who are NIH or contractor employees involved in patenting and licensing of PHS inventions. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Records are stored in a dedicated file room or in locking file cabinets in file folders. During normal business hours, OTT Records Management on-site contractor personnel regulate availability of the files. During evening and weekend hours the offices are locked and the building is closed.

3. *Procedural and Technical Safeguards:* Data stored in computers will be accessed through the use of passwords known only to the authorized users. A password is required to access the database. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information, including confidential business information submitted by potential licensees, from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 1100–L, which allows records to be kept for a maximum of thirty years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS

Acting Director for Administrative Services, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Third Floor, Room 325, Rockville, Maryland 20852.

Office of Reports and Analysis, Office of Extramural Research, National Institutes of Health, Building 1, Room 252, 1 Center Drive, Bethesda, MD 20892–2184.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) Full name, and (b) appropriate identifying information on the nature of the invention.

RECORD ACCESS PROCEDURE:

Write to the system manager specified above to attain access to records and provide the same information as is required under the Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Inventors and other collaborating persons, grantees, fellowship recipients and contractors; other Federal agencies; scientific experts from non-Government organizations; contract patent counsel and their employees and foreign contract personnel; United States and foreign patent offices; prospective licensees; PHS Technology Development Coordinators, Internet and commercial databases, and third parties whom PHS contacts to determine individual invention ownership or Government ownership.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0169

SYSTEM NAME:

Medical Staff-Credentials Files, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Record Department, National Institutes of Health, 10 Center Drive, MSC 1192, Bethesda, MD 20892–1192.

Write to the system manager at the address below for a list of Contractor locations, including the address of any

Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been approved as members of the medical staff at the Warren G. Magnuson Clinical Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical staff names, date of birth, home address and telephone number, office address and telephone number, citizenship, visa information, appointment date, hospital-wide computer access privileges, Institute/Center designation, branch/lab, type of medical staff membership, privilege delineation, professional degree(s) including school of attendance and graduation dates, foreign medical examinations, specialty board certifications, licensing information (including state of licensure and license number), record of disciplinary actions, documentation of training, and admitting privileges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for collecting the requested information is contained in section 301 (42 U.S.C. 241) of the Public Health Service Act, as amended, outlining the authority of the Secretary to, within the Public Health Service (PHS), promote the coordination of various research and associated activities, including for purposes of study, admitting and treating individuals at PHS facilities. Section 402(b) of the Public Health Service Act (42 U.S.C. 282(b)), as amended, outlining the authority of the Director of the National Institutes of Health (NIH) with respect to the admission and treatment of individuals at NIH facilities for purposes of study.

PURPOSE(S):

These records are used to: (1) Maintain information used in the credentialing and privileging of active medical staff members at the Warren G. Magnuson Clinical Center; (2) document patient care privileges for active members of the medical staff; (3) provide information about active and non-active members of the medical staff to authorized individuals; and (4) report to the National Practitioner Data Bank as required by the provisions of Title IV of Pub. L. 99–660, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information to representatives of the Joint Commission on Accreditation of Healthcare Organizations for the purpose of conducting quality assurance reviews and inspections of the Warren G. Magnuson Clinical Center credentialing policies and procedures.

6. NIH may disclose information from this system of records to State medical boards for purposes of professional quality assurance activities.

7. NIH may disclose information from this system of records to health care facilities for the purpose of verifying that an individual to whom they intend to grant medical staff or patient care privileges has or previously held such privileges at the Warren G. Magnuson Clinical Center.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper forms in file folders and on computer disks.

RETRIEVABILITY:

Records are retrieved by name, date of birth, type of medical staff membership, Institute/Center and licensing status.

SAFEGUARDS:

1. *Authorized Users:* Data on the computer network system is accessed by a password known only to authorized users who are NIH employees and contractor staff responsible for implementing the medical staff credentials data system. Access to information is thus limited to those with a need to know.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but entry is controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* Access to files is strictly controlled by the system manager. Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through a network system by use of a password known only to authorized users. All authorized users of personal information in connection with the performance of their jobs (see *Authorized Users,* above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1'' ''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 2300–293–4, ''Medical Staffs' Credential Files,'' which allows inactive records to be transferred to the Federal Records Center at five year intervals and to be

destroyed after thirty years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Medical Record Department, National Institutes of Health, 10 Center Drive, MSC 1192, Bethesda, MD 20892–1192.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the above address. The requester must provide tangible proof of identity (e.g., driver's license). If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the system manager specified above to attain access to records and provide the same information as that required under the Notification Procedure. Requesters should also reasonably specify the record contents being requested. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0200

SYSTEM NAME:

Clinical, Epidemiologic, and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at NIH and Contractor research facilities which collect or provide research data for this system. Contractors may include, but are not limited to: Research centers, clinics, hospitals, universities, medical schools, research institutions/foundations, national associations, commercial organizations, collaborating State and Federal Government agencies, and coordinating centers. A current list of sites, including the address of any Federal Records Center where records from this system may be stored, is available by writing to the appropriate Coordinator listed under Notification Procedure.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and/or children who are the subjects of clinical, epidemiologic, and biometric research studies of the NIH. Individuals with disease. Individuals who are representative of the general population or of special groups including, but not limited to: Normal controls, normal volunteers, family members and relatives; providers of services (e.g., health care and social work); health care professionals and educators, and demographic sub-groups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to real and/or hypothesized risks (e.g., exposure to biohazardous microbial agents).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data about individuals as relevant to a particular research study. Examples include, but are not limited to: Name, study identification number, address, relevant telephone numbers, social security number (voluntary), driver's license number, date of birth, weight, height, sex, race; medical, psychological and dental information, laboratory and diagnostic testing results; registries; social, economic and demographic data; health services utilization; insurance and hospital cost data, employers, conditions of the work environment, exposure to hazardous substances/compounds; information pertaining to stored biologic specimens (including blood, urine, tissue and genetic materials), characteristics and activities of health care providers and educators and trainers (including curricula vitae); and associated correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

''Research and Investigation,'' ''Appointment and Authority of the Directors of the National Research Institutes,'' ''National Cancer Institute,'' ''National Eye Institute,'' ''National Heart, Lung and Blood Institute,'' ''National Institute on Aging,'' ''National Institute on Alcohol Abuse and Alcoholism,'' ''National Institute on Allergy and Infectious Diseases,'' ''National Institute of Arthritis and Musculoskeletal and Skin Diseases,'' ''National Institute of Child Health and Human Development,'' ''National Institute on Deafness and Other Communication Disorders,'' ''National Institute of Dental and Craniofacial Research,'' ''National Institute of Diabetes, and Digestive and Kidney Diseases,'' ''National Institute of Drug Abuse,'' ''National Institute of Environmental Health Sciences,'' ''National Institute of Mental Health,'' ''National Institute of Neurological Disorders and Stroke,'' and the ''National Human Genome Research Institute'' of the Public Health Service Act. (42 U.S.C. 241, 242, 248, 281, 282, 284, 285a, 285b, 285c, 285d, 285e, 285f, 285g, 285h, 285i, 285j, 285l, 285m, 285n, 285o, 285p, 285q, 287, 287b, 287c, 289a, 289c, and 44 U.S.C. 3101.)

PURPOSE(S):

To document, track, monitor and evaluate NIH clinical, epidemiologic, and biometric research activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations 42 U.S.C. 241, 42 U.S.C. 290dd–2, 42 CFR part 2, and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 241 and 42 CFR part 2a; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless

the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is, therefore, deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. Disclosure may be made to agency contractors, grantees, experts, consultants, collaborating researchers, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. Information from this system may be disclosed to Federal agencies, State agencies (including the Motor Vehicle Administration and State vital statistics offices, private agencies, and other third parties (such as current or prior employers, acquaintances, relatives), when necessary to obtain information on morbidity and mortality experiences, and to locate individuals for follow-up studies. Social security numbers, date of birth and other identifiers may be disclosed: (1) To the National Center for Health Statistics to ascertain vital status through the National Death Index; (2) to the Health Care Financing Agency to ascertain morbidities; and (3) to the Social Security Administration to ascertain disabilities and/or location of participants. Social security numbers may also be given to other Federal agencies, and State and local agencies when necessary to locating individuals for participation in follow-up studies.

6. Medical information may be disclosed in identifiable form to tumor registries for maintenance of health statistics, *e.g.,* for use in epidemiologic studies.

7. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b.) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

8. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

9. Disclosure may be made to authorized organizations which provide health services to subject individuals or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements.

10. The Secretary may disclose information to organizations deemed qualified to carry out quality assessment, medical audits or utilization reviews.

11. Disclosure may be made for the purpose of reporting child, elder, or spousal abuse or neglect or any other type of abuse or neglect as required by State or Federal law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on index cards, file folders, computer tapes and disks (including optical disks), photography media, microfiche, microfilm, and audio and video tapes. For certain studies, factual data with study code numbers are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper/computer files.

RETRIEVABILITY:

During data collection stages and follow-up, retrieval is by personal identifier (*e.g.,* name, social security number, medical record or study identification number, etc.). During the data analysis stage, data are normally retrieved by the variables of interest (*e.g.,* diagnosis, age, occupation).

SAFEGUARDS:

1. *Authorized Users:* Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, *e.g.,* interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. Researchers authorized to conduct research on biologic specimens will typically access the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual.

2. *Physical Safeguards:* Records are either stored in locked rooms during off-duty hours, locked file cabinets, and/or secured computer facilities. For certain studies, personal identifiers and link files are separated and stored in locked files. Computer data access is limited

through the use of key words known only to authorized personnel.

3. *Procedural Safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When anonymous data is provided to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The OHS project directors, contract officers, and project officers oversee compliance with these requirements. Personnel having access are trained in Privacy Act requirements. Depending upon the sensitivity of the information in the record, additional safeguard measures may be employed.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—''Keeping and Destroying Records'' (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Collaborative Perinatal Project records are retained in accordance with item 3000–G–4, which does not allow records to be destroyed. Refer to the NIH Manual Chapter for specific conditions on disposal or retention instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix I for a listing of current system managers. This system is for use by all NIH Institutes and Centers. The following system notices have been subsumed under this umbrella system notice.

09–25–0001, Clinical Research: Patient Records, HHS/NIH/NHLBI.

09–25–0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS.

09–25–0016, Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINDS.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.

09–25–0037, Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

09–25–0038, Clinical Research: Patient Data, HHS/NIH/NIDDK.

09–25–0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK.

09–25–0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK.

09–25–0042, Clinical Research: National Institute of Dental and Craniofacial Research Patient Records, HHS/NIH/NIDCR.

09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDCR.

09–25–0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

09–25–0053, Clinical Research: Vision Studies, HHS/NIH/NEI.

09–25–0057, Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI.

09–25–0060, Clinical Research: Division of Clinical Sciences Clinical Investigations, HHS/NIH/NCI.

09–25–0067, Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI.

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

09–25–0074, Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI.

09–25–0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.

09–25–0126, Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS.

09–25–0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD.

09–25–0130, Clinical Research: Epidemiologic Studies in the Division of Cancer Epidemiology and Genetics, HHS/NIH/NCI.

09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.

09–25–0142, Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA.

09–25–0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

09–25–0145, Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute, HHS/NIH/NEI.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD.

09–25–0152, Biomedical Research: Records of Subjects in National Institute of Dental and Craniofacial Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDCR.

09–25–0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

09–25–0154, Biomedical Research: Records of Subjects: (1) Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI; and (2) Women's Health Initiative (WHI) Studies, HHS/NIH/OD.

09–25–0170, Diabetes Control and Complications Trial (DCCT) Data System, HHS/NIH/NIDDK.

09–25–0172, Clinical Research: National Human Genome Research Institute, HHS/NIH/NHGRI.

09–25–0201, Clinical Research: National Institute of Mental Health Patient Records, HHS/NIH/NIMH.

09–25–0205, Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/NIH/NIAAA, HHS/NIH/NIDA and HHS/NIH/NIMH.

09–25–0212, Clinical Research: Neuroscience Research Center Patient Medical Records, HHS/NIH/NIMH.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate IC Privacy Act Coordinator listed below. In cases where the requester knows specifically which system manager to contact, he or she may contact the system manager directly (see Appendix I). Notification requests should include: Individual's name; current address; date of birth; date, place and nature of participation in specific research study; name of individual or organization administering the research study (if known); name or description of the research study (if known); address at the time of participation; and in specific cases, a notarized statement (some

highly sensitive systems require two witnesses attesting to the individual's identity). A requester must verify his or her identity by providing either a notarization of the request or by submitting a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals will be granted direct access to their medical records unless the system manager determines that such access is likely to have an adverse effect (i.e., could cause harm) on the individual. In such cases when the system manager has determined that the nature of the record information requires medical interpretation, the subject of the record shall be requested to designate, in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, other health professional, or other responsible individual. In this case, the medical/dental record will be sent to the designated representative. Individuals will be informed in writing if the record is sent to the representative. This same procedure will apply in cases where a parent or guardian requests notification of, or access to, a child's or incompetent person's medical record. The parent or guardian must also verify (provide adequate documentation) their relationship to the child or incompetent person as well as his or her own identity to prove their relationship.

If the requester does not know which Institute or Center Privacy Act Coordinator to contact for notification purposes, he or she may contact directly the NIH Privacy Act Officer at the following address: NIH Privacy Act Officer, Office of Management Assessment, 6011 Executive Blvd., Room 601L, Rockville, MD 20852.

NIH Privacy Act Coordinators

Office of the Director, (OD), NIH, Associate Director for Disease Prevention, OD, NIH, Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892.

National Cancer Institute (NCI), Privacy Act Coordinator, NCI, NIH, Building 31, Room 10A34, 31 Center Drive, Bethesda, MD 20892.

National Eye Institute (NEI), Privacy Act Coordinator, NEI, NIH, Building 31, Room 6A32, 31 Center Drive, MSC 2510, Bethesda, MD 20892–2510.

National Heart, Lung and Blood Institute (NHLBI), Privacy Act Coordinator, NHLBI, NIH, Building 31, Room 5A08, 31 Center Drive, Bethesda, MD 20892.

National Institute on Aging (NIA), Privacy Act Coordinator, NIA, NIH, Building 31, Room 2C12, 31 Center Drive, Bethesda, MD 20892.

National Institute on Alcohol Abuse and Alcoholism (NIAAA), Privacy Act Coordinator, NIAAA, NIH, Willco Building, Suite, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.

National Institute of Allergy and Infectious Diseases (NIAID), Privacy Act Coordinator, NIAID, NIH, Solar Building, Room 3C–23, 6003 Executive Blvd., Bethesda, MD 20892.

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Privacy Act Coordinator, NIAMS, NIH, Natcher Building, Room 5AS49, 45 Center Drive, Bethesda, MD 20892.

National Institute of Child Health and Human Development (NICHD), Privacy Act Coordinator, NICHD, NIH, 6100 Executive Blvd., Room 5D01, Bethesda, MD 20892.

National Institute on Deafness and Other Communication Disorders (NIDCD), Privacy Act Coordinator, NIDCD, NIH, Building 31, Room 3C02, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Dental and Craniofacial Research (NIDCR), Privacy Act Coordinator, NIDCR, NIH, Natcher Building, Room 4AS–43A, 45 Center Drive, MSC 6401, Bethesda, MD 20892–6401.

National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), Privacy Act Coordinator, NIDDK, NIH, Building 31, Room 9A47, 31 Center Drive, Bethesda, MD 20892.

National Institute on Drug Abuse (NIDA), Privacy Act Coordinator, NIDA, NIH, Parklawn Building, Room 10A–42, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Environmental Health Sciences (NIEHS), Privacy Act Coordinator, NIEHS, NIH, PO Box 12233, Research Triangle Park, NC 27709.

National Institute of Mental Health (NIMH), Privacy Act Coordinator, NIMH, NIH, Parklawn Building, Room 7C–22, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Neurological Disorders and Stroke (NINDS), Privacy Act Coordinator, NINDS, NIH, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892.

National Human Genome Research Institute (NHGRI), Office of Policy Coordination, Bldg. 31, Room 4B09, Bethesda, MD 20892.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate official at the address specified under Notification Procedure, and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, including but not limited to: Referring medical physicians, mental health/alcohol/drug abuse or other health care providers; hospitals; organizations providing biological specimens; relatives; guardians; schools; and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Manager(s) and Address(es)

Office of the Director, NIH, Associate Director for Disease Prevention, OD, NIH, Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892.

National Cancer Institute, Computer Systems Analyst, DCBD, NCI, NIH, Executive Plaza North, Room 344, Bethesda, MD 20892.

American Burkitt's Lymphoma Registry, Division of Cancer Etiology, NCI, NIH, Executive Plaza North, Suite 434, 6130 Executive Blvd., Bethesda, MD 20892.

Chief, Genetic Epidemiology Branch, DCEG, NCI, NIH, Executive Plaza South, Room 7122, MSC 7236, 6120 Executive Blvd., Bethesda, MD 20892–7236.

Program Director, Research Resources, Biological Carcinogenesis Branch, DCE, NCI, NIH, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

Chief, Environmental Epidemiology Branch, DCE, NCI, NIH, Executive Plaza North, Room 443, 6130 Executive Blvd., Bethesda, MD 20892.

Associate Director, Surveillance Program, DCPC, NCI, NIH, Executive Plaza North, Room 343K, 6130 Executive Blvd., Bethesda, MD 20892.

Head, Biostatistics and Data Management Section, DCS, NCI, NIH, 6116 Executive Blvd., Room 702, Bethesda, MD 20892.

Chief, Clinical Research Branch, Biological Response Modifiers Program, Frederick Cancer Research and Development Center, DCT, NCI, NIH, 501 W. 7th Street, Suite #3, Frederick, MD 21701.

Deputy Branch Chief, Navy Hospital, NCI—Naval Medical Oncology Branch, DCT, NCI, NIH, Building 8, Room 5101, Bethesda, MD 20814.
Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, DCT, NCI, NIH, Executive Plaza North, Suite 804, Bethesda, MD 20892.
Director, Extramural Clinical Studies, BRB, BRMP, DCT, NCI, NIH, Frederick Cancer Research and Development Center, Fort Detrick, Frederick, MD 21701.
National Eye Institute, Clinical Director, NEI, NIH, Building 10, Room 10N–202, 10 Center Drive, Bethesda, MD 20892.
Director, Division of Biometry and Epidemiology, NEI, NIH, Building 31, Room 6A–52, 31 Center Drive, Bethesda, MD 20892.
National Heart Lung and Blood Institute, Administrative Officer, Division of Intramural Research, NHLBI, NIH, Building 10 Room 7N220, 10 Center Drive, MSC 1670, Bethesda, MD 20892–1670.
Senior Scientific Advisor, OD, Division of Epidemiology and Clinical Applications, NHLBI, NIH, Federal Building, 220, 7550 Wisconsin Avenue, Bethesda, MD 20892.
National Institute on Aging, Computer Scientist, Longitudinal Studies Branch, IRP, NIH, Gerontology Research Center, GRC, 4940 Eastern Avenue, Baltimore, MD 21224.
Associate Director, Epidemiology, Demography and Biometry Program, NIA, NIH, Gateway Building, Suite 3C309, 7201 Wisconsin Avenue, Bethesda, MD 20892.
National Institute on Alcohol Abuse and Alcoholism, Deputy Director, Division of Biometry and Epidemiology, NIAAA, NIH, Willco Building, Suite 514, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.
Deputy Director, Div. of Clinical and Prevention Res., NIAAA, NIH, Willco Building, Suite 505, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003.
National Institute of Allergy and Infectious Diseases, Chief, Respiratory Viruses Section, LID, NIAID, NIH, Building 7, Room 106, 9000 Rockville Pike, Bethesda, MD 20892.
Chief, Hepatitis Virus Section, LID, NIAID, NIH, Building 7, Room 202, 9000 Rockville Pike, Bethesda, MD 20892.
Chief, Epidemiology and Biometry Branch, DMID, NIAID, NIH, Solar Building, Room 3A24, Bethesda, MD 20892.
Special Assistant, Clinical Research Program, DAIDS, NIAID, NIH, Solar Building, Room 2C–20, 6003 Executive Blvd., Bethesda, MD 20892.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, Clinical Director, NIAMS, NIH, Building 10, Room 9S205, 10 Center Drive, Bethesda, MD 20892.
National Institute of Child Health and Human Development, Chief, Contracts Management Branch, NICHD, NIH, Executive Plaza North, Room 7A07, 6100 Executive Blvd., North Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Acting Director of Intramural Research, NIDCD, NIH, Building 31, Room 3C02, 31 Center Drive, Bethesda, MD 20892.
Director, Division of Human Communication, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180.
National Institute of Dental and Craniofacial Research, Deputy Clinical Director, NIDCR, NIH, Building 10, Room 1N–113, 10 Center Drive, MSC 1190, Bethesda, MD 20892–1190.
Research Psychologist, Gene Therapy and Therapeutics Branch, NIDCR, NIH, Building 10, Room 1N114, 10 Center Drive, MSC 1190, Bethesda, MD 20892–1190.
National Institute of Diabetes and Digestive and Kidney Diseases, Chief, Clinical Investigations, NIDDK, NIH, Building 10, Room 9N222, 10 Center Drive, Bethesda, MD 20892.
Chief, Phoenix Clinical Research Section, NIDDK, NIH, Phoenix Area Indian Hospital, Room 541, 4212 North 16th Street, Phoenix, AZ 85016.
Chief, Diabetes Research Section, DPB, DDEMD, NIDDK, NIH, Natcher Building, Room 5AN–18G, 45 Center Drive, MSC 6600, Bethesda, MD 20892.
National Institute on Drug Abuse, Privacy Act Coordinator, NIDA, NIH, Parklawn Building, Room 10A–42, 5600 Fishers Lane, Rockville, MD 20857.
National Institute of Environmental Health Sciences, Chief, Epidemiology Branch, NIEHS, NIH, PO Box 12233, Research Triangle Park, NC 27709.
National Institute of Mental Health, Director, Intramural Research Program, NIMH, NIH, Building 10, Room 4N–224, 9000 Rockville Pike, Bethesda, MD 20892.
Privacy Act Coordinator, NIMH, NIH, 6001 Executive Blvd., Room 6112, Bethesda, MD 20982.
National Institute of Neurological Disorders and Stroke, Privacy Act Coordinator, NINDS, NIH, Neuroscience Center, 6001 Executive Blvd., Suite 3305, MSC 9531, Bethesda, MD 20892–9531.
Chief, Epilepsy Branch, NINDS, NIH, Neuroscience Center, 6001 Executive Blvd., Suite 2110, MSC 9523, Bethesda, MD 20892–9523.
Assistant Director, CNP, DIR, NINDS, NIH, Building 10, Room 5N226, 10 Center Drive, Bethesda, MD 20892.
Deputy Chief, Laboratory of Central Nervous Systems Studies, Intramural Research Program, NINDS, NIH, Building 36, Room 5B21, 9000 Rockville Pike, Bethesda, MD 20892.
Director, Division of Fundamental Neuroscience and Developmental Disorders, NINDS, NIH, Neuroscience Center, 6001 Executive Blvd., Suite 2136, MSC 9527, Bethesda, MD 20892–9527.
Director, Division of Convulsive, Infectious and Immune Disorders, NINDS, NIH, Neuroscience Center, 6001 Executive Blvd., Suite 2110, MSC 9521, Bethesda, MD 20892–9521.
Director, Division of Stroke, Trauma, and Neurodegenerative Disorders, NINDS, NIH, Neuroscience Center, 6001 Executive Blvd., Suite 2209, MSC 9525, Bethesda, MD 20892–9525.
Division of Experimental Therapeutics and Clinical Trials, NINDS, NIH, Neuroscience Center, 6001 Executive Blvd., Suite 2213, MSC 9520, Bethesda, MD 20892–9520.
National Human Genome Research Institute (NHGRI), Clinical Director, NHGRI, Bldg. 10, Room 10C101D, 10 Center Drive, Bethesda, MD 20892.

09–25–0202

SYSTEM NAME:

Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Drug Abuse, Intramural Research Program, Johns Hopkins Bayview Medical Center, P.O. Box 5180, Baltimore, MD 21224.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

Iron Mountain, 8200 Preston Court, Suite One, Jessup, MD 20794.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilly committed narcotic addicts (1967–1976) and adult PHS beneficiaries (1935–1974) treated at either the PHS hospital in Fort Worth, Texas, or Lexington, Kentucky.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records, such as treatment admission and release dates, name and address, and other demographic data; medical records, such as, but not limited to, medical history information, drug abuse/use data as well as treatment information, any laboratory tests, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Narcotic Addict Rehabilitation Act of 1966, and Narcotic Addict Rehabilitation Amendments of 1971, Titles I and III (42 U.S.C. 3411 *et seq.* and 28 U.S.C. 2901 *et seq.*), and Public Health Service Act, sections 321–326, 341(a) and (c) (42 U.S.C. 248–253, 257(a) and (c)).

PURPOSE(S):

The records were collected originally to monitor the individual's progress

while being treated at either of two PHS hospitals and to ensure continuity of that care. These systems are now inactive. The records are used to respond to requests from subject individuals (or his/her designated representative) to (1) establish eligibility for certain Federal benefits for the individual or his/her dependent(s), and (2) provide information to subsequent health care providers at the request of the individual regarding medical treatment received to ensure continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records at National Institute on Drug Abuse (NIDA) are on microfilm and contain only part of the admission and discharge information. The microfilm is stored in a file cabinet in a locked room. Records sent to Federal Records Center are stored in GSA-approved storage containers.

RETRIEVABILITY:

The administrative records and microfilm are filed by patient name. The medical records are filed either by patient name or by patient's hospital number with a cross-reference list at NIDA matching number to name.

SAFEGUARDS:

1. *Authorized Users:* Only the system manager and designated staff.

2. *Physical Safeguards:* The microfilm is in a room which has limited access, or stored at a security coded warehouse. The room is located in a building with a 24-hour security patrol/television surveillance system. Sign in and out procedures are used at all times. The warehouse has security access; records can only be retrieved by the system manager or designated staff using a confidential code number. The warehouse is patrolled on a 24-hour basis with television surveillance.

3. *Procedural Safeguards:* Only the system manager and his/her staff have access to the microfilm information and have been trained in accordance with the Privacy Act.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

All administrative and medical records have been retired to a Federal Records Center. The records collected under the Narcotic Addict Rehabilitation Act of 1966 will be destroyed when they are 25 years old, which will be in 2001 because the last patient was released from treatment in 1976. The PHS beneficiaries' records will be destroyed at the same time. The records will be shredded in 2003 upon written request from the system manager.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Records Officer, National Institute on Drug Abuse, Intramural Research Program, Johns Hopkins Bayview Medical Center, Box 5180, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above. An individual may learn if a record exists about himself or herself upon written request with a notarized signature. The request should include, if known: Patient hospital record number, full name or any alias used, patient's address during treatment, birth date, veteran status (if applicable) and approximate dates in treatment, and social security number.

An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above, and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; patients' drug treatment program counselors; court records; hospital personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0203

SYSTEM NAME:

National Institute on Drug Abuse, Intramural Research Program, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Drug Abuse, Intramural Research Program, PO Box 5180, Baltimore, MD 21224.

Quest, Pathology Building, 1901 Silver Spring Road, Baltimore, MD 21227.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

NOVA, Johns Hopkins Bayview Medical Center, Building C, 4940 Eastern Avenue, Baltimore, MD 21224.

Iron Mountain, 8200 Preston Court, Suite One, Jessup, MD 20794.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers, adult males (from 1968 to present), adult females (beginning in l985) and adolescents (ages 13–18, beginning in 1983), and children (neonate to 12 beginning in 1989). Clinical research projects conducted at the Addiction Research Center (ARC). This system also includes records on adult Federal prisoners involved in research projects at ARC when located at Lexington, Kentucky, from 1968–1976, and some records from system 09–30–0020 to be used for statistical research only.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records involved are administrative, medical and research records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301(a) (42 U.S.C. 241(a)); sections 341(a) and 344(d) (42 U.S.C. 257(a) and 260(d)); sections 503 and 515 (42 U.S.C. 290aa–2 and 290cc). These sections authorize the conduct of research in all areas of drug abuse.

PURPOSE(S):

1. To collect and maintain a data base for research activities at NIDA/IRP.

2. To enable Federal drug abuse researchers to evaluate and monitor the subjects' health during participation in a research project. The areas of research

include, but are not limited to, biomedical, clinical, behavioral, pharmacological, psychiatric, psychosocial, epidemiological, etiological, statistical, treatment and prevention of narcotic addiction and drug abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The National Institute on Drug Abuse (NIDA) uses a contractor to recruit volunteers and to screen these individuals for their acceptability to participate in specific research projects, and limits the contractor's access to the records to these procedures. NIDA also uses a contractor to perform routine medical laboratory tests on blood and urine samples. These routine tests verify that the subject is in good health. Both contractors disclose records from this system only to NIDA and are required to maintain Privacy Act safeguards with respect to such records.

2. (a) PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has, notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders or on computer disks, magnetic tapes, or microfilm.

RETRIEVABILITY:

Administrative and medical records are indexed and retrieved by the subject's name and identification code number. Research records are indexed and retrieved by the subject's name and identification code number.

SAFEGUARDS:

1. *Authorized Users:* Only authorized ARC staff (Principal Investigator and his/her research team) are allowed access to these files. The contractor staff has access to the files during the recruitment/screening process.

2. *Physical Safeguards:* Files and file rooms are locked after business hours. Building has electronic controlled entry at all times with a 24-hour guard/television surveillance system. The computer terminals are in a further secured area.

3. *Procedural Safeguards:* All users of personal information in connection with the performance of their jobs protect information from unauthorized personnel. Access codes to the research records are available only to the Principal Investigator and his/her research team. Access to the records is strictly limited to those staff members trained in accordance with the Privacy Act. The contractor staff members are required to secure the information in accordance with the Privacy Act. ARC Project Officer and contracting officials will monitor contractor compliance.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

In addition, because much of the data collected in these research projects are sensitive and confidential, special safeguards have been established. Certificates of confidentiality have been issued under Protection of Identity—Research Subjects Regulations (42 CFR part 2a) to those projects initiated since February 1980. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding their names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify such individuals. In addition, these records are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: ''Where the content of patient records has been disclosed pursuant to these regulations for the purpose of conducting scientific research * * * information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.''

RETENTION AND DISPOSAL:

Records will be disposed of in accordance with the NIH Records Control Schedule, *i.e.,* when the records are ten years old or no longer required for administrative or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Records Officer, NIDA, Intramural Research Program, Johns Hopkins Bayview Medical Center—Building C, PO Box 5180, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above. Provide a notarized signature as proof of identity. This can be waived if the request is made through official Federal, State, or local channels. The request should include the patient's register number and/or the number of years of incarceration (for prisoner subjects), full name at time of participation in the research project, date(s) of research participation, and title of research project or name of drug being studied. An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) of the Addiction Research Center staff to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, and state the corrective action sought and reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The individual; observations and medical recordings (such as blood pressure, dosage of compound administered, *etc.*) made by the Principal Investigator and his/her research team; system of records number 09–30–0020; drug treatment programs; Bureau of Prisons; case workers; psychiatrists; research laboratories; and pharmacies and hospitals. Many of these records are confidential and privileged communication is guaranteed under Section 344(d) of the PHS Act.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0207

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse and on Treatment Medications, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

University of California, San Francisco, Langley Porter Psychiatric Institute, San Francisco, CA 94143.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal, healthy adults who voluntarily participate in studies on the pharmacokinetics and pharmacodynamics of psychoactive drugs at Langley Porter Psychiatric Institute, during the period September 1987 through June 1997.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research records on each subject-participant contain the following information: Name; clinician's records including medical history, laboratory test results, physical examinations, psychological profile, and drug use profile; drug study data including records of drugs administered, exposures to radioactivity, and drug reactions; and date of study in which the subject participated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301(a), 503 and 405 (42 U.S.C. 241 and 284).

PURPOSE(S):

The primary purpose of this system is to support research on the pharmacokinetics and pharmacodynamics of drugs of abuse as well as treatment drugs. The term ''pharmacokinetics'' refers to the manner in which the human body processes a drug. ''Pharmacodynamics'' refers to the manner in which the drug affects the human body.

The clinical investigator used data of a medical nature that is contained in the system to make determinations regarding drug dosages and/or radiochemical exposures appropriate to the individual human subject-participants, in order to preserve and protect the health of each. The system also provides baseline data for studying the drug effects.

The Food and Drug Administration (FDA) also may use the records in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose to a congressional office the record of an individual in response to a verified inquiry from the congressional office made at the written request of the individual.

2. NIH contractors, use the records in this system to accomplish the research purpose for which the records are collected. The contractors are required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The contractor maintains the records on paper in file folders.

RETRIEVABILITY:

The contractor indexes and retrieves the records by the subject-participant's name.

SAFEGUARDS:

1. *Authorized Users:* Only the contract Project Director and his/her research team and the Federal Project Officer and his/her support staff have access to these records.

2. *Physical Safeguards:* The contractor keeps all records in a locked metal file cabinet in premises with limited accessibility. Only the clinical investigator (Project Director) has the key to the locked files.

3. *Procedural Safeguards:* Only the contract staff have access to the files. Persons other than subject participants who request individually identifiable data from a record, must provide written consent from the subject participant permitting the requested disclosure. The only exception would be for disclosure to persons or organizations permitted by the Privacy Act, section 3(B) to obtain personally identifiable data.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook. In addition, the contract staff complies with contractor's (University of California, San Francisco) standard procedures for safeguarding data.

RETENTION AND DISPOSAL:

The records will be kept no later than June 2002 (five years after the anticipated completion of the studies). At that time, the NIDA project officer will authorize in writing the clinical investigators to destroy the records by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Pharmacokinetic Studies on Drugs of Abuse, Medications Development Division, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Blvd., Room 4123, MSC 9551, Rockville, MD 20892–9551.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above.

Provide the following information: Subject-participant's full name and a letter of request (or permission, if the requester is not the subject-participant) with notarized signature of the individual who is the subject of the record, approximate date(s) of experiment(s) in which the individual participated, and drug name (if known). In addition, an individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager at the address above and reasonably identify the record, specify the information to be contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The subject-participants and the contractor personnel conducting the research studies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0208

SYSTEM NAME:

Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Research Triangle Institute, Center for Social Research and Policy Analysis, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of Federally-funded treatment programs, including Treatment Alternative Street Crime (TASC) Programs of the Department of Justice, who requested to be included in TOPS from 1979 through 1986. New data collected from voluntary adults/adolescent clients of public and private funded-treatment programs beginning in 1991 and will continue through 1995.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories are: Demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301 and 405 (42 U.S.C. 241 and 284.

PURPOSE(S):

The purpose of the system is to compile information on drug abusers in drug abuse treatment programs in order to derive information on the treatment environments and abusers' behaviors and characteristics subsequent to treatment. Researchers and drug abuse service providers may use the aggregate data to address issues and generate hypotheses to understand better the interactions among the client and community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Within the restrictions set forth in HHS regulations concerning the confidentiality of drug abuse patient records (42 CFR 2.56), we may disclose a record for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to, abide by these provisions.

2. The Research Triangle Institute, an NIH contractor, uses the records in this system to accomplish the research purpose for which the records are collected. In the event of follow-up studies or continuation studies because the contract has been terminated for convenience by the Government, we may disclose records in this system to a subsequent NIH contractor. We would require the new contractor to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview forms, magnetic tapes, and disks.

RETRIEVABILITY:

Records are indexed and retrieved by unique alpha numerical identifier. In order to relate the data collected to specific individuals, one must use the link file discussed under Safeguards.

SAFEGUARDS:

1. *Authorized Users:* Contractor personnel, the agency project officer, and agency employees whose duties require the use of the information in the system.

2. *Physical Safeguards:* The data management task leader, the project leader, or the project director provide technical supervision of all data collection and processing activities. Individually identified forms are stored in a secure, vault-like room provided for this purpose. Authorized personnel have access to the room by one locked door with controlled entry, i.e., only on the written authority of the professional staff member in charge. Computerized records are kept in a vault area with limited accession.

3. *Procedural Safeguards:* Because some of the data collected in this study, such as data on drug use, are sensitive and confidential, special safeguards have been established. A Certificate of Confidentiality has been issued under 42 CFR part 2a. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. In addition, these records are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: ''Where the content of patient records has been disclosed pursuant to (these regulations) for the purpose of conducting scientific research . . . information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof

either voluntarily or in response to any legal process whether Federal or State.''

Another safeguard is that the forms containing subject identification information for client follow-up and data matching purposes do not include any reference to the purpose of the study. Identification and location information is kept separate from any information that would suggest that the respondent has been in a drug treatment program.

Information on completed forms is entered immediately on the computer. Completed forms and computerized data are released only to authorized persons. Only aggregate data are provided and used in the preparation of necessary and appropriate reports.

A link file system is used. This system has three components: (1) Personal information, (2) data base information, and (3) the link file, which contains identifying number pairs which can be used to match data with individuals. The advantage of this system is that the data base can be used directly for report generation, etc., without the use of decrypting subroutines or access to the personal information or matching link files.

In addition, the computer center being utilized has developed an extensive security system to protect computer account codes and data. This system is described in a publication that is available from the system manager upon request.

We do not anticipate any disclosure of individually identifiable information to other persons or organizations within the Department of Health and Human Services. Nor does the contractor provide individually identification information to the Department of Justice, with which NIDA has a cooperative agreement for this study.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook. In addition, project staff complies with the contractor's (Research Triangle Institute) standard procedures for safeguarding data.

The contractor provides only aggregate information to NIDA.

RETENTION AND DISPOSAL:

The contractor destroys interview forms by shredding or burning immediately after contractor staff have completed and verified direct entry on magnetic tape or disk storage. The contractor will destroy individual identification and location data by shredding or burning, under the explicit written authorization of the system manager, which is anticipated to be no longer than five years after the termination of the study unless the information is needed for research purposes. We will retain aggregate data tapes for research purposes. These tapes will not have any individually identifiable information. In accordance with the NIH Records Control Schedule, these tapes will be retained for five years after completion of the project (approximately 2000). At that time, the tapes will be retired to the Federal Records Center and destroyed when they are ten years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Drug Abuse Treatment Outcome Study (DATOS), Project Officer, Services Research Branch, Division of Clinical and Services Research, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Blvd., Room 4222, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above. An individual may learn if a record exists about himself/herself upon written request, with notarized signature. The request should include, if known, name of the researcher, location of the research site, approximate date of data collection, any alias used, and subject identification number.

An individual who requests notification of a medical record shall, at the time the request in made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) of the Division of Clinical Research staff to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

Persons other than subject individuals, who request individually identifiable data from a record must provide written consent from the subject individual permitting the requested disclosure. The only exception (if not in conflict with confidentiality regulations) would be for disclosure to persons or organizations permitted by the Privacy Act, section 3(b), to obtain personally identifiable data.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subjects, and staff in participating drug abuse treatment programs, written clinical evaluations, counselors, psychiatrists, psychotherapists, family members, research assistants, hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0209

SYSTEM NAME:

Subject-Participants in Drug Abuse Research Studies on Drug Dependence and in Research Supporting New Drug Applications, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Veterans Administration Hospital, Cooperative Studies Program, Department of Veterans Medical Center, Perry Point, MD 21902.

Dixon and Williams Pharmaceutical, 5775 Hyde Park Circle, Jacksonville, FL 32210.

Medications Development Division and Division of Clinical Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 4123, Bethesda, MD 20892.

Veterans Affairs Medical Center, 50 Irving Street, NW, Washington, DC 20422.

Veterans Affairs Medical Center, University and Woodland Avenues, Philadelphia, PA 19104.

Veterans Affairs Medical Center, Brentwood Division, Wilshire and Sawtell Boulevards, Los Angeles, CA 90073.

National Institute on Drug Abuse, Division of Intramural Research Programs, 4940 Eastern Avenue, Baltimore, MD 21224.

Write to the system manager at the address below for the address of any new locations where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of Federally-funded and other drug abuse treatment programs who have requested to receive investigational new or marketed drugs, such as but not limited to, naltrexone, levo-alpha acetylmethadol (LAAM), or buprenorphine as part of their treatment. Data collection for the earlier LAAM studies began in 1975 and continued through September 1979; additional LAAM studies began in 1992 and continued through September 1997, naltrexone studies began in 1977 and continued through June 1984; and studies for other investigational new compounds (buprenorphine, gepirone, etc,) began in 1992 and may continue through calendar year 2005.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 464p, and 405 (42 U.S.C. 241, and 284).

PURPOSE(S):

1. To maintain information on the safety and effectiveness of drugs for treatment of drug dependence with or without abuse potential in various treatment environments and modalities and changes in the behavior and characteristics of drug abusers who received these substances as part of their treatment regimen.

2. To provide data required by the Food and Drug Administration (FDA) to support research on drug dependence and potential new drug applications for various drugs, and to treat drug dependence with or without abuse potential. A new drug application is a notice to FDA that a pharmaceutical company believes they have enough data to demonstrate the safety and efficacy of a substance to satisfy FDA for marketing the substance. FDA may also use the records in routine inspections that FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

3. To conduct research on the pharmacology, toxicology, and behavioral characteristics of drugs of abuse alone or in combination with proposed treatment drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NIH contractor(s) use the records in the system in order to accomplish the research and development purposes for which the records were collected. In the event of a follow-up study or continuation study, the responsible project officer may disclose records in this system to a subsequent NIH contractor(s). Any new contractor(s) is and would be required to maintain Privacy Act safeguards with respect to such records and to comply with the confidentiality restrictions of 42 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview and assessment forms, video tapes, magnetic tapes, disks, and microfiche in boxes in closed cabinets in a locked room with limited accessibility.

RETRIEVABILITY:

The records are indexed and retrieved by subject-participant's name code (*i,e.,* initials—not name) and unique numerical identifier. In order to relate the data collected to specific individuals, however, one must use the link file discussed under safeguards.

SAFEGUARDS:

1. *Authorized Users:* For the naltrexone study, the system manager or Federal Project Officer and only authorized contract staff have access to the records (computerized and hard copy files) in the system. The contractor provides only aggregate data in reports to NIDA, FDA, or the public. Only the NIDA personnel mentioned previously and selected authorized contract staff have access to the stored LAAM records.

A certificate of confidentiality has been issued to researchers conducting the naltrexone study under 42 CFR, part 2, Protection of Identity—Research Subjects. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. The earlier LAAM study (from 1975 through 1979) was not conducted under a certificate of confidentiality. The 1992 LAAM studies were conducted under the protection afforded by a confidentiality certificate. These regulations do not prohibit voluntary disclosure by the researcher. However, the records of these studies also are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: ''Where the content of patient records has been disclosed. Pursuant to (these regulations) for the purpose of conducting scientific research * * * information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily of in response to any legal process whether Federal or State.''

The contractor's institutional review board reviewed and approved the safeguards described above in accordance with 45 CFR part 46 on the Protection of Human Subjects.

2. *Physical Safeguards:* For the naltrexone records, the contractor(s) stored individually identified forms in a locked room with controlled entry, i.e., only on written authority of the professional staff member in charge of data handling and processing). The contractor staff entered the collected information onto computer tape or disks as soon after contact with the subject-participant as possible, and stores the computerized records in a secured area with access limited as above.

For the LAAM, buprenorphine and other compound records, NIDA stores the individually identified forms in a lockable cabinet in a secure room. Only authorized NIDA personnel, *i.e.,* Division of Clinical Research and Medications Development professional staff and their support staff (program assistant, clerk-typist, or secretary), have access to the room with controlled entry. The room is in a building which has a 24-hour guard/television surveillance system and has controlled entry (picture identification sign in and out procedures) before and after normal working hours.

Another safeguard for these studies is that the forms containing subject identification information do not include any reference to the purpose of the study. The identification information is separate from any information that would suggest that the respondent is or has been in a drug abuse treatment program. In addition, the computer center being utilized for naltrexone has developed an extensive

security system to protect computer account codes and data.

3. *Procedural Safeguards:* Access to the computerized records of the studies (naltrexone and other research) is protected by a computerized password routine which is changed periodically. In addition, the project staff complies with the contractor's standard procedures for safeguarding data. The link file system that identifies individuals with personal data has three components: (1) Identification information, (2) data base information, and (3) the link file, which contains identifying number pairs which match data with individuals. The advantage of this system is that one may use the baseline data directly for report generation, etc., without using the subroutines or accessing the personal information or link files.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

The naltrexone staff will destroy identifiable information by shredding or burning when it is no longer needed for analysis or research purposes; then the tapes will be erased. NIDA will destroy individual identification and match-up information from other studies by shredding or burning five years after FDA completes the review and approves the new drug applications or when they are no longer needed for research purposes.

NIDA will retain the aggregate data tapes and/or paper records from studies for research purposes. These tapes will not have any individually identifiable information. In accordance with the FDA regulations governing new drug applications, the aggregate tapes will be retained for at least two years after FDA approves the new drug applications. At that time, the tapes will be retired to the Federal Records Center and destroyed when they are five years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Naltrexone Study, Division of Clinical Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 4234, Bethesda, MD 20892.

Project Officer, LAAM and Other Research Records, Medications Development Division, National Institute on Drug Abuse, 6001 Executive Blvd., Room 4128, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

An individual may determine if a record exists about himself/herself upon written request, with notarized signature if request is made by mail, or with suitable identification if request is made in person, to the appropriate system manager at the address above. The following information should be included, if known: Subject-participant's full name and a letter of request with notarized signature of the subject-participant of the record, any alias used, subject-participant's identification number, name of the researcher, name of clinic or research center, name of substance, and approximate date of study participation.

An individual who requests notification of a medical record must, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subject-participants, staff in the participating drug abuse treatment programs, written clinical evaluations, private physicians, counselors, psychiatrists, psychotherapists, family members, research assistants, and hospital records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0210

SYSTEM NAME:

Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Basic Neurobiology and Biological Systems Research Branch (BNBSRB), Division of Basic Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 4282, MSC 9555, Bethesda, MD 20892–9555.

Research Triangle Institute, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual researchers and organizations who are registered with the Drug Enforcement Administration (DEA), Department of Justice (DOJ), some since 1966, and who have voluntarily submitted documentation to the National Institute on Drug Abuse (NIDA) in order to obtain, through the NIDA Drug Supply Program (DSP), drugs of abuse for use in a research project.

CATEGORIES OF RECORDS IN THE SYSTEM:

While the records in this system are research project-related, they support the eligibility of individual researchers to receive drugs of abuse. Types of information contained in the records are: Researcher's name, curricula vitae, research protocol, DEA and (if applicable) Nuclear Regulatory Commission registration numbers (when a radiolabeled compound is requested and shipped), business address (location of research project) and telephone number, summary of research project(s), requests for substance(s), name and amount of each compound requested and shipped, dates material is shipped and received, shipment numbers, and order form numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301, and 405 (42 U.S.C. 241 and 284); Controlled Substances Act of 1970 (21 U.S.C. 801 *et seq.*); Atomic Energy Act of 1954, as amended, section 81 (42 U.S.C 2111); and Energy Reorganization Act of 1974, section 201 (42 U.S.C. 5841).

PURPOSE(S):

To facilitate operation of DSP which is a centralized research support service through which the United States Government supplies to the national and international scientific community for research purposes, most Schedule I and many Schedule II-V controlled and non-controlled substances as specified in the Controlled Substances Act (CSA) of 1970 (21 U.S.C. 801 *et seq.*). Controlled substances are chemicals and other substances, and their immediate precursors, that the Attorney General has determined to have such potential

for abuse as to warrant regulation under the CSA. Some of these substances are radiolabeled materials. Radiolabeled materials are substances to which a small amount of radioactivity is added for use in various studies, such as drug metabolism and mechanisms of drug actions.

This system of records was established to facilitate DSP by enabling NIDA:

1. To verify that requests for drugs of abuse, some of which are radiolabeled, are from authorized individuals/organizations for use in a research project;

2. To verify that the amounts of the materials requested by researchers for animal, in vivo, and in vitro research are justified and available;

3. To supply controlled substances in amounts approved by the Food and Drug Administration (FDA) to researchers conducting research with human subjects;

4. To ship these materials securely in accordance with CSA and the Atomic Energy Act; and

5. To maintain records of these transactions.

FDA also may use the records in routine inspections in accordance with FDA's responsibilities to develop standards on the composition, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose the record of an individual to a congressional office in response to a verified inquiry from the congressional office made at the written request of the individual.

2. We may disclose information to DEA, DOJ, to enable DEA to carry out its responsibilities as described in the Controlled Substances Act of 1970.

3. An NIH contractor routinely uses the records in this system to ship controlled substances to authorized recipients. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

4. An NIH contractor may have access to the records in this system in the performance of its software modification/correction tasks specified in its contract. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

NIDA maintains ''hard copy'' records in file folders and automated records on computer disk.

RETRIEVABILITY:

Authorized NIDA and contractor personnel index and retrieve the computerized records by a researcher code number assigned by a computer program at the time a new record is established. Authorized NIDA personnel index and retrieve ''hard copy'' records by researcher's name. NIDA maintains a computerized, alphabetical cross-reference list that matches names and numbers.

SAFEGUARDS:

1. *Authorized Users:* The Chief, BNBSR Branch and his or her support staff, program assistant and clerk-typist, and the contracts' project directors and their support staffs have access to the records.

2. *Physical Safeguards:* The ''hard copy'' records and main computer are physically located at the Neuroscience Center, Bethesda, Maryland.

The computerized records are kept in a room with limited admittance. The room is locked after working hours. The ''hard copy'' records are stored in locked file cabinets in a room with very limited admittance. This room is also locked after working hours. The Neuroscience Center has a 24-hour guard patrol service.

3. *Procedural Safeguards:* The terminals are housed in a secured work area with limited admittance. Contract personnel use a password identification system to obtain access; NIDA changes the passwords periodically.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

NIDA maintains an individual's record for five years after the researcher's last request for, or shipment of, a drug of abuse. We consider the record inactive after that, and erase it from the computer disk by a delete routine. The delete routine automatically deletes the computerized cross-reference as well. We destroy the ''hard copy'' record by shredding. The system is checked once a year for inactive records.

SYSTEM MANAGER(S) AND ADDRESS:

Project Director, Drug Supply Program, BNBSR Branch, Division of Basic Research, Neuroscience Center, 6001 Executive Blvd., Room 4282, MSC 9555, Bethesda, MD 20892–9555.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above. An individual may learn if a record exists about himself or herself upon written request. The request should include the researcher's name and business address at the time of last shipment. The request must be signed in ink by the individual researcher. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Initial source is the individual researcher. Some of the DEA registration information provided by a researcher is verified through a DEA computer check. FDA provides information concerning type and amount of controlled substance(s) to be shipped to an

individual researcher for research projects involving human subjects.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0211

SYSTEM NAME:

Intramural Research Program Records of In- and Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/NIH/NIAAA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. A list of specific project sites is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In-and out-patients with alcohol abuse and dependence, alcohol-induced organic brain syndromes; their relatives; and healthy volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research data of wide variety including biochemical measures, psychophysiological and psychological tests, questionnaires, clinical and behavioral observations and interviews, physical examinations, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, sections 301 (42 U.S.C. 241) and 510 (42 U.S.C. 290bb). These sections authorize the conduct of general health research and research into alcoholism and alcohol abuse.

PURPOSE(S):

These records are used for diagnosis and treatment of patients with alcohol abuse and dependence and related conditions; behavioral research relating to the causes, diagnoses, and treatment of addictions; and basic research on behavioral and biological processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are covered by section 527 of the Public Health Service Act (42 U.S.C. 290ee–3) and 42 CFR, Chapter I, subchapter A, part 2, on confidentiality of alcohol and drug abuse patient records. In accordance with these regulations, the records are confidential and may only be disclosed with the written consent of the patient with specific restrictions, and without the patient's consent in the following instances: (1) To medical personnel to the extent necessary to meet a bona fide emergency; (2) to qualified personnel for the purpose of conducting scientific research; or (3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore, after certain considerations, and with appropriate safeguards. Routine uses of information in this system are limited to the following:

1. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose: (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office at the written request of that individual, in accordance with 42 CFR, chapter I, subchapter A, part 2.

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm and audio and video tapes. Normally the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and follow-up, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by variables of interest, *e.g.,* age, diagnosis, *etc.*

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained in each project. Depending on the sensitivity of the project, additional safeguards may be added.

1. *Authorized Users:* Only NIAAA medical and research staff have access to these records, as authorized by the system manager.

2. *Physical Safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link codes are separated as much as possible and stored in locked files.

3. *Procedural Safeguards:* Collection and maintenance of data are consistent with legislation and regulations for protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients. Computer data access is limited through the use of key words, a series of account numbers, and passwords which are changed frequently and known only to authorized personnel.

4. *Implementation Guidelines:* These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, ''Safeguarding Records Contained in Systems of Records,'' supplementary Chapter PHS hf: 45–13, and the HHS Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records are held for five years after completion of the project, retired to a

Federal Records Center, and subsequently disposed of after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Clinical Director, Laboratory of Clinical Studies, Division of Intramural Clinical and Biological Research, National Institutes of Health, Building 10, Room 3B–19, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) nature of illness (if any); (c) title of study; (d) name of researcher conducting study. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of child's/incompetent person's record shall at the time the request is made designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The designee will receive the record in all cases and upon review will determine whether the record should be made available to the parent or guardian.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individuals under study, either patient or normal subject, contract surveys, hospital records, medical and nursing staff notes, and from Privacy Act system of records 90–25–0099, ''Clinical Research: Patient Medical Records, HHS/NIH/CC.''

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–30419 Filed 11–29–99; 8:45 am]

BILLING CODE 4140–01–P

federal register

Tuesday
November 30, 1999

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 403, 412, 431, etc.
Medicare and Medicaid Programs; Religious Nonmedical Health Care Institutions and Advance Directives; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 403, 412, 431, 440, 442, 456, 446, 488, and 489

[HCFA–1909–IFC]

RIN 0938–AI93

Medicare and Medicaid Programs; Religious Nonmedical Health Care Institutions and Advance Directives

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule deletes all references to Christian Science sanatoria and sets forth the Medicare requirements for coverage and payment of services furnished by religious nonmedical health care institutions. It also sets forth the conditions of participation that religious nonmedical health care institutions must meet before they can participate in Medicare. It sets forth the methods we will use to pay religious nonmedical health care institutions and monitor expenditures for religious nonmedical health care institution services. Additionally, the rule presents the rules governing optional coverage of religious nonmedical health care institution services by States under the Medicaid program.

DATES: *Effective date:* These regulations are effective January 31, 2000.

The incorporation by reference of the publication in this rule was approved by the Director of the Federal Register as of January 31, 2000.

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 31, 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–1909–IFC, P.O. Box 8017, Baltimore, MD 21244–9016.

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, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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I. Introduction

Section 4454 of the Balanced Budget Act of 1997 (BBA'97), Public Law No. 105–33, enacted August 5, 1997, which amended the Social Security Act (the Act), deletes all references to Christian Science sanatoria. Section 4454 provides for coverage of inpatient hospital services and post-hospital extended care services furnished in qualified religious nonmedical health care institutions (RNHCIs) under Medicare and as a State Plan option under Medicaid. (We will refer to these services as ''RNHCI services.'') While the previous provisions were specific to Christian Science sanatoria, the new amendments make it possible for institutions other than Christian Science facilities to qualify as RNHCIs and to participate in Medicare and Medicaid. The programs will only pay for nonmedical health care services furnished in RNHCIs, as defined in the law.

This interim final rule with comment period sets forth the requirements that an RNHCI must meet to participate in the Medicare or Medicaid programs. This rule permits a Medicare beneficiary to elect to receive care in an RNHCI based on his or her own religious convictions or to revoke that election if for any reason he or she decides to pursue medical care. The rule describes the process involved in making future elections. The rule sets forth conditions of participation that an RNHCI must fully meet to participate in the Medicare program. If we find that the accreditation of an RNHCI by a State, regional, or national organization provides reasonable assurances, in accordance with 42 CFR part 488, subpart A, that all of our requirements are met or exceeded, we may treat that RNHCI as meeting the conditions of participation.

The rule presents the methodologies under which we will pay RNHCIs, monitor the Medicare expenditure level for RNHCI services for any given federal fiscal year (FFY), and implement a ''sunset'' of the RNHCI benefit. Finally, the rule revises Medicaid regulations to reflect statutory changes and makes necessary nomenclature and conforming changes.

II. Background

Since the beginning of the Medicare program, the Act contained provisions authorizing payment for certain services furnished in Christian Science sanatoria. There were similar provisions authorizing payment for such services under Medicaid. Section 4454 of BBA'97 repealed the existing Medicare

and Medicaid provisions authorizing payment for services furnished in Christian Science sanatoria. Section 4454 authorizes Medicare and Medicaid payment for certain services provided in an RNHCI, as defined in the statute. Services furnished in any facility that meets the definition of an RNHCI may qualify for payment, not just those provided in Christian Science sanatoria. It should be noted that the Medicaid RNHCI provisions are optional and not an essential component of the basic Medicaid State plan. As in the past, the new provisions do not mention the use of a religious practitioner since we consider the cost of using a religious practitioner the financial responsibility of the patient.

III. Regulatory Provisions

A. RNHCI Medicare Benefits, Conditions of Participation, and Payment

We are revising part 403 (Special Programs and Projects) of the Code of Federal Regulations by adding a new subpart G, ''Religious Nonmedical Health Care Institutions-Benefits, Conditions of Participation, and Payment.''

1. Basis and Purpose (§ 403.770)

This rule implements Section 4454 of BBA'97, which amended the following sections of the Act: 1821, and 1861(e), (y) and (ss) (Medicare provisions); 1902(a) and 1908(e)(1) (Medicaid provisions); and 1122(h) and 1162 (conforming provisions).

Section 4454 of BBA'97 modified section 1861 of the Act in several ways. First, section 4454 removed the reference to Christian Science from the definition of the term ''hospital'' in section 1861(e) and substituted ''religious nonmedical health care institution.'' Section 4454 also changed the title of section 1861(y) from ''Extended Care in Christian Science Skilled Nursing Facilities'' to ''Extended Care in Religious Nonmedical Health Care Institutions'' and substituted ''religious nonmedical health care institution'' for the reference to Christian Science sanatorium in that section.

Section 4454 added new section 1861(ss) to the Act. New section 1861(ss)(1) of the Act defines the ten minimum characteristics that a facility must have to be considered an RNHCI and provides the basis for the Medicare conditions of participation described in this rule.

Section 4454 also added a new section 1821 to the Act, providing conditions for coverage of RNHCI services. New section 1821(a) and (b) of the Act addresses the requirements that the beneficiary must fulfill to qualify for coverage and payment of RNHCI services. New section 1821(c) and (d) of the Act addresses the monitoring of expenditures for RNHCI services, safeguards against excessive expenditures for those services, and the circumstances under which the RNHCI benefit created by section 4454 will ''sunset''.

Section 4454 also amends the third sentence in section 1902(a) after the phrase ''shall not apply'' by removing the phrase ''to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientists, Boston, Massachusetts'' and inserting ''to a religious nonmedical health care institution (as defined in section 1861(ss)(1).'' Section 4454 also amends 1908(e)(1) after the phrase ''does not include'' by removing ''a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' and inserting ''a religious nonmedical health care institution (as defined in section 1861(ss)(1)).'' These amendments to the Act provide for RNHCI services as a State option under the Medicaid program.

2. Definitions and Terms (§ 403.702)

In the first section of subpart G we have included a ''definitions section'' to assist readers with terms or acronyms that are used in the rule. However, if a term is defined within the text of the rule, then it is not included in the definitions section. The terms and acronyms presented in the definitions section are as follows:

Election means a written statement signed by a beneficiary or the beneficiary's legal representative indicating the beneficiary's choice to receive nonmedical care or treatment for religious reasons. The term is specific to the section 4454 provisions: it is the new process by which a beneficiary elects to choose RNHCI services rather than other covered medical services.

Excepted medical care means medical care that is received involuntarily or required under Federal, State, or local laws. It is a new term specific to the provisions implementing section 4454 and is intended to identify the kinds of medical services that can be provided to a beneficiary with an election for RNHCI services without revoking the election.

FFY is the acronym for the Federal fiscal year, which is the period used in calculating budget figures for the RNHCI program.

Medical care or treatment means health care furnished by or under the direction of a licensed physician that can involve diagnosing, treating, or preventing disease and other damage to the mind and body. It may involve the use of pharmaceuticals, diet, exercise, surgical intervention, and technical procedures.

Nonexcepted medical care means medical care, other than excepted medical care, that is sought by or for a beneficiary who has elected religious nonmedical health care institution services. It is a new term specific to the provisions implementing section 4454 and is intended to define the kinds of medical services that, if received by a beneficiary who has previously elected RNHCI services, would revoke the individual's election of services.

Religious nonmedical care or religious method of healing means health care furnished under established religious tenets that prohibit conventional or unconventional medical care for the treatment of a beneficiary. It is a term specific to the provisions implementing section 4454 and defines a specific approach to health care management.

RNHCI stands for ''religious nonmedical health care institution'' (as defined in section 1861(ss)(1) of the Act).

Religious nonmedical nursing personnel means individuals who are grounded in the religious beliefs of the RNHCI, trained and experienced in the principles of nonmedical care, and formally recognized as competent in the administration of care within their religious nonmedical health care group. The term is specific to the provisions implementing section 4454 and defines a specific group of health care workers.

3. Requirements for Coverage (§ 403.720)

In order for a Medicare or Medicaid provider to meet the definition of an RNHCI, it must satisfy the ten qualifying provisions as contained in new section 1861(ss)(1) of the Act, which are simply restated in the rule. While the requirements contained in sections 1861(ss)(1)(B) (lawful operation), (G) (ownership by or in a provider of medical services), and (H) (utilization review) of the Act are explicitly addressed in the Medicare conditions of participation, it is essential that a facility meet all ten elements to qualify as an RNHCI for both the Medicare and Medicaid programs. Section 1861(ss)(1) of the Act states that an RNHCI means an institution that:

(a) Is described in subsection (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under subsection (a) of that section. The inability to either gain or retain this

status will disqualify an institution from participation as an RNHCI.

(b) Is lawfully operated under all applicable Federal, State, and local laws and regulations. Federal law supersedes State and local laws unless the State and local requirements are more stringent than the Federal requirements.

(c) Furnishes only nonmedical nursing items and services to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical services would be inconsistent with their religious beliefs. The religious component of the healing is not covered by Medicare or Medicaid.

(d) Furnishes nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of these patients. This care frequently involves: assistance with activities of daily living; assistance in moving, turning, positioning, and ambulation; meeting nutritional needs; and comfort and support measures.

(e) Furnishes nonmedical items and services to inpatients on a twenty-four hour basis.

(f) Does not furnish, on the basis of its religious beliefs, through its personnel or otherwise, medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients.

(g) Is not owned by, under common ownership with, or has an ownership interest of five percent or more in, a provider of medical treatment or services, and is not affiliated with a provider of medical treatment or services, or with an individual who has an ownership interest of five percent or more in, a provider of medical treatment or services. For purposes of this requirement, an affiliation does not exist in the circumstances described in section 1861(ss)(4)of the Act or § 403.738(c).

(h) Has in effect a utilization review plan that:

• Provides for review of admissions to the institution, of the duration of stays, of cases of continuous extended duration, and of the items and services furnished by the institution.

• Requires that the reviews be made by an appropriate committee of the institution that includes the individuals responsible for overall administration and for supervision of nursing personnel at the institution.

• Provides that records be maintained of the meetings, decisions, and actions of the committee.

• Meets other requirements as the Secretary finds necessary to establish an effective utilization review plan.

(i) Provides information the Secretary may require to implement section 1821 of the Act, including information relating to quality of care and coverage determinations.

(j) Meets other requirements the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution. These requirements are the conditions of participation in this subpart. The RNHCI must meet or exceed the conditions of participation in order to qualify as a Medicare provider. The conditions of participation will be discussed individually in section III.A.5. of this preamble. The RNHCI must also have a valid provider agreement with HCFA.

In addition to the above requirements, section 4454 of BBA'97 added section 1821 to the Act, establishing conditions of coverage for RNHCI services. Section 1821(a) of the Act requires that as a condition for Part A Medicare coverage:

• The beneficiary must have a condition that would qualify under Medicare Part A for inpatient hospital services or extended care services furnished in a hospital or skilled nursing facility that is not an RNHCI.

When a Medicare beneficiary has an effective election on file with us but does not have a condition that would qualify for Medicare Part A inpatient hospital or post-hospital extended care services if the beneficiary were an inpatient of a hospital or a resident of an SNF that is not an RNHCI, then services furnished in a RNHCI are not covered by Medicare. A Medicare claim for services that were furnished to that beneficiary would be treated as a claim for uncovered services. If the beneficiary only needs assistance with activities of daily living, then the beneficiary's condition could not be considered as meeting the Medicare Part A requirements.

• The beneficiary must have a valid election in effect to receive RNHCI services.

A beneficiary who meets all other applicable requirements and who has in effect a valid election to receive services in an RNHCI is eligible for coverage of those services in an RNHCI.

If no valid election is filed or the election has been revoked and no new election is in effect, the beneficiary does not have Medicare coverage for services furnished in an RNHCI. Consequently, a Medicare claim for services furnished to such a beneficiary would also be treated as a claim for uncovered services.

• The RNHCI may not accept a patient as a Medicare or Medicaid beneficiary after the sunset provision (§ 403.756) is implemented unless the patient has an election in effect prior to January 1 of the year in which the sunset provision is implemented. A claim filed for payment for services furnished to a patient with no valid election in effect before January 1 of the year the sunset provision is implemented would be denied.

• The RNHCI must, after reasonable investigation, determine that the beneficiary has not received nonexcepted medical treatment that would have caused his or her election to be revoked. We believe that the RNHCI is in the best position to gain information from the patient about health care incidents that may have occurred since first signing an election statement that might change the election status.

Examples:

(a) During the admission interview the RNHCI became aware that the beneficiary had been in an accident in which he or she suffered lacerations and contusions and was massively confused when transferred to a local emergency room. The emergency room staff controlled the bleeding and completed repair of the lacerations and initiated a neurological assessment before the patient's religious preferences were known. This is considered excepted medical care since the patient was not mentally competent to refuse the initiation of medical care and did not voluntarily seek medical attention. Receipt of excepted care does not revoke the beneficiary's election for RNHCI services.

(b) During the admission interview the RNHCI becomes aware that the beneficiary had visited a chiropractor to gain relief from persistent back pain. This chiropractor visit is considered nonexcepted care since the beneficiary voluntarily sought Medicare covered medical care, which effectively revokes the election for RNHCI services.

If the election has been revoked, it means the beneficiary and RNHCI are responsible for the cost of services that are denied by Medicare.

4. Valid Election Requirements (§ 403.724)

The new section 1821(b) of the Act addresses the issues involved in beneficiary election of RNHCI services. None of the provisions in this section existed prior to the passage of BBA'97.

(a) General Requirements

(i) The election must be a written statement that includes the following statements:

• The beneficiary is conscientiously opposed to acceptance of nonexcepted medical treatment as defined in § 403.702. This is a statutory requirement that is restated in the rule.

• The beneficiary acknowledges that the acceptance of nonexcepted or conventional medical treatment is inconsistent with his or her sincere religious beliefs. This is a statutory requirement that is restated in the rule.

• The beneficiary acknowledges that the receipt of nonexcepted medical treatment constitutes a revocation of the election and may limit further receipt of services in an RNHCI. We believe that it is essential that the election indicate the beneficiary's understanding as to what acts on his or her part could revoke the election.

• The beneficiary acknowledges that the election may be revoked by submitting a written statement to HCFA. We believe that it is essential that the election indicate the beneficiary's understanding as to how he or she can revoke the election.

• The beneficiary acknowledges that revocation of the election will not prevent or delay access to medical services available under Medicare Part A in facilities other than RNHCIs. We believe that it is essential that the election indicate the beneficiary's understanding that at no time will he or she be denied access to Medicare Part A services.

(ii) The election must be signed and dated by the beneficiary or his or her legal representative. We believe the election for RNHCI services can only be made by a Medicare beneficiary or his or her legal representative. An election may not be made by or on behalf of an individual prior to reaching Medicare eligibility and beneficiary status. The election may not be made for an individual by a friend or family member who is not the legal representative of the beneficiary.

(iii) The election must be notarized. We are requiring that election statements be signed by the beneficiary or his or her legal representative and notarized. We believe that this is necessary to assure the identity and relationship of the parties involved and the beneficiary's understanding of the content of the election statement. An election statement may neither be predated to seek coverage and payment for services furnished prior to the date of an election nor post-dated to meet the time limitations on making a new election imposed by an earlier revocation (see § 403.724(b)). We believe that the beneficiary must be eligible to enter an election at the time the document is signed and notarized.

(iv) The RNHCI must keep a copy of the election statement on file and submit the original to HCFA with any information obtained regarding prior elections or revocations. The maintenance of a double entry system will assure the accuracy of a beneficiary's status and eligibility for RNHCI services. While we require the receipt of an original copy of the election in order to complete the filing process, there is nothing that precludes the signing of multiple originals at the same time. The provider or the beneficiary and his or her legal representative may be more comfortable in having an original rather than a copy for future reference. Having an original of the election may be particularly important to beneficiaries who feel they might relocate at some future date and may not be readmitted to the same RNHCI.

(v) The election becomes effective on the date it is signed. The dating of the election is required to establish a history that documents the beneficiary's eligibility for RNHCI services.

(vi) The election remains in effect until revoked. Since there is no time limitation on the term of the election statement, it will remain effective until revoked by the written request of the beneficiary or action of the beneficiary in seeking nonexcepted medical care as defined in § 403.702.

(b) Revocation of Election

(i) A beneficiary's election is revoked by one of the following:

• The beneficiary receives nonexcepted medical treatment for which Medicare payment is requested. Under section 1821(b)(3) of the Act, an election by a beneficiary will be revoked if the beneficiary receives nonexcepted medical treatment for which Medicare payment is sought.

Nonexcepted medical treatment in this rule refers to any medical care or treatment other than excepted medical treatment.

Examples of nonexcepted medical care could include but are not limited to the following:

+ A beneficiary receiving medical diagnosis and/or treatment for persistent headaches and/or chest pains.

+ A beneficiary in an RNHCI who is transferring to a community hospital to have radiological studies and the reduction of a fracture.

+ A beneficiary with intractable back pain receiving medical, surgical, or chiropractic services.

• Under section 1821(b)(3) of the Act, an election by an individual may also be revoked voluntarily by notifying us in writing.

(ii) The receipt of excepted medical treatment as defined in § 403.702 does not revoke the election made by a beneficiary. Examples of excepted services include but are not limited to the following:

+ A beneficiary who receives vaccinations required by a State or local jurisdiction. This is compliant behavior to meet government requirements and not considered as voluntarily seeking medical care or services.

+ A beneficiary who is involved in an accident and receives medical attention at the accident scene, or in transport to a hospital, or at the hospital before being able to make their beliefs and wishes known.

+ A beneficiary who is unconscious and receives emergency care and is hospitalized before regaining consciousness or being able to locate his or her legal representative.

(c) Limitation on Subsequent Elections

(i) If a beneficiary's election has been made and revoked twice, the following limitations on subsequent elections apply:

• The third election is not effective until 1 year after the date of the most recent revocation.

• Any succeeding elections are not effective until 5 years after the date of the most recent revocation.

Section 1821(b)(4) of the Act provides limitations on subsequent elections. An individual may file an election and revoke it twice with no affect on benefits paid under Medicare Part A for services furnished in an RNHCI. However, once an individual's election has been made and revoked twice, the next (third) election may not become effective until the date that is one year after the date of the most recent revocation. Any succeeding election (fourth or later) will not become effective until the date that is five years after the date of the most recent revocation. While there are progressive waiting periods for an individual to file an election following the second revocation, there is never a waiting period for the individual to be able to receive covered medical services as a Medicare beneficiary.

(ii) HCFA will not accept as the basis for payment of any claim any election filed on or after January 1 of the calendar year in which the sunset provision described in § 403.756 becomes effective. Section 1821(d) of the Act provides that if the sunset provision becomes effective we may not accept any more elections for RNHCI services. The sunset provision is discussed in detail in section III. A.9. and § 403.756 of this rule.

5. Conditions of Participation

(a) Patient Rights (§ 403.730)

Under section 1861(ss)(1)(J) of the Act, we may accept an RNHCI as a participating Medicare provider only if, in addition to meeting the specific requirements of that section, it meets other requirements we find necessary in the interest of patient health and safety.

Patient health and safety cannot be protected simply by avoiding obvious risk factors such as safety hazards or inadequate staff. Therefore, patient rights dealing with freedom from physical, psychological, and verbal abuse, misappropriation of property, and physical restraints are examples of direct protections of patients' physical and emotional health and safety. Successful restoration of health depends on many factors related to emotional health, including a general feeling of well-being. We believe patient health and safety can be protected only if the RNHCI delivers patient care in an atmosphere of respect for the individual patient's comfort, dignity, and privacy. Therefore, we are setting forth a condition of participation that recognizes explicitly that the RNHCI must protect and promote certain patient rights.

The patients' rights condition at § 403.730 has four standards. The first standard requires that the RNHCI inform each patient of his or her rights before furnishing care. We are not prescribing a specific method by which a RNHCI should notify each patient of his or her rights, because we believe that each RNHCI should implement a policy that reflects its specific manner of operations and minimizes administrative burden. This standard also requires that a RNHCI have a process for prompt resolution of grievances and that it inform patients of this process. The process must include a specific person within the facility whom a patient can contact to file a grievance. In addition, the facility must provide patients with contact information for appropriate State and Federal resources.

The remaining three standards (Exercise of rights, Privacy and safety, and Confidentiality of patient records) under the patient rights condition establish a minimum set of required patient rights. In developing these provisions, we closely examined the regulations concerning patient rights for other provider types, such as nursing homes and home health agencies. Because the nature of patient care varies among provider types, we are including only those patient rights that we believe are appropriate and necessary in the religious nonmedical setting. We are requiring that a patient have the following rights:

- The right to be informed of his or her rights, to participate in the development and implementation of his or her plan of care, and to make decisions regarding his or her care.
- The right to formulate advance directives and to have those directives followed.
- The right to privacy and to receive care in a safe setting.
- The right to be free from verbal, psychological, and physical abuse, and misappropriation of property.
- The right to confidentiality of his or her care records.
- The right to be free from the use of restraints.
- The right to be free from involuntary seclusion.

We believe these patient rights are necessary in the interest of patient health and safety. We note that the rights regarding advance directives may seem superfluous for those patients seeking nonmedical care, but we believe that a patient always has the right to change his or her mind regarding the method of health care he or she chooses. Advance directives are particularly important for a patient choosing to rely solely upon a religious nonmedical method of healing as it makes his or her wishes known in the event he or she becomes incapacitated and unable to make health care choices.

HCFA policy in HCFA's nursing home interpretive guidelines defines restraints as any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the patient's body that the individual cannot remove easily that restricts freedom of movement or normal access to one's own body. Physical restraints include, but are not limited to: Using bed rails to keep a patient from voluntarily getting out of bed (as opposed to enhancing mobility while in bed); tucking in a sheet so tightly that a bed bound patient cannot move; using wheelchair safety bars to prevent a patient from rising from the chair; placing a patient in a chair that prevents rising; and placing a patient in a wheelchair so close to a wall that the wall prevents the patient from rising. Bed rails may be used either as restraints or to assist in mobility and transfer of a patient only. The use of bed rails as restraints is prohibited unless they are necessary to treat a patient's medical symptoms.

Restraint use may constitute an accident hazard and professional standards of practice have eliminated the need for physical restraints except under limited medical circumstances. Potential negative outcomes for restraint use include incontinence, decreased range of motion, and decreased ability to ambulate, symptoms of withdrawal or depression, reduced social contact, and death. Studies have shown that bed rails as restraints add risk to the patient by potentially increasing the risk of more significant injury from a fall from a bed with raised rails than from a fall from a bed without bed rails. There are other, safer methods to reduce the risk of falls from a bed such as lowering the bed or putting the mattress on the floor and frequent staff monitoring. Therefore, if a cognizant, able patient requests bed rails to assist in mobility, it is not considered a restraint. If, on the other hand, a legal representative requests bed rails for a bed bound relative with no medical need for bed rails, then it is considered a restraint. The representative cannot give permission to use restraints, including bed rails for ''safety,'' if it is not necessary to treat the patient's medical symptoms. Restraining someone to keep him or her ''safe'' is limited to circumstances in which the patient has medical symptoms and a physician's order that warrant the use of a restraint (see nursing home regulations and interpretive guidelines). Since the RNHCI recognizes neither medical symptoms or physicians (and it is prohibited to do so by the Act), there is no reason that a restraint may be used in a RNHCI.

HCFA has worked for many years to reduce restraint use and is very proud of the progress it has made in doing so. Not only would allowing restraints in RNHCIs be counterproductive to their mission and niche, but it would be utterly contrary to the standards that we have developed in conjunction with other stakeholders in health care that would permit restraints only with a medical diagnosis and medical orders.

(b) Quality Assessment and Performance Improvement (§ 403.732)

We are requiring a participating RNHCI to implement a continuous effort to improve its performance, incorporating an approach that focuses on the RNHCI's efforts to improve patient care and satisfaction. Specifically, we are requiring each RNHCI to develop, implement, maintain and evaluate an effective quality assessment and performance improvement program. We are not prescribing specific methodologies to achieve this objective. Each RNHCI is free to pursue quality improvement in a manner best suited to its individual characteristics and resources. However, every RNHCI is responsible for implementing actions that result in

performance improvements across the full range of the RNHCI's services to patients. Also, we are requiring an RNHCI's quality assessment and performance improvement program to track performance to ensure that improvements are sustained over time.

The quality assessment and performance improvement condition (§ 403.732) contains two standards, the first addressing the scope of the program and the second concerning the responsibility for the program. The first standard requires that an RNHCI's quality assessment and performance improvement contain the minimum items that must be in the RNHCI's program. Specifically, we require that the RNHCI objectively evaluate the following areas that we believe are critical: access to care, patient satisfaction, staff performance, complaints and grievances, discharge planning activities, and safety issues, including physical environment. We believe that these items comprise the fundamental building blocks of a well-managed RNHCI.

Additionally, § 403.732 states that for each area listed above, and any other areas the RNHCI includes, the RNHCI must define and describe quality assessment and performance improvement activities that are appropriate for the services furnished by or in the RNHCI.

Because of the unique nature of the care furnished in RNHCIs, we are not prescribing a specific definition of quality or outlining what activities are appropriate to meet this standard. However, we welcome any comments on whether the regulations should include some prescribed methods and some definitions on the nature of quality in an RNHCI.

Additionally, the RNHCI must measure, analyze, and track performance that the RNHCI adopts or develops that reflects processes of care and RNHCI operations. By ''measure'' we mean that the RNHCI must use an objective means of tracking performance that enables the RNHCI to identify differences in performance between two points in time. For an RNHCI to consider that it is ''doing better'' is a subjective statement and is not an acceptable measure. There must be some identifiable units of measurement that a knowledgeable person can distinguish as evidence of change. Not all objective measures must be shown as valid and reliable (that is, subjected to scientific development) to be usable in improvement projects, but they will at least identify a starting point and an ending point stated in objective terms that relate to the objectives and outcomes of the improvement projects. However, rather than mandating specific performance measures, we are allowing each RNHCI the flexibility to identify its own measures of performance for the activities it identifies as priorities in its quality assessment and performance improvement strategy. We are also requiring that the RNHCI inform the patients of the scope and responsibilities of the quality assessment and performance improvement program.

We also are requiring in § 403.732 that an RNHCI set priorities for performance improvement, based on the prevalence and severity of the identified problem(s). Lastly, this standard requires the RNHCI to take action to correct problems identified through its quality assessment and performance improvement program. We envision an RNHCI meeting this requirement by conducting an analysis when adverse outcomes are identified and then taking action to enact long-term correction and improvement of the identified problems.

The second standard, Program responsibilities, requires that the RNHCI's governing body ensure that there is an effective quality assessment and performance improvement program. We are requiring that the governing body and administration officials be responsible for ensuring that the quality assessment and performance improvement program addresses identified priorities and be responsible for implementing and evaluating improvements. Additionally, the standard requires that all programs, departments, and functions be a part of the RNHCI's quality assessment and performance improvement program. This also includes any services carried out under contract.

(c) Food services (§ 403.734)

This condition has two standards. The first standard, Sanitary conditions, requires that food provided to patients be obtained, stored, prepared, distributed and served under sanitary conditions. We believe that it is necessary for any acceptable food services program to serve food that meets these criteria. The other standard requires that meals be prepared which furnish adequate nutrition based on the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. We believe this standard is necessary to protect the health and safety of patients in an RNHCI and that the Board's guidelines can appropriately be used here because they represent accepted practices that are in widespread use in other providers. We are not requiring therapeutic diets or parenteral nutrition as these are considered medical practices.

Additionally, this standard requires that food furnished be palatable, attractive and served at the proper temperature. The RNHCI is also required to offer substitutes of similar nutritional value to patients who refuse food served or desire alternative choices. All meals are to be furnished at regular times comparable to normal mealtimes in the community and in no instance may there be more than 14 hours between a substantial evening meal and breakfast the next day. Additionally, there RNHCI must offer snacks at bedtime.

(d) Discharge Planning (§ 403.736)

Under this condition, we are requiring the RNHCI to implement a discharge planning process to assure that appropriate post-RNHCI services are obtained for each patient, as necessary. The discharge planning process will apply to services furnished by the RNHCI to ensure a timely and smooth transition to the most appropriate type of setting for the patient. To be compatible with other regulations for other providers, we are dividing the condition into several standards—Discharge planning evaluation, Discharge plan, Transfer or referral, and Reassessment.

The first standard concerns the identification of patients in need of evaluation. We are requiring an RNHCI to assess the need for a discharge plan for patients likely to suffer any adverse consequences if there is no planning and for other patients upon their request. The discharge planning process must be initiated when the patient is admitted to the facility. Additionally, we are requiring that discharge planning be initiated upon the request of the patient or a legal representative acting on his or her behalf. The discharge planning evaluation must include an assessment of the possibility of a patient needing services after discharge and the patient's capacity for self-care or care in the environment from which he or she entered the RNHCI. We are requiring that the evaluation be completed on a timely basis and included in the patient's rights record, thus ensuring that appropriate arrangements for post-RNHCI care are made before discharge and avoiding unnecessary delays. We believe these requirements are necessary because they emphasize the need for prompt action to assess and act on the discharge planning needs of the patients.

The second standard requires that qualified and experienced personnel develop the discharge plan and that the RNHCI be responsible for the implementation of the plan. We assume this plan to be thoughtful and tailored to each individual's needs. A statement such as ''the patient was discharged to XYZ facility'' is not considered a discharge plan. We assume the plan would provide recommendations and arrangements for placement, either in the community or in the environment from which the patient was admitted. The RNHCI is also responsible for reassessing each individual's plan for factors that may affect the appropriateness of the plan. The patient or the legal representative must be informed and prepared for any post-RNHCI care. Additionally, the RNHCI must inform the patient or legal representative of his or her ability to choose among any (medical facilities or otherwise) participating Medicare providers that will respect the preferences of the patient and family.

The third standard requires the RNHCI to transfer or refer patients in a timely manner to another facility (including a medical facility, if requested by the beneficiary or his or her legal representative), in accordance with § 403.730(b)(2). The RNHCI must notify the patient of his or her rights to make decisions about care, including transfers and discharges, and must involve the patient in decisions about the transfers and discharges. Furthermore, the patient always has the choice to revoke his or her election for RNHCI care (in accordance with the revocation provisions in § 403.724(b)) in order to receive care in a traditional medical setting. While we expect that all transfers and referrals will be made in a timely manner, we expect that RNHCIs will act as expeditiously as needed to implement transfers or referrals to a medical facility that are requested by a patient after the patient's revokes his or her election for RNHCI care.

The last standard requires the RNHCI to reassess its discharge planning process on an ongoing basis. This reassessment must include reviewing a sampling of discharge plans and follow-up with the patient, if necessary, to ensure that the RNHCI was responsive to his or her discharge needs.

(e) Administration (§ 403.738)

The first standard is the same as section 1861(ss)(1)(B) of the Act, which requires the RNHCI to be operated under all Federal, State, and local laws. The administration condition requires the RNHCI to have written policies regarding organization, services, and administration. This condition consists of three standards—Compliance with Federal, State, and local laws, Governing body, and Ownership and disclosure.

In addition, we are requiring that the RNHCI meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color or national origin (45 CFR part 80); nondiscrimination on the basis of handicap (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination of the provider agreement or the suspension of, or the refusal to grant or continue, payment of Federal funds to an RNHCI.

The second standard, Governing body, described in § 403.738(b), requires that the RNHCI appoint a governing body, or a person designated to function as a governing body, to be responsible for establishing and implementing policies regarding the RNHCI's management and operation. We assume that the governing body will create an environment that ensures high quality care that is consistent with patient needs and the effective administration of the RNHCI.

We want to emphasize that the governing body is responsible for the entire operation of the RNHCI, including contracts, arrangements, and the appointment of an administrator. While the governing body requirements may necessitate the implementation of certain processes, we believe they are essential to ensuring that the RNHCI with which HCFA has entered into a provider agreement is, in fact, able to ensure patient health and safety. To ensure this accountability, we have specified the responsibility of the governing body for establishing and implementing all policies regarding the RNHCI's management and operation. We believe the performance of these basic organizational functions is necessary for a patient-centered environment.

The third standard states the provisions of sections 1861(ss)(1)(G)(I) and 1861(ss)(4) of the Act, which permit ownership interests and affiliations if they meet certain criteria. Under the third standard, a RNHCI may not be owned by, be under common ownership with, or have an interest in a provider of medical treatment services. Additionally, the RNHCI may not be affiliated with a provider of medical treatment or services or affiliated with an individual who has an ownership interest in a provider of medical treatment or services. Permissible affiliations are one of the following:

- An individual serving as an uncompensated director, trustee, officer, employee, or other member of the governing body of the RNHCI, or
- An individual who is a director, trustee, officer, employee, or staff member of a RNHCI having a family relationship with an individual who is affiliated with (or has an ownership interest in) a provider of medical treatment or services, or
- An individual or entity furnishing goods or services as a vendor of medical treatment to both providers of medical treatment or services and RNHCIs.

We have included the requirement that the RNHCI also comply with ownership disclosure requirements of §§ 420.206 and 455.104 of 42 CFR Chapter 4.

In order to adequately monitor the potential for fraud and abuse in the program, we have added an additional requirement that the RNHCI also furnish written notice to HCFA if a change occurs in any of the following:

- Persons with ownership or controlling interest.
- The officers, directors, agents or managing employees.
- The religious entity, corporation, association, or other company responsible for the management of the RNHCI.
- The administrator or director of nonmedical nursing services.

(f) Staffing (§ 403.740)

Under the condition for staffing we are requiring the RNHCI to have qualified experienced personnel present in sufficient numbers to meet the specific needs of the patients. The overall goal of this condition is to ensure that all the RNHCI's areas, not just those directly involved with patient care, are staffed with sufficient, qualified personnel. We believe an efficient and well-run institution is the product of all staffing areas working to improve the overall quality of the facility.

This condition is composed of three standards which support the objective that the RNHCI be staffed with qualified personnel. The first of these standards, Personnel qualifications, concerns qualifications of those individuals who furnish care to patients. We want to emphasize that the standard applies to all such individuals, whether or not they are employed or compensated by the RNHCI or, if they are compensated,

whether salaried or contractors. This standard reflects our view that the conditions of participation for RNHCIs should not prescribe specific Federal personnel requirements for nonmedical personnel or attempt to limit or specify the functions they may perform.

The next standard, Education, training, and performance evaluation, is intended to ensure that the RNHCI staff are aware of their job responsibilities and are capable of meeting them. We are requiring that personnel receive education or training needed to help them achieve this goal. This education may include training that is related to the individual job description, performance expectations, applicable organizational policies and procedures, and safety responsibilities. We are emphasizing that under this standard, the RNHCI is responsible only for ensuring that the individual adequately knows the nature of his or her specific job duties. The individual is responsible for his or her own basic education, and for any continuing education needed to retain specific certification(s), unless the RNHCI chooses to assume this responsibility as part of the staff development process.

The second part of this standard requires all personnel in the RNHCI, as well as contractors and individuals working under arrangement, to demonstrate in practice the skills and techniques necessary to perform their assigned duties and responsibilities. It is not enough that the RNHCI demonstrates that staff has received training, or indicate how much training has been offered or provided. For effective health and safety of the patients, it is critical that all staff use the skills and techniques necessary to do their jobs correctly.

Lastly, this standard requires the RNHCI to evaluate the performance of the staff and implement measures for improvement as needed. We assume that all staff, whether directly or indirectly involved in patient care, will perform their duties competently and efficiently and it is the RNHCI's responsibility to ensure that the staff meet these expectations on an ongoing basis.

(g) Physical Environment (§ 403.742)

As with other providers, we expect an RNHCI to maintain a physical environment that ensures the safety of the patients, staff, and the public. We developed the physical environment standards based upon our experiences with other providers participating in the Medicare or Medicaid program. Section 403.742 consists of two standards, Buildings and Patient rooms. We have set forth requirements that we believe are fundamental to effective management of an RNHCI's physical environment.

The first standard, Buildings, requires that the condition of the physical plant and the overall environment be developed and maintained so that the safety and well-being of the patients are ensured. These requirements state that there must be emergency power for emergency lights and for fire detection, alarm, and extinguishing systems; procedures for proper storage and disposal of trash; proper ventilation, light, and temperature control throughout the RNHCI; a written disaster plan to address loss of power, water, and sewage; facilities for emergency gas and water supply; an effective pest control program; a preventive maintenance program for essential equipment; and a working call system for patients to summon aid or assistance.

The second standard, Patient rooms, requires that all patient rooms be designed and equipped for the adequate care, comfort and privacy of the patient. We have designated that each room accommodate no more than four patients and measure at least 80 square feet per patient if a multiple patient room, and 100 square feet per patient for a single patient room. We may permit variances in the standards relating to room size on a case-by-case basis if these variances are intended for the special needs of the patients and will not adversely affect the patients' health or safety. Additionally, each room must have direct access to an exit corridor, have at least one window to the outside, and have a floor at or above grade level. Each room must be designed or equipped to ensure full visual privacy for each patient.

The rest of the patient rooms standard concerns what furnishings the RNHCI must provide each patient. The RNHCI is responsible for furnishing a separate bed of the proper size and height outfitted with a clean, comfortable mattress and bedding appropriate for the weather and climate. Functional furniture appropriate for the patient's needs must also be provided including individual closet space with clothes racks and shelves that are accessible to the patient.

(h) Life Safety From Fire (§ 403.744)

The Life Safety Code, developed by the National Fire Protection Association, serves as the basis for many Federal, State, and local fire safety regulations. The Life Safety Code is a nationally recognized standard that includes fire protection requirements necessary to protect patients in health care facilities. The Life Safety Code covers construction, fire protection, and occupancy features needed to reduce danger to life from fire, smoke and fumes. The code is applied to both new and existing buildings. The National Fire Protection Association revises the code periodically to reflect advancements in fire protection.

Under the condition we are requiring that an RNHCI comply with the 1997 edition of the Life Safety Code that we have incorporated by reference. We are adopting the 1997 edition of the code because we believe that it provides the highest available level of protection for patients, staff and the public. The regulations also provide that we may waive specific provisions of the code that would result in unreasonable hardship upon an RNHCI, if the waiver does not adversely affect patient health and safety. Additionally, the regulations permit an RNHCI to meet a fire and safety code imposed by State law if HCFA finds that the State imposed code adequately protects patients.

The balance of the condition requires that an RNHCI have written fire control plans that contain provisions for prompt reporting of fires; protection of patients, staff and the public; evacuation; and cooperation with the fire fighting authorities. Other written evidence must be maintained by the RNHCI that documents the regular inspection and approval by the State or local fire agency.

(i) Utilization Review (§ 403.746)

Section 1861(ss)(1)(H) of the Act requires an RNHCI to have in effect a utilization review plan. Each RNHCI must have in effect its own utilization review plan, including the establishment of a utilization review committee to carry out the functions of the program.

Under the first standard, we are requiring that the UR plan contain written procedures for evaluating admissions, the duration of care, the need for extended care, and the items and services furnished by the RNHCI.

The second standard provides for the establishment of a UR committee which will be responsible for all functions of the UR program. We expect the utilization review committee to be responsible for evaluating each admission to the facility to ensure that the admission is necessary and appropriate. We are requiring that the committee consist of the governing body, the administrator or other individual responsible for the administration of the RNHCI, the nursing supervisor, and other staff as

appropriate. The committee will evaluate the estimated duration of care and, in the event of an extended stay, review the necessity and appropriateness of the continued stay. We assume that the committee will establish criteria and select norms to be used in determining the necessity of admissions, extended stays and other services offered by or in the facility as well as an ongoing review of these items. If the committee cannot establish necessity or appropriateness of care, we assume that the RNHCI will recommend that the patient's admission, extended stay, or other services not be approved for payment.

Unlike other providers participating in the Medicare and Medicaid programs, RNHCIs do not offer any medical treatments or procedures, conventional or otherwise. Therefore, we do not believe it is appropriate to prescribe a specific method or form for the utilization review plan. While we have initially decided that allowing flexibility for each RNHCI in the process of development and implementation of a utilization review plan in a RNHCI will aid in more efficient and appropriate delivery of services, we welcome comments on whether a more prescriptive method should be required.

6. Estimate of Expenditures and Adjustments (§ 403.750)

Section 1821(c)(1) of the Act requires us to estimate the level of Medicare expenditures for RNHCI benefits before the beginning of each federal fiscal year (FFY) starting in FFY 2000. In addition, beginning with FFY 1999, section 1821(c)(3) of the Act requires us to monitor the expenditure level for RNHCI services provided in each FFY.

The estimation of expenditure levels is necessary to determine if adjustments are required to limit payments to RNHCIs in the following FFY. In addition, the estimate is used to determine if the sunset provision is implemented.

The estimation of expenditures will take into consideration factors that could impact on this budget projection. These factors include, but are not limited, to projection of new facilities, the number of beneficiaries making elections under this provision, trends in discharges, length of stays, inflation, and other events that could affect future expenditures. As required by section 1861(e) of the Act, we will issue an annual Report to Congress, reviewed by OMB, as the vehicle for reporting potential need to make adjustments in payments and proposed mechanisms to be employed in order to stay within the established expenditure trigger level.

The first objective of the yearly estimate is to determine if payment adjustments are required during the FFY to prevent the level of estimated expenditures from exceeding the ''trigger level.'' The trigger level is defined in section 1821(c)(2)(C) of the Act as the ''unadjusted trigger level'' for an FFY increased or decreased by the carry forward from the previous FFY. Section 1821(c)(2)(C)(ii)(I) of the Act establishes the unadjusted trigger level at $20,000,000 for FFY 1998, which is also the trigger level for that year. To calculate each succeeding unadjusted trigger level for an FFY, it is necessary to adjust the unadjusted trigger level from the prior year by the average percentage increase in the consumer price index for the 12-month period ending with July preceding the beginning of the next FFY. To calculate the trigger level for the current FFY, the unadjusted trigger level (after being modified by the consumer price index for the current year) is either increased or decreased by the carry forward from the previous FFY; that is, by the amount by which expenditures for RNHCI services either exceeded or fell short of the trigger level for that previous FFY.

We believe that adhering to the terminology that appears in the statute to explain the calculation of the trigger level might be confusing because it requires an unadjusted trigger level to be adjusted twice, once by the consumer price index and once by the carry forward. Therefore, to help clarify our explanation of the calculation of the trigger level, we use a new term to identify the unadjusted trigger level from the prior FFY. The new term, ''base year amount,'' is the unadjusted trigger level from the previous FFY. To calculate the unadjusted trigger level for the current FFY, the base year amount is adjusted by the average consumer price index. This unadjusted trigger level is then increased or decreased by the carry forward to compute the trigger level for the current FFY.

To help explain the statutory provision, we have prepared the following example.

Example (1). Trigger Level Calculation. This example shows the calculation of the trigger level starting with FFY 1998. For FFY 1998, the unadjusted trigger level and the trigger level are the same. The initial unadjusted trigger level is established in the statute at $20,000,000 for FFY 1998. For FFY 1999, the base year amount is the unadjusted trigger level from the prior year, $20,000,000. The unadjusted trigger level for 1999 is $20,700,000, which is the base year amount ($20,000,000) increased by the multiplication of the base year amount by the consumer price index of 3.5 percent ($20,000,000 times .035 = $700,000). For FFY 1999 the trigger level equals the unadjusted trigger level since there is no carry forward. For FFY 2000, the base year amount is $20,700,000, which is the unadjusted trigger level from the prior year.

Fiscal year	Base year amount	CPI	Unadjusted trigger Level	Trigger level	Actual outlays	Carry forward
Column	1	2	3	4	5*	6
1998	$-0-	N/A	$20,000,000	$20,000,000	Not Required	$-0 -
1999	20,000,000	3.5%	20,700,000	20,700,000	$8,500,000	12,200,000
2000	20,700,000	3.5%	21,424,500	33,624,500	16,000,000	17,624,500
2001	21,424,500	3.5%	22,174,358	39,798,858	20,000,000	19,798,858
2002	22,174,358	3.5%	22,950,460	42,749,318	30,000,000	12,749,318
2003	22,950,460	3.5%	23,753,726	36,503,044	40,000,000	(3,496,956)
2004	23,753,726	3.5%	24,585,107	21,088,151	25,000,000**	(3,911,849)
2005	24,585,107	3.5%	25,445,585	21,533,736	25,000,000**	(3,466,264)
2006	25,445,585	3.5%	26,336,180	22,869,916	25,000,000**	(2,130,084)
2007	26,336,180	3.5%	27,257,946	25,127,862	27,000,000**	(1,872,138)

***Note:** Column 5 actual outlays are for this example only and do not represent a projection of expenditures. These numbers were created solely for this example.

**Adjustments required by section 1861(c)(2) of the Act.

Calculations:

Column 1—Base Year = Prior Year Unadjusted Trigger.

Column 2—CPI = For simplicity, this example uses 3.5% for each year.
Column 3—Unadjusted Trigger = Current base year times one plus the result of the base year times the consumer price index.
FFY 2000—$21,424,500 = $20,700,000 × 1.035 (1+ .035).
Column 4—Trigger Level = Unadjusted triggers level for the current fiscal year plus or minus the carry forward from the prior year.
FFY 2000—$33,624,500 = $21,424,500 + $12,200,000.
Column 6—Carry forward = Trigger level minus actual outlays.
FFY 2000—$17,624,500 = $33,624,500 − $16,000,000.
***Note:** For FFY 2004 adjustments in payments would be imposed to prevent estimated expenditures from exceeding the trigger level of $21,088,151.

Example (2). Trigger Level Calculation—Carry Forward. This example calculates the trigger level when the $50 million limitation on the carry forward applies. For FFY 2003, the trigger level is $62,503,044 and actual outlays were $10 million. The difference is $52,503,044, which is the potential carry forward to the next FFY. However, since this difference is greater than $50 million, the carry forward used to compute the trigger level for FFY 2004 is limited to $50 million. The trigger level for FFY 2004 is $74,585,107, which is computed by adding the unadjusted trigger level of $24,585,107 to the allowed carry forward amount of $50 million.

Fiscal year	Base year amount	CPI	Unadjusted trigger level	Trigger level	Actual outlays	Carry forward
Column	1	2	3	4	*5	6
1998	$-0-	N/A	$20,000,000	$20,000,000	Not Required	$-0 -
1999	20,000,000	3.5%	20,700,000	20,700,000	$8,500,000	12,200,000
2000	20,700,000	3.5%	21,424,500	33,624,500	10,000,000	23,624,500
2001	21,424,500	3.5%	22,174,358	45,798,858	15,000,000	30,798,858
2002	22,174,358	3.5%	22,950,460	53,749,318	15,000,000	38,749,318
2003	22,950,460	3.5%	23,753,726	62,503,044	10,000,000	**52,503,044
2004	23,753,726	3.5%	24,585,107	74,584,107	15,000,000	**59,585,107
2005	24,585,107	3.5%	25,445,585	75,445,585	20,000,000	**55,445,585
2006	25,445,585	3.5%	26,336,180	76,336,180	35,000,000	41,336,180
2007	26,336,180	3.5%	27,257,946	68,594,126	40,000,000	28,594,126

***Note:** Column 5 actual outlays are for this example only and do not represent a projection of expenditures. These numbers were created solely for this example.
** Carry forward limited to $50 million in computing subsequent fiscal years trigger level.

Section 1821 (c)(2)(A) of the Act provides for a proportional reduction in payments for covered RNHCI services when the level of estimated expenditures exceeds the trigger level for any FFY. The reduction is designed to prevent the level of estimated expenditures from exceeding the trigger level for that FFY. However, if actual expenditures surpass the trigger level then the trigger level for the next FFY is decreased by the excess expenditures. Since the excess is a negative carry forward adjustment, it reduces the trigger level for the next FFY beginning with FFY 2004, as shown in Example 1.

In addition to a proportional reduction in payments, section 1821(c)(2)(B) of the Act authorizes us to impose other conditions or limitations to keep Medicare expenditure levels below the trigger level. The statute provides us with authority to decide which type of adjustment to apply but is silent about when to apply a proportional adjustment or when to apply alternative adjustments. Therefore, we have extremely broad authority to decide what type of adjustments to impose.

The rule at § 403.750 follows the statute and provides for imposing either a proportional adjustment to payments or alternative adjustments, depending on the magnitude of the adjustment required to keep the level of estimated expenditures from exceeding the trigger level. To account for any error in the estimation of expenditure levels, the trigger level for the next FFY is adjusted by the carry forward. If expenditures were to exceed the trigger level, the trigger level for the subsequent year must be decreased, resulting in more drastic payment adjustments in future years. We will do this in an attempt to prevent expenditures from exceeding the trigger level for three consecutive years and thus avoid having to implement the sunset provision.

We decided not to list the possible alternative adjustments in the rule. We considered establishing specific alternative adjustments in the regulation but believed this would not provide the flexibility needed to modify services and expenditures that section 1821(c)(2) of the Act requires in a changing environment. If, in any new FFY, the level of estimated expenditures were to exceed the trigger level, and we believe that the proportional adjustment alone would be inappropriate to reduce expenditures, we will consider making alternative adjustments including but not limited to: (1) Not certifying new facilities, (2) limiting Medicare payments to the number of patient stays from the prior year, (3) limiting the days for which Medicare would pay while a beneficiary was an inpatient, or (4) limiting the number of new elections that could be filed for RNHCI benefits. These alternative adjustments are only a few of the possible adjustments that we will consider imposing. We will consider making other adjustments depending on the magnitude of the adjustments required to prevent estimated expenditures from exceeding the trigger level. We will notify RNHCIs of the type or kind of adjustments that we will impose in a given FFY. This notification will take place before the start of the FFY in which the adjustments are to be effective.

7. Payment Provisions (§ 403.752)

(a) Payment to RNHCIs

Sections 1861(e) and (y)(1) of the Act grant us broad authority to construct a payment methodology for RNHCIs. The Congressional committee reports which accompanied this statutory provision reflected the intent of the enactors that we continue to pay facilities likely to qualify under this benefit on an interim basis until the regulations to implement the statute were in place, and we have

done so. The only providers that could qualify as RNHCIs at the time of enactment were Christian Science Sanatoria, and for that reason we decided to continue to pay those facilities based on the methodology under which they had previously been paid; that is, a reasonable cost methodology. We have decided to continue to pay RNHCIs under a reasonable cost methodology to insure a smooth transition to prospective payment, as described below.

We currently regulate Christian Science sanatoria under the regulations described in §§ 412.90 and 412.98. These regulations authorize payments to these facilities under the hospital prospective payment system or, if the facility was excluded from the prospective payment system, under reasonable cost principles. This final rule will formally eliminate § 412.90(c) and § 412.98, and treat all RNHCIs the same for payment purposes. We considered establishing different payment methodologies for inpatient hospital services and post-hospital extended care services furnished in RNHCIs, but have decided not to do so. Since the nonmedical component of both inpatient hospital services and post-hospital extended care services furnished in RNHCIs are similar, and there are no differentiating medical components, we believe it is appropriate to have one payment methodology for both types of services.

We will pay RNHCIs under the same reasonable cost methodology we have used for Christian Science sanatoria. Based on the historical data available to us, Christian Science sanatoria have had average lengths of stay exceeding 25 days, similar to long term care hospitals, and we anticipate that this pattern will continue. The Christian Science sanatoria have all qualified for exclusion from the hospital prospective payment system on this basis. We will pay RNHCIs the reasonable cost of furnishing covered services to Medicare beneficiaries subject to the rate of increase limits in accordance with the provisions in 42 CFR 413.40, which implement section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248).

As will be the case for most types of providers after the implementation of BBA'97, we eventually intend to pay all RNHCIs based on a prospective payment methodology. We are planning to look specifically at the SNF, home health, and rehabilitation hospital PPS systems as models for payment system development. The SNF PPS is resource-based and driven by an assessment instrument that captures both resources and functional status. The home health and rehabilitation hospital PPS also will be resource-based and driven by assessment instruments and functional status. Thus, they appear to have the features necessary to capture the resources needed to provide religious nonmedical care. One key challenge is to identify a system whose classification mechanism can be adapted to use the information available in the RNHCI setting, i.e., functional status and resource use but not diagnosis or other medical information. At this point, we are not sure how that can be achieved fully in any of these settings.

The application of a prospective payment methodology is a multi-step process, most of which is carried out by the fiscal intermediary. That process would require the RNHCI to complete an assessment instrument, for each beneficiary/patient on admission and at designated intervals, excluding all identified medical elements contained in the instrument. The assessment instrument is primarily geared to identifying patient capabilities and the need for assistance with activities of daily living and mobility. A completed copy of the assessment instrument would be transmitted to the fiscal intermediary to be read by computer and converted to a resource/payment classification. This would afford an individual RNHCI the ability to elect not to participate in the assessment instrument process for each beneficiary with the understanding that it would result in the automatic assignment of the minimum resource classification for payment purposes.

We believe a prospective payment approach would be effective in identifying RNHCI patient needs and appropriately paying for covered services to meet beneficiaries' health care needs. Details on the SNF prospective payment system were published in the **Federal Register** on May 12, 1998 (63 FR 26252). BBA '97 outlines the requirements for prospective payment systems to be developed for HHAs in section 4603 and for inpatient rehabilitation facilities in section 4421. Details on the proposed HHA prospective payment system will be published in the **Federal Register** in the near future. The proposed inpatient rehabilitation facility prospective payment system is expected to be published as a proposed rule in December of this year. We solicit the views of interested entities regarding the development of a prospective payment system for RNHCIs. We will consider these views in developing a proposal to pay RNHCIs under a prospective payment methodology.

(b) Administrative and Judicial Review

Under section 1821(c)(2)(D) of the Act there is no administrative or judicial review of our estimates of the level of expenditures for RNHCI services or the application of the adjustment in payments for those services. We are incorporating this provision into our regulations.

(c) Beneficiary Liability

Under the new regulations, RNHCIs are subject to Medicare rules for deductibles and coinsurance. Under normal Medicare rules, a provider of services may only bill a beneficiary deductible and coinsurance amounts. However, section 1821(c)(2)(E) authorizes RNHCIs to bill individuals an amount equal to the reduction in payments applied under sections 1821(c)(2) (A) or (B) of the Act.

Because the statute gives us authority to impose a wide variety of alternative reductions, and because we are not specifying those alternative adjustments in the rule, we also decided not to include in the rule a formula for the computation of the amount of the Medicare reduction. Establishing a set formula in regulations also would not provide flexibility to compute the liability of a beneficiary if there was a change in the way RNHCIs are paid later. Instead of limiting the computation to a rigid set of rules, the regulations only state that RNHCIs have the right to bill beneficiaries for the amount of the Medicare reduction.

To inform beneficiaries of this liability, the regulations require RNHCIs to inform each beneficiary in writing of any proportional adjustment in effect at the time of their admission or any proportional adjustment that may become effective during the beneficiary's Medicare-covered length of stay. At least 30 days before the Medicare reduction is to take effect, RNHCIs must give written notification to beneficiaries who are already receiving care. The notification includes an explanation that the law permits the RNHCI to bill beneficiaries the amount of the allowed Medicare reduction. When the RNHCI bills the beneficiary, the regulations require the RNHCI to furnish a calculation of the Medicare reduction.

If we are required to reduce payments to RNHCIs for an FFY, we will notify RNHCIs of the amount of the required payment reduction. This notification will explain how RNHCIs will calculate the additional amount that they may bill the beneficiaries.

Unless there is an unexpected growth in services furnished by RNHCIs, we do

not anticipate the need to reduce payments in the near future. However, we are using example 3 in section L below to show the potential effects on the financial liability of a Medicare beneficiary. This example assumes a proportional payment reduction of 12 percent to prevent the level of estimated expenditures from exceeding the trigger level. Because payments are required to be reduced by 12 percent (in this example), the statute permits RNHCIs to bill beneficiaries the amount of the Medicare reduction. To calculate the additional amount billable to the beneficiary in this example we would instruct RNHCIs to use the cost per diem from their most recently filed Medicare cost report multiplied by the number of days included in the individual's Medicare covered length of stay. This cost per discharge would then be reduced by any coinsurance and deductible amounts billable to the individual and any amounts billable to a third party payer. This net amount would be multiplied by the proportional adjustment required for the FFY. The result is the Medicare reduction amount that the RNHCI may bill the beneficiary. If, in this example, the cost of furnishing a covered inpatient service was $5,000 (25 days times $200 per day), the RNHCIs could bill the individual an additional $508 ($5,000—$764 × 12%). The $508 was computed by subtracting from the cost of the stay ($5,000) a deductible of $764 and any coinsurance amount ($0 in this example) times the proportional adjustment to payment of 12%. The RNHCI could bill the individual $1,272, which consists of the deductible of $764 and the amount of the Medicare reduction attributable to the beneficiary, $508.

8. Monitoring Expenditure Level (§ 403.754)

Section 1821(c)(3)(A) of the Act requires us to monitor the expenditure level of RNHCIs beginning with FFY 1999. The regulation follows the requirements of the statute and requires us to track actual Medicare expenditures for services furnished in RNHCIs. The purpose of monitoring Medicare expenditure levels is to calculate the carry forward adjustment to the trigger level required by § 403.750(d).

The carry forward adjustment is defined in section 1821(c)(3)(B)(I) of the Act and is the difference between actual expenditures and the trigger level for the prior FFY. When the level of Medicare expenditures for an FFY exceeds or is less than the trigger level for that FFY, then the trigger level for the next FFY will be reduced or increased by the amount of the excess or deficit in expenditures. However, the carry forward may not exceed $50 million for any FFY, in accordance with section 1861(c)(3)(B)(ii) of the Act.

9. Sunset Provision (§ 403.756)

Section 1821(d) of the Act contains the RNHCI sunset provision. This provision, when activated, will prevent beneficiaries from making elections to receive Medicare payment for religious nonmedical health care services after a certain date. The sunset provision will be activated when the level of estimated expenditures exceeds the trigger level for three consecutive FFYs, beginning in FFY 2002. Under the sunset provision, only those individuals with a valid election in effect before January 1 following the end of the third consecutive FFY in which expenditures exceed the trigger level can have benefits paid under part 403, subpart G. After that date, we will not accept any elections to pay for services furnished in RNHCIs. The earliest the sunset provision could become effective is January 1, 2005. Under this scenario, only Medicare beneficiaries with a valid election in effect before January 1, 2005, could have religious nonmedical health care benefits paid by Medicare, and payment could be made only for RNHCI services provided during those elections.

We will publish a notice in the **Federal Register** at least 60 days before the effective date of the sunset provision to alert the public that no elections will be accepted for services in an RNHCI.

The following example shows when adjustments are made and when the sunset provision is activated.

Example (3). This example compares the trigger level to the level of estimated expenditures to determine if adjustment in payments or alternative adjustments are required. In addition, it tracks the trigger level and the level of estimated expenditures to determine if the sunset provision is activated. For the sunset provision to become effective, estimated expenditures must exceed the trigger level for three consecutive FFYs. In FFY 2001, this example presumes that estimated expenditures for Medicare would exceed the trigger level. To prevent estimated expenditures from exceeding the trigger level, we would need to adjust payments to RNHCIs in the next FFY. This example also assumes that estimated expenditures starting in FFY 2003 will exceed the trigger level for three consecutive FFYs. In this circumstance, the sunset provision would be activated, and, therefore, no elections would be accepted after December 31, 2005. Individuals with elections in effect on or before December 31, 2005, would continue to have benefits paid under this provision for services provided for the duration of those elections.

Fiscal Year	Trigger Level	Estimated Expenditures	Adjustments in Payments
Column	1	2	3
1998	20,000,000		
1999	20,700,000		
2000	33,624,500	20,000,000	NONE REQUIRED.
2001	39,798,858	45,000,000	REDUCE PAYMENTS.
2002	42,749,318	40,000,000	NONE REQUIRED.
2003	36,503,044	45,000,000 (1 yr.)	REDUCE PAYMENTS.
2004	21,088,151	30,000,000 (2 yr.)	REDUCE PAYMENTS.
2005	21,533,736	25,000,000 (3 yr.)	REDUCE PAYMENTS.
2006	22,869,916	28,000,000	REDUCE PAYMENTS.

Note: Expenditures in this table are an example only and do not represent projection of expenditures. These numbers were created solely for this example.

B. Medicaid Provisions (§ 440.170)

Services in RNHCIs are optional Medicaid services that a State may elect to include in its title XIX State plan in accordance with section 1905(a)(22) of the Act. This section permits the inclusion of any other medical care and any other type of remedial care and any other type of remedial care recognized under State law, specified by HCFA. Federal financial participation is only

available to a State for these services if they are included in the State Plan.

Prior to passage of the Balanced Budget Act of 1997, the Medicaid program reimbursed for services provided in Christian Science sanitoria, or by Christian Science nurses. The Social Security Act exempted Christian Science sanitoria from the requirements of section 1902(a)(9)(A)(State responsibility for establishing and maintaining health standards for private or public institutions in which recipients of Medicaid may receive care or services), 1902(a)(31)(requirements for plans of care, on-site inspections and evaluations of care by professional, independent review teams and subsequent reporting to the State agency by these teams concerning patients receiving care in intermediate care facilities for the mentally retarded) and 1902(a)(33) of the Act (condition of participation reviews). The statute also exempted Christian Science sanitoria from the utilization review requirements of section 1903(I)(4) of the Act and from the requirements applicable to the licensing of nursing home administrators specified in section 1908(e)(1) of the Act.

The Balanced Budget Act amended these sections of the statute to delete the references to Christian Science sanitoria and to substitute references to RNHCIs, as defined in section 1861(ss)(1) of the Act. We are incorporating these revisions into the regulations. Consequently, there is no longer authority for inclusion of Christian Science sanitoria as a coverage category in Medicaid regulations. Section 4454(b) of the BBA'97 now provides for coverage of a religious nonmedical health care institution as defined in section 1861(ss)(1) of the Act. Specific ownership and affiliation requirements related to RNHCIs are described in section 1861(ss)(4). We are therefore removing § 440.170(c), Services in Christian Science sanitoriums. Additionally, a RNHCI as defined in section 1861(ss)(1) of the Act furnishes exclusively inpatient services. Consequently, we are removing § 440.170(b), Services of Christian Science nurses, since it deals with care in the home setting. These sections are being replaced with a new § 440.170(b), which defines a RNHCI for Medicaid coverage purposes as one which meets the requirements of section 1861(ss)(1) of the Act, and a new § 440.170(c), which describes the specific ownership and affiliation requirements applicable to Medicaid RNHCIs.

In order to be eligible to bill the Medicaid program, we are requiring that a RNHCI meet the Medicare conditions of participation described in part 403 of this rule. Section 4454(b) of the BBA'97 provides for Medicaid coverage of RNHCIs as defined in section 1861(ss)(1). Section 1861(ss)(1)(J) requires that a RNHCI meet such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution. This statutory requirement is implemented for the Medicare program by the conditions of participation, which set quality and safety standards for RNHCIs. We believe that Congress' intent in incorporating section 1861(ss)(1)(J) in the Medicaid definition of a RNHCI was to ensure the inclusion of similar health and safety requirements in the Medicaid regulations. Based on our experience with Christian Science sanitoria, we expect that the majority of RNHCIs which will serve Medicaid beneficiaries will also serve Medicare beneficiaries.

Therefore, rather than developing separate Medicaid requirements, we are specifying that RNHCIs must meet the Medicare conditions of participation in order to receive Medicaid reimbursement.

C. Part 488 Survey, Certification and Enforcement Procedures

Section 1861(ss)(2) provides that we may accept the accreditation of an approved group that RNHCIs meet or exceed some or all of the applicable Medicare requirements. Therefore, we are amending the regulations at § 488.2 to add section 1861(ss)(2) as the statutory basis for accreditation of RNHCIs and § 488.6 to add the RNHCIs to the list of providers in this section.

D. Part 489—Provider Agreements and Supplier Approval

Technical Change

Section 4641 of the Balanced Budget Act of 1997 requires that the patient's advance directive be placed in a ''prominent part'' of his or her medical record. Therefore, we are adding ''prominent part'' to § 489.102(a)(2) to reflect this requirement; that is, providers are required to ''Document in a prominent part of the individual's current medical record * * * an advance directive.''

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the 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 PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are, however, requesting an emergency review of this interim final rule with comment period. In compliance with section 3506(c)(2)(A) of the PRA, we are submitting to OMB the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure compliance with section 4454 of BBA'97. This section requires that a Medicare beneficiary (or his or her legal representative) who is entering, or who is already in, an RNHCI file an election statement 30 days after the publication of this rule in order to meet the requirements of the rule. We cannot reasonably comply with normal clearance procedures because public harm is likely to result if the agency cannot enforce the requirements of this section 4454 of BBA'97 in order to ensure that the Medicare beneficiary receives covered services in an RNHCI.

HCFA is requesting OMB review and approval of this collection 11 working days after the publication of this rule, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 10 working days after the publication of this rule.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

We are soliciting public comment on each of the issues for the provisions summarized below that contain information collection requirements:

Section 403.724 Valid Election Requirements

In summary, § 403.724(a)(1) requires an RNHCI to utilize a written election statement that includes the requirements set forth in this section.

The burden associated with this requirement is the one-time effort required to agree on the format for the election statement. It is estimated that it will take each RNHCI 2 hours to comply with these requirements. There are currently 19 Christian Science sanatoria participating in Medicare that are expected to apply as RNHCIs; thus, there will be a total of 38 burden hours. The burden associated with signing, filing and submitting the election statement is described in §§ 403.724(a)(2)and(3) and 403.724(a)(4).

In summary, § 403.724(a)(2) and (3) require that an election must be signed and dated by the beneficiary or his or her legal representative and have it notarized.

The burden associated with this requirement is the time required for the beneficiary or his or her legal representative to read, sign, and date the election statement and have it notarized. It is estimated that it will take each beneficiary approximately 10 minutes to read, sign, and date the election statement. We anticipate that the RNHCI will have a notary present to witness and notarize the election statement. There are approximately 1,000 beneficiaries that will be affected by this requirement for a total of 167 burden hours during the first year.

Section 403.724(a)(4) requires that the RNHCI keep a copy of the election statement on file and submit the original to HCFA with any information obtained regarding prior elections or revocations.

The burden associated with this requirement is the time required for an RNHCI to keep a copy of the election statement and submit the original to HCFA. It is estimated that it will take 5 minutes to comply with this requirement. During the first year there will be approximately 1,000 election statements for a total of 84 burden hours.

If not revoked, an election is effective for life and does not need to be completed during future admissions. Section 403.724(b)(1) states that a beneficiary can revoke his or her election statement by the receipt of nonaccepted medical treatment or the beneficiary may voluntarily revoke the election and notify HCFA in writing. We anticipate that there would be very few (fewer than 10 beneficiaries) if any instances in which a beneficiary will notify HCFA in writing that he or she will revoke his or her election statement. We believe the above requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c)(4) since this requirement does not collect information from ten or more entities on an annual basis.

Section 403.730 Condition of Participation: Patient Rights

Section 403.730(a)(1) states that the RNHCI must inform each patient of his or her rights in advance of furnishing patient care.

The burden associated with this requirement is the time and effort necessary to disclose the notice requirements referenced above to each patient. We estimate that on average it will take each of the 19 estimated RNHCIs 8 hours to develop the required notice and that it will take each RNHCI 5 minutes to provide each notice, with an average of 109 notices provided per RNHCI on an annual basis. Therefore, the total annual burden associated with this requirement is 173 hours after the first year. For the first year there will be an additional one-time burden of 152 hours.

In its resolution of the grievance, a RNHCI must provide the patient with written notice of its decision that contains the name of the RNHCI contact person, the process of the facility in resolving the grievance, and contact information for appropriate State and Federal resources.

The burden associated with this requirement is the time and effort necessary to disclose the written notice to each patient who filed a grievance. We estimate that on average it will take each RNHCI 15 minutes to develop and disseminate the required notice. We further estimate that 19 RNHCIs will provide 5 notices on an annual basis, a total annual burden of 1.5 hours, with an additional one-time burden of 5 hours the first year.

Section 403.736 Condition of Participation: Discharge Planning

While the information collection requirement (ICR) summarized below is subject to the PRA, we believe the burden associated with this ICR is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 403.736(a)(1) requires that the discharge planning evaluation must be initiated at admission and must include the following: (1) An assessment of the possibility of a patient needing post-RNHCI services and of the availability of those services and (2) an assessment of the probability of a patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he or she entered the RNHCI.

Section 403.736(a)(3) states that the discharge planning evaluation must be included in the patient's rights record for use in establishing an appropriate discharge plan and must discuss the results of the evaluation with the patient or a legal representative acting on his or her behalf.

Section 403.736(b)(1) states that, if the discharge planning evaluation indicates a need for a discharge plan, qualified and experienced personnel must develop or supervise the development of the plan.

Section 403.736(b)(2) states that, in the absence of a finding by the RNHCI that the beneficiary needs a discharge plan, the beneficiary or his or her legal representative may request a discharge plan. In this case, the RNHCI must develop a discharge plan for the beneficiary.

Section 403.736(b)(3) states that the RNHCI must arrange for the initial implementation of the patient's discharge plan.

Section 403.736(b)(4) states that, if there are factors that may affect continuing care needs or the appropriateness of the discharge plan, the RNHCI must reevaluate the beneficiary's discharge plan.

Section 403.736(b)(5) states that the RNHCI must inform the beneficiary or legal representative about the beneficiary's post-RNHCI care requirements.

Section 403.736(b)(6) states that the discharge plan must inform the beneficiary or his or her legal representative about the freedom to choose among providers of care when a variety of providers is available that are willing to respect the discharge preferences of the beneficiary or legal representative.

Section 403.736(c) states that the RNHCI must transfer or refer patients to appropriate facilities (including medical facilities if the beneficiary so desires) as needed for follow up or ancillary care and notify the patient of his or her right to participate in planning the transfer or referral in accordance with § 403.730(a)(2).

Section 403.736(d) states that the RNHCI must reassess its discharge planning process on an ongoing basis. The reassessment must include a review of discharge plans to ensure that they are responsive to discharge needs.

Section 403.738 Condition of Participation: Administration

While the information collection requirement (ICR) summarized below is subject to the PRA, we believe the

burden associated with this ICR is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 403.738(a) states that an RNHCI must have written policies regarding its organization, services, and administration.

While the following ICR is an information collection requirement, we believe the ICR is exempt from the PRA as defined in 5 CFR 1320.3(c)(4), since it does not collect information from 10 or more entities on an annual basis.

Section 403.738(c)(4) states that the RNHCI must furnish written notice, including the identity of each new individual or company, to HCFA at the time of a change, if a change occurs in any of the following: persons with an ownership or control interest, as defined in 42 CFR 420.201 and 455.101; the officers, directors, agents, or managing employees; the religious entity, corporation, association, or other company responsible for the management of the RNHCI; and the RNHCI's administrator or director of nonmedical nursing services.

Section 403.742 Condition of Participation: Physical Environment

While the information collection requirement (ICR) summarized below is subject to the PRA, we believe the burden associated with this ICR is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 403.742(a)(4) requires that a RNHCI have a written disaster plan to address loss of power, water, sewage disposal, and other emergencies.

Section 403.744 Condition of Participation: Life Safety From Fire

While the information collection requirement (ICR) summarized below is subject to the PRA, we believe the burden associated with this ICR is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 403.744(a)(2) states that the RNHCI must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, staff and the public; evacuation; and cooperation with fire fighting authorities.

Section 403.744(a)(3) states that the RNHCI must maintain written evidence of regular inspection and approval by State or local fire control agencies.

Section 403.746 Condition of Participation: Utilization Review

In summary, § 403.746 states that the RNHCI must have in effect a written utilization review plan to assess the necessity of services furnished. The plan must provide that records be maintained of all meetings, decisions, and actions by the utilization review committee. The utilization review plan must contain written procedures for evaluating the following: admissions, the duration of care, continuing care of an extended duration, and items and services furnished.

Drafting a utilization review plan will take each current RNHCI 3 hours, for a total one time burden of 57 hours. Though we have received no inquiries from any entity about becoming a RNHCI, for purposes of this paperwork collection requirement, we estimate that there will be one additional RNHCI each year, which will create a 3 hour burden annually.

Section 403.752 Payment Provisions

The following section describes the burden associated with the payment provisions and is subject to the PRA.

Based on the most recent data available, Medicare expenditures for Christian Science sanatoria were approximately $8 million annually. The trigger level for FFY 1998, the first year of RNHCI implementation, is $20 million. Beginning in FFY 2000, when estimated expenditures for RNHCI services exceed the trigger level for a FFY, HCFA must adjust the RNHCI payment rates.

However, because of the amount of the gap between current expenditures and the trigger level, and because we do not anticipate that the number of RNHCIs will increase significantly, we do not anticipate having to adjust the payment rates for a minimum of 3 years. Thus, the section will not be implemented and there will be no paperwork burden associated with it for several years. Therefore, there is no burden associated with the following section at this time.

Section 403.752(d)(I) states that the RNHCI must notify the beneficiary in writing at the time of admission of any proposed or current proportional Medicare adjustment. A beneficiary currently receiving care in the RNHCI must be notified in writing 30 days before the Medicare reduction is to take effect. The notification must inform the beneficiary that the RNHCI can bill him or her for the proportional Medicare adjustment.

Section 403.752(d)(ii) states that the RNHCI must, at time of billing, provide the beneficiary with his or her liability for payment, based on a calculation of the Medicare reduction pertaining to the beneficiary's covered services permitted by § 403.750(b).

Section 440.170 General Provisions—Medicaid

We believe the following paperwork burden is not subject to the Act, as defined by 5 CFR 1320.4(a)(2), since the collection action is conducted during an investigation or audit against specific individuals or entities.

Section 440.170(b)(9) states that an RNHCI must provide information HCFA may require, upon request, to implement section 1821 of the Act, including information relating to quality of care coverage and determinations.

Section 489.102 Requirements for Providers

The ICR in the following section, except for its application to RNHCIs, has been approved under OMB approval number 0938–0610.

In summary, § 489.102(a) requires that hospitals, critical access hospitals, skilled nursing facilities, home health agencies, providers of home health care (and for Medicaid purposes, providers of personal care services), hospices, and religious nonmedical health care institutions document and maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care.

For the current approval, we stated that it will take each facility 3 minutes to document a beneficiary's record whether he or she has implemented an advance directive. We anticipate that it will also take each RNHCI 3 minutes per patient to comply with this requirement, for a total of 104 burden hours on an annual basis. In addition, there will be a one-time burden of 8 hours per RNHCI to maintain written policies and procedures concerning advance directives, for a total of 152 hours.

We will submit a revision to OMB Approval Number 0938–610 to reflect the addition of RNHCIs to the paperwork burden.

We have submitted a copy of this rule to OMB for its review of the ICRs. These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

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 N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Julie Brown HCFA–1909–IFC, Fax number: (410) 786–0262 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

V. Regulatory Impact Analysis

We have examined the impacts of this 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, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of 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. This 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.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

In accordance with the provisions of Executive Order 13132, this regulation will not significantly affect the States beyond what is required by basic State Plans for Medicaid. It follows the intent and letter of the law and does not usurp State authority beyond the basic Medicaid requirements. This regulation describes only processes that must be undertaken if a State exercises its option to amend the State plan to include coverage of inpatient religious nonmedical health care institutions (RNHCIs) as set forth in section 4454 of the BBA'97.

Those States that have RNHCI facilities and have selected to offer the optional RNHCI service are very limited. At the moment we only have 18 facilities participating in Medicare and four in Medicaid. The monitoring of the program is conducted by staff in the Boston Regional Office (Region I) and they will be responsible for the survey and certification activity that is usually conducted by the State Agency.

Section 4454 of the BBA'97 amended the Act to remove the authorization for payment for services furnished in Christian Science sanatoria from both Medicare and Medicaid law. Section 4454 authorizes payment for inpatient services in a RNHCI for beneficiaries who, for religious reasons, are conscientiously opposed to the acceptance of medical care. Section 4454 of BBA'97 provides for coverage of the nonmedical aspects of inpatient care services in RNHCIs under Medicare and as a State option under Medicaid. In order for a provider to satisfy the definition of a religious nonmedical health care institution, for both Medicare and Medicaid, it must satisfy the ten qualifying provisions contained in new section 1861(ss)(1) of the Act. The RNHCI choosing to participate in Medicare must also be in compliance with both the conditions for coverage and the conditions of participation contained in the new regulation. Neither Medicare nor Medicaid will pay for any religious aspects of care provided in these facilities. HCFA has used one fiscal intermediary to handle all Christian Science sanatoria and the Boston Regional Office to monitor the process, and we plan to continue that arrangement for RNHCIs.

Currently, there are 19 Christian Science sanatoria that are furnishing services and receiving payment under Medicare. Three of these facilities are dually eligible to participate in Medicare and Medicaid, and there are two that only participate in Medicaid. Medicare expenditure levels for Christian Science sanatoria has been approximately $8 million annually.

We anticipate that most if not all existing Christian Science sanatoria will be certified as RNHCIs but do not know how many other facilities will be eligible to apply for participation. Therefore, we cannot project the impact this regulation will have on payments or the number of organizations that will elect to furnish services to what we believe is a very small beneficiary population.

Section 4454 of BBA'97 establishes certain controls on the amount of expenditures for RNHCI services in a given FFY. Section 1821(c)(2)(C) explains the operation of these controls through the use of a trigger level. The trigger level for FFY 1998 is $20 million. Thereafter, this amount is increased each FFY by the average consumer price index. This amount is further increased or decreased by a carry forward amount, which is the difference between the previous FFY's expenditures and the previous FFY's trigger level.

The trigger level is used to determine if Medicare payments for the current FFY need to be adjusted. Beginning with fiscal year 2000, if the estimated level of expenditures for a FFY exceeds the trigger level for that FFY, we are required by law to make a proportional adjustment to payments or alternative adjustments to prevent expenditures from exceeding the trigger level.

BBA'97 precludes administrative or judicial review of adjustments that we determine are necessary to control expenditures. The trigger level is also used to activate the sunset provision, which prohibits us from accepting any new elections when estimated expenditures exceed the trigger level for three consecutive fiscal years.

Since the Congress has established controls over the amount of money that can be spent for RNHCI services and because Christian Science sanatoria that qualify as RNHCIs will continue to be paid on a reasonable cost basis, there should be no adverse impact on beneficiaries or on existing facilities within the next five years unless there is a dramatic increase in the number of RNHCIs and their Medicare/Medicaid patients.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act. 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.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all health care 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 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. This 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.

Section 4454 of the BBA'97 amended the Act to remove the authorization for payment for services furnished in Christian Science sanatoria from both Medicare and Medicaid law. Section 4454 authorizes payment for inpatient services in a RNHCI for beneficiaries who, for religious reasons, are conscientiously opposed to the acceptance of medical care. Section 4454 of BBA'97 provides for coverage of the nonmedical aspects of inpatient care services in RNHCIs under Medicare and as a State option under Medicaid. In order for a provider to satisfy the definition of a religious nonmedical health care institution, for both Medicare and Medicaid, it must satisfy the ten qualifying provisions contained in new section 1861(ss)(1) of the Act. The RNHCI choosing to participate in Medicare must also be in compliance with both the conditions for coverage and the conditions of participation contained in the new regulation. Neither Medicare nor Medicaid will pay for any religious aspects of care provided in these facilities. HCFA has used one fiscal intermediary to handle all Christian Science sanatoria and the Boston Regional Office to monitor the process, and we plan to continue that arrangement for RNHCIs.

Currently, there are 19 Christian Science sanatoria that are furnishing services and receiving payment under Medicare. Three of these facilities are dually eligible to participate in Medicare and Medicaid, and there are two that only participate in Medicaid. Medicare expenditure levels for Christian Science sanatoria has been approximately $8 million annually.

We anticipate that most if not all existing Christian Science sanatoria will be certified as RNHCIs but do not know how many other facilities will be eligible to apply for participation. Therefore, we cannot project the impact this regulation will have on payments or the number of organizations that will elect to furnish services to what we believe is a very small beneficiary population.

Section 4454 of BBA'97 establishes certain controls on the amount of expenditures for RNHCI services in a given FFY. Section 1821(c)(2)(C) explains the operation of these controls through the use of a trigger level. The trigger level for FFY 1998 is $20 million. Thereafter, this amount is increased each FFY by the average consumer price index. This amount is further increased or decreased by a carry forward amount, which is the difference between the previous FFY's expenditures and the previous FFY's trigger level.

The trigger level is used to determine if Medicare payments for the current FFY need to be adjusted. Beginning with fiscal year 2000, if the estimated level of expenditures for a FFY exceeds the trigger level for that FFY, we are required by law to make a proportional adjustment to payments or alternative adjustments to prevent expenditures from exceeding the trigger level.

BBA'97 precludes administrative or judicial review of adjustments that we determine are necessary to control expenditures. The trigger level is also used to activate the sunset provision, which prohibits us from accepting any new elections when estimated expenditures exceed the trigger level for three consecutive fiscal years.

Since the Congress has established controls over the amount of money that can be spent for RNHCI services and because Christian Science sanatoria that qualify as RNHCIs will continue to be paid on a reasonable cost basis, there should be no adverse impact on beneficiaries or on existing facilities within the next five years unless there is a dramatic increase in the number of RNHCIs and their Medicare/Medicaid patients.

For these reasons, 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.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the 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 PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are, however, requesting an emergency review of this interim final rule with comment period. In compliance with section 3506(c)(2)(A) of the PRA, we are submitting to OMB the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure compliance with section 4454 of BBA'97. This section requires that a Medicare beneficiary (or his or her legal representative) who is entering, or who is already in, an RNHCI file an election statement 30 days after the publication of this rule in order to meet the requirements of the rule. We cannot reasonably comply with normal clearance procedures because public harm is likely to result if the agency cannot enforce the requirements of this section 4454 of BBA'97 in order to ensure that the Medicare beneficiary receives covered services in an RNHCI.

HCFA is requesting OMB review and approval of this collection 11 working days after the publication of this rule, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 10 working days after the publication of this rule.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

We are soliciting public comment on each of the issues for the provisions summarized below that contain information collection requirements:

Section 403.724 Valid Election Requirements

In summary, § 403.724(a)(1) requires an RNHCI to utilize a written election statement that includes the requirements set forth in this section.

The burden associated with this requirement is the one-time effort required to agree on the format for the election statement. It is estimated that it will take each RNHCI 2 hours to comply with these requirements. There are currently 19 Christian Science sanatoria participating in Medicare that are expected to apply as RNHCIs; thus, there will be a total of 38 burden hours. The burden associated with signing, filing and submitting the election statement is described in §§ 403.724(a)(2) and (3) and 403.724(a)(4).

In summary, § 403.724(a)(2) and (3) require that an election must be signed and dated by the beneficiary or his or her legal representative and have it notarized.

The burden associated with this requirement is the time required for the beneficiary or his or her legal representative to read, sign, and date the election statement and have it notarized. It is estimated that it will take each beneficiary approximately 10 minutes to read, sign, and date the election statement. We anticipate that the RNHCI will have a notary present to witness and notarize the election statement. There are approximately 1,000 beneficiaries that will be affected by this requirement for a total of 167 burden hours during the first year.

Section 403.724(a)(4) requires that the RNHCI keep a copy of the election statement on file and submit the original to HCFA with any information obtained regarding prior elections or revocations.

The burden associated with this requirement is the time required for an RNHCI to keep a copy of the election statement and submit the original to HCFA. It is estimated that it will take 5 minutes to comply with this requirement. During the first year there will be approximately 1,000 election statements for a total of 84 burden hours.

If not revoked, an election is effective for life and does not need to be completed during future admissions. Section 403.724(b)(1) states that a beneficiary can revoke his or her election statement by the receipt of nonexcepted medical treatment or the beneficiary may voluntarily revoke the election and notify HCFA in writing. We anticipate that there would be very few (fewer than 10 beneficiaries) if any instances in which a beneficiary will notify HCFA in writing that he or she will revoke his or her election statement. We believe the above requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c)(4) since this requirement does not collect information from ten or more entities on an annual basis.

While the information collection requirements (ICR) summarized below are subject to the PRA, we believe the burden associated with these ICRs is exempt as defined in 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.

Section 403.730 Condition of Participation: Patient Rights

Section 403.730(a)(1) states that the RNHCI must inform each patient of his or her rights in advance of furnishing patient care.

Section 403.732 Condition of participation: Quality Assessment and Evaluation

In summary, § 403.732 states that the RNHCI must develop, implement, and maintain a quality assessment and evaluation program.

Section 403.736 Condition of Participation: Discharge Planning

Section 403.736(a)(1) requires that the discharge planning evaluation must be initiated at admission and must include the following: (1) an assessment of the possibility of a patient needing post-RNHCI services and of the availability of those services and (2) an assessment of the probability of a patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he or she entered the RNHCI.

Section 403.736(a)(3) states that the discharge planning evaluation must be included in the patient's rights record for use in establishing an appropriate discharge plan and must discuss the results of the evaluation with the patient or a legal representative acting on his or her behalf.

Section 403.736(b)(1) states that, if the discharge planning evaluation indicates a need for a discharge plan, qualified and experienced personnel must develop or supervise the development of the plan.

Section 403.736(b)(2) states that, in the absence of a finding by the RNHCI that the beneficiary needs a discharge plan, the beneficiary or his or her legal representative may request a discharge plan. In this case, the RNHCI must develop a discharge plan for the beneficiary.

Section 403.736(b)(3) states that the RNHCI must arrange for the initial implementation of the patient's discharge plan.

Section 403.736(b)(4) states that, if there are factors that may affect continuing care needs or the appropriateness of the discharge plan, the RNHCI must reevaluate the beneficiary's discharge plan.

Section 403.736(b)(5) states that the RNHCI must inform the beneficiary or legal representative about the beneficiary's post-RNHCI care requirements.

Section 403.736(b)(6) states that the discharge plan must inform the beneficiary or his or her legal representative about the freedom to choose among providers of care when a variety of providers is available that are willing to respect the discharge preferences of the beneficiary or legal representative.

Section 403.736(c) states that the RNHCI must transfer or refer patients to appropriate facilities (including medical facilities if the beneficiary so desires) as needed for follow up or ancillary care and notify the patient of his or her right to participate in planning the transfer or referral in accordance with § 403.730(a)(2).

Section 403.736(d) states that the RNHCI must reassess its discharge planning process on an ongoing basis. The reassessment must include a review of discharge plans to ensure that they are responsive to discharge needs.

Section 403.738 Condition of Participation: Administration

In summary § 403.738 states that an RNHCI must have written policies regarding its organization, services, and administration.

Section 403.742 Condition of Participation: Physical Environment

Section 403.742(a)(4) requires that a RNHCI have a written disaster plan to address loss of power, water, sewage disposal, and other emergencies.

Section 403.744 Condition of Participation: Life Safety From Fire

Section 403.744(a)(2) states that the RNHCI must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, staff and the public; evacuation; and cooperation with fire fighting authorities.

Section 403.744(a)(3) states that the RNHCI must maintain written evidence

of regular inspection and approval by State or local fire control agencies.

Section 403.746 Condition of Participation: Utilization Review

In summary, § 403.746 states that the RNHCI must have in effect a written utilization review plan to assess the necessity of services furnished. The plan must provide that records be maintained of all meetings, decisions, and actions by the utilization review committee. The utilization review plan must contain written procedures for evaluating the following: admissions, the duration of care, continuing care of an extended duration, and items and services furnished.

Section 489.102 Requirements for Providers

In summary, § 489.102(a) requires that hospitals, critical access hospitals, skilled nursing facilities, home health agencies, providers of home health care (and for Medicaid purposes, providers of personal care services), hospices, and religious nonmedical health care institutions document and maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care.

While the following ICR is subject to the PRA, we believe the burden associated with this ICR is exempt as defined in 5 CFR 1320.3(c)(4), since it does not collect information from 10 or more entities on an annual basis.

Section 403.738 Condition of Participation: Administration

Section 403.738(c)(4) states that the RNHCI must furnish written notice, including the identity of each new individual or company, to HCFA at the time of a change, if a change occurs in any of the following: persons with an ownership or control interest, as defined in 42 CFR 420.201 and 455.101; the officers, directors, agents, or managing employees; the religious entity, corporation, association, or other company responsible for the management of the RNHCI; and the RNHCI's administrator or director of nonmedical nursing services.

The following sections describe the burden associated with the payment provisions. Based on the most recent data available, Medicare expenditures for Christian Science sanatoria were approximately $8 million annually. The trigger level for FFY 1998, the first year of RNHCI implementation, is $20 million. Beginning in FFY 2000, when estimated expenditures for RNHCI services exceed the trigger level for a FFY, HCFA must adjust the RNHCI payment rates. Therefore, the burden associated with the following sections is not subject to the PRA at this point in time.

Section 403.752 Payment provisions

Section 403.752(d)(i) states that the RNHCI must notify the beneficiary in writing at the time of admission of any proposed or current proportional Medicare adjustment. A beneficiary currently receiving care in the RNHCI must be notified in writing 30 days before the Medicare reduction is to take effect. The notification must inform the beneficiary that the RNHCI can bill him or her for the proportional Medicare adjustment.

Section 403.752(d)(ii) states that the RNHCI must, at time of billing, provide the beneficiary with his or her liability for payment, based on a calculation of the Medicare reduction pertaining to the beneficiary's covered services permitted by § 403.750(b).

We believe the following ICR is not subject to the Act, as defined by 5 CFR 1320.4(a)(2), since the collection action is conducted during an investigation or audit against specific individuals or entities.

Section 440.170 General Provisions—Medicaid

Section 440.170(b)(9) states that an RNHCI must provide information HCFA may require, upon request, to implement section 1821 of the Act, including information relating to quality of care coverage and determinations.

PRA Summary of Burden

The table below indicates the annual number of responses for each regulation section in this rule containing ICRs, the average burden per response in minutes or hours, and the total annual burden hours.

ESTIMATED ANNUAL BURDEN

CFR section	Responses	Average burden per response	Burden hours
403.724(a)(1)	19	2 hours	38 hours.
403.724(a)(2)(3)	1,000	10 minutes	167 hours.
403.724(a)(4)	1,000	5 minutes	84 hours.
Total			289 hours.

We have submitted a copy of this rule to OMB for its review of the ICRs. These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

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 N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Louis Blank HCFA–1909–IFC, Fax number: (410) 786–0262 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Allison Herron Eydt, HCFA Desk Officer, Fax numbers: (202) 395–6974 or (202) 395–5167

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances 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 4454 of BBA'97 requires us to publish this rule in final with a comment period and bypass the normal notice-and-comment period.

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 comment period for public comment.

VII. 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, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 403

Health insurance, Hospitals, Incorporation by refrence, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Medicaid, Nursing homes, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 466

Grant programs-health, Health facilities, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is amended as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Subpart F is added and reserved.

3. Subpart G is added to read as follows:

Subpart G—Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment

Sec.

Subpart G—Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment

§ 403.700 Basis and purpose.

This subpart implements sections 1821; 1861(e),(y), and (ss); 1869; and 1878 of the Act regarding Medicare payment for inpatient hospital or posthospital extended care services furnished to eligible beneficiaries in religious nonmedical health care institutions.

§ 403.702 Definitions and terms.

For purposes of this subpart, the following definitions and terms apply:

Election means a written statement signed by the beneficiary or the beneficiary's legal representative indicating the beneficiary's choice to receive nonmedical care or treatment for religious reasons.

Excepted medical care means medical care that is received involuntarily or required under Federal, State, or local laws.

FFY stands for Federal fiscal year.

Medical care or treatment means health care furnished by or under the direction of a licensed physician that can involve diagnosing, treating, or preventing disease and other damage to the mind and body. It may involve the use of pharmaceuticals, diet, exercise, surgical intervention, and technical procedures.

Nonexcepted medical care means medical care (other than excepted medical care) that is sought by or for a beneficiary who has elected religious nonmedical health care institution services.

Religious nonmedical care or religious method of healing means health care furnished under established religious tenets that prohibit conventional or unconventional medical care for the treatment of a beneficiary, and the sole reliance on these religious tenets to fulfill a beneficiary's total health care needs.

RNHCI stands for ''religious nonmedical health care institution,'' as defined in section 1861(ss)(1) of the Act.

Religious nonmedical nursing personnel means individuals who are grounded in the religious beliefs of the RNHCI, trained and experienced in the principles of nonmedical care, and formally recognized as competent in the administration of care within their religious nonmedical health care group.

§ 403.720 Conditions for coverage.

Medicare covers services furnished in an RNHCI if the following conditions are met:

(a) The provider meets the definition of an RNHCI as defined in section 1861(ss)(1) of the Act. That is, it is an institution that:

(1) Is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxes under section 501(a).

(2) Is lawfully operated under all applicable Federal, State, and local laws and regulations.

(3) Furnishes only nonmedical nursing items and services to beneficiaries who choose to rely solely upon a religious method of healing and for whom the acceptance of medical services would be inconsistent with their religious beliefs.

(4) Furnishes nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of nonmedical patients.

(5) Furnishes nonmedical items and services to inpatients on a 24-hour basis.

(6) Does not furnish, on the basis of religious beliefs, through its personnel or otherwise medical items and services

(including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients.

(7) Is not owned by, is not under common ownership with, or does not have an ownership interest of 5 percent or more in, a provider of medical treatment or services and is not affiliated with a provider of medical treatment or services or with an individual who has an ownership interest of 5 percent or more in, a provider of medical treatment or services. (Permissible affiliations are described at § 403.738(c).)

(8) Has in effect a utilization review plan that sets forth the following:

(i) Provides for review of the admissions to the institution, the duration of stays, and the need for continuous extended duration of stays in the institution, and the items and services furnished by the institution.

(ii) Requires that reviews be made by an appropriate committee of the institution that included the individuals responsible for overall administration and for supervision of nursing personnel at the institution.

(iii) Provides that records be maintained of the meetings, decisions, and actions of the review committee.

(iv) Meets other requirements as the Secretary finds necessary to establish an effective utilization review plan.

(9) Provides information HCFA may require to implement section 1821 of the Act, including information relating to quality of care and coverage decisions.

(10) Meets other requirements HCFA finds necessary in the interest of the health and safety of the patients who receive services in the institution. These requirements are the conditions of participation in this subpart.

(b) The provider meets the conditions of participation cited in §§ 403.730 through 403.746. (A provider may be deemed to meet conditions of participation in accordance with part 488 of this chapter.)

(c) The provider has a valid provider agreement as a hospital with HCFA in accordance with part 489 of this chapter and for payment purposes is classified as an extended care hospital.

(d) The beneficiary has a condition that would make him or her eligible to receive services covered under Medicare Part A as an inpatient in a hospital or SNF.

(e) The beneficiary has a valid election as described in § 403.724 in effect for Medicare covered services furnished in an RNHCI.

§ 403.724 Valid election requirements.

(a) *General requirements.* An election statement must be made by the Medicare beneficiary or his or her legal representative.

(1) The election must be a written statement that must include the following statements:

(i) The beneficiary is conscientiously opposed to acceptance of nonexcepted medical treatment.

(ii) The beneficiary acknowledges that the acceptance of nonexcepted medical treatment is inconsistent with his or her sincere religious beliefs.

(iii) The beneficiary acknowledges that the receipt of nonexcepted medical treatment constitutes a revocation of the election and may limit further receipt of services in an RNHCI.

(iv) The beneficiary acknowledges that the election may be revoked by submitting a written statement to HCFA.

(v) The beneficiary acknowledges that revocation of the election will not prevent or delay access to medical services available under Medicare Part A in facilities other than RNHCIs.

(2) The election must be signed and dated by the beneficiary or his or her legal representative.

(3) The election must be notarized.

(4) The RNHCI must keep a copy of the election statement on file and submit the original to HCFA with any information obtained regarding prior elections or revocations.

(5) The election becomes effective on the date it is signed.

(6) The election remains in effect until revoked.

(b) *Revocation of election.* (1) A beneficiary's election is revoked by one of the following:

(i) The beneficiary receives nonexcepted medical treatment for which Medicare payment is requested.

(ii) The beneficiary voluntarily revokes the election and notifies HCFA in writing.

(2) The receipt of excepted medical treatment as defined in § 403.702 does not revoke the election made by a beneficiary.

(c) *Limitation on subsequent elections.* (1) If a beneficiary's election has been made and revoked twice, the following limitations on subsequent elections apply:

(i) The third election is not effective until 1 year after the date of the most recent revocation.

(ii) Any succeeding elections are not effective until 5 years after the date of the most recent revocation.

(2) HCFA will not accept as the basis for payment of any claim any elections executed on or after January 1 of the calendar year in which the sunset provision described in § 403.756 becomes effective.

§ 403.730 Condition of participation: Patient rights.

An RNHCI must protect and promote each patient's rights.

(a) *Standard: Notice of rights.* The RNHCI must do the following:

(1) Inform each patient of his or her rights in advance of furnishing patient care.

(2) Have a process for prompt resolution of grievances, including a specific person within the facility whom a patient may contact to file a grievance. In addition, the facility must provide patients with information about the facility's process as well as with contact information for appropriate State and Federal resources.

(b) *Standard: Exercise of rights.* The patient has the right to:

(1) Be informed of his or her rights and to participate in the development and implementation of his or her plan of care.

(2) Make decisions regarding his or her care, including transfer and discharge from the RNHCI. (See § 403.736 for discharge and transfer requirements.)

(3) Formulate advance directives and expect staff who furnish care in the RNHCI to comply with those directives, in accordance with part 489, subpart I of this chapter. For purposes of conforming with the requirement in § 489.102 that there be documentation in the patient's medical records concerning advanced directives, the patient care records of a beneficiary in an RNHCI are equivalent to medical records held by other providers.

(c) *Standard: Privacy and safety.* The patient has the right to the following:

(1) Personal privacy.

(2) Care in a safe setting.

(3) Freedom from verbal, psychological, and physical abuse, and misappropriation of property.

(4) Freedom from the use of restraints.

(5) Freedom from involuntary seclusion.

(d) *Standard: Confidentiality of patient records.* For any patient care records or election information it maintains on patients, the RNHCI must establish procedures to do the following:

(1) Safeguard the privacy of any information that identifies a particular patient. Information from, or copies of, records may be released only to authorized individuals, and the RNHCI must ensure that unauthorized individuals cannot gain access to or alter patient records. Original patient care records must be released only in accordance with Federal or State laws, court orders, or subpoenas.

(2) Maintain the records and information in an accurate and timely manner.

(3) Ensure timely access by patients to the records and other information that pertains to that patient.

(4) Abide by all Federal and State laws regarding confidentiality and disclosure for patient care records and election information.

§ 403.732 Condition of participation: Quality assessment and performance improvement.

The RNHCI must develop, implement, and maintain a quality assessment and performance improvement program.

(a) *Standard: Program scope.* (1) The quality assessment and performance improvement program must include, but is not limited to, measures to evaluate:

(i) Access to care.

(ii) Patient satisfaction.

(iii) Staff performance.

(iv) Complaints and grievances.

(v) Discharge planning activities.

(vi) Safety issues, including physical environment.

(2) In each of the areas listed in paragraph (a)(1) of this section, and any other areas the RNHCI includes, the RNHCI must do the following:

(i) Define quality assessment and performance improvement measures.

(ii) Describe and outline quality assessment and performance improvement activities appropriate for the services furnished by or in the RNHCI.

(iii) Measure, analyze, and track performance that reflect care and RNHCI processes.

(iv) Inform all patients, in writing, of the scope and responsibilities of the quality assessment and performance improvement program.

(3) The RNHCI must set priorities for performance improvement, considering the prevalence of and severity of identified problems.

(4) The RNHCI must act to make performance improvements and must track performance to assure that improvements are sustained.

(b) *Standard: Program responsibilities.* (1) The governing body, administration, and staff are responsible for ensuring that the quality assessment and performance improvement program addresses identified priorities in the RNHCI and are responsible for the development, implementation, maintenance, and performance improvement of assessment actions.

(2) The RNHCI must include all programs, departments, functions, and contracted services when developing, implementing, maintaining, and evaluating the program of quality assessment and performance improvement.

§ 403.734 Condition of participation: Food services.

The RNHCI must have an organized food service that is directed and adequately staffed by qualified personnel.

(a) *Standard: Sanitary conditions.* The RNHCI must furnish food to the patient that is obtained, stored, prepared, distributed, and served under sanitary conditions.

(b) *Standard: Meals.* The RNHCI must serve meals that furnish each patient with adequate nourishment in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. The RNHCI must do the following:

(1) Furnish food that is palatable, attractive, and at the proper temperature and consistency.

(2) Offer substitutes of similar nourishment to patients who refuse food served or desire alternative choices.

(3) Furnish meals at regular times comparable to normal mealtimes in the community. There must be no more than 14 hours between a substantial evening meal and breakfast the following day.

(4) The RNHCI must offer snacks at bedtime.

§ 403.736 Condition of participation: Discharge planning.

The RNHCI must have in effect a discharge planning process that applies to all patients. The process must assure that appropriate post-institution services are obtained for each patient, as necessary.

(a) *Standard: Discharge planning evaluation.* (1) The RNHCI must assess the need for a discharge plan for any patient identified as likely to suffer adverse consequences if there is no planning and for any other patient upon his or her request or at the request of his or her legal representative. This discharge planning evaluation must be initiated at admission and must include the following:

(i) An assessment of the possibility of a patient needing post-RNHCI services and of the availability of those services.

(ii) An assessment of the probability of a patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he or she entered the RNHCI.

(2) The staff must complete the assessment on a timely basis so that arrangements for post-RNHCI care are made before discharge and so that unnecessary delays in discharge are avoided.

(3) The discharge planning evaluation must be included in the patient's rights record for use in establishing an appropriate discharge plan and must discuss the results of the evaluation with the patient or a legal representative acting on his or her behalf.

(b) *Standard: Discharge plan.* (1) If the discharge planning evaluation indicates a need for a discharge plan, qualified and experienced personnel must develop or supervise the development of the plan.

(2) In the absence of a finding by the RNHCI that the beneficiary needs a discharge plan, the beneficiary or his or her legal representative may request a discharge plan. In this case, the RNHCI must develop a discharge plan for the beneficiary.

(3) The RNHCI must arrange for the initial implementation of the beneficiary's discharge plan.

(4) If there are factors that may affect continuing care needs or the appropriateness of the discharge plan, the RNHCI must reevaluate the beneficiary's discharge plan.

(5) The RNHCI must inform the beneficiary or legal representative about the beneficiary's post-RNHCI care requirements.

(6) The discharge plan must inform the beneficiary or his or her legal representative about the freedom to choose among providers of care when a variety of providers is available that are willing to respect the discharge preferences of the beneficiary or legal representative.

(c) *Standard: Transfer or referral.* The RNHCI must transfer or refer patients in a timely manner to another facility (including a medical facility if requested by the beneficiary, or his or her legal representative) in accordance with § 403.730(b)(2).

(d) *Standard: Reassessment.* The RNHCI must reassess its discharge planning process on an ongoing basis. The reassessment must include a review of discharge plans to ensure that they are responsive to discharge needs.

§ 403.738 Condition of participation: Administration.

An RNHCI must have written policies regarding its organization, services, and administration.

(a) *Standard: Compliance with Federal, State, and local laws.* The RNHCI must operate in compliance with all applicable Federal, State, and local laws, regulations, and codes including, but not limited to, those pertaining to the following:

(1) Protection against discrimination on the basis of race, color, national

origin, age, or handicap (45 CFR parts 80, 84, and 91).

(2) Protection of human research subjects (45 CFR part 46).

(3) Application of all safeguards to protect against the possibility of fraud and abuse (42 CFR part 455).

(b) *Standard: Governing body.* (1) The RNHCI must have a governing body, or a person designated to function as a governing body, that is legally responsible for establishing and implementing all policies regarding the RNHCI's management and operation.

(2) The governing body must appoint the administrator responsible for the management of the RNHCI.

(c) *Standard: Affiliations and disclosure.* (1) An affiliation is permissible if it is between one of the following:

(i) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of an RNHCI and a provider of medical treatment or services.

(ii) An individual who is a director, trustee, officer, employee, or staff member of an RNHCI and another individual, with whom he or she has a family relationship, who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(iii) The RNHCI and an individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and RNHCIs.

(2) The RNHCI complies with the disclosure requirements of §§ 420.206 and 455.104 of this chapter.

(3) The RNHCI furnishes written notice, including the identity of each new individual or company, to HCFA at the time of a change, if a change occurs in any of the following:

(i) Persons with an ownership or control interest, as defined in §§ 420.201 and 455.101 of this chapter.

(ii) The officers, directors, agents, or managing employees.

(iii) The religious entity, corporation, association, or other company responsible for the management of the RNHCI.

(iv) The RNHCI's administrator or director of nonmedical nursing services.

§ 403.740 Condition of participation: Staffing.

The RNHCI must be staffed with qualified experienced personnel who are present in sufficient numbers to meet the needs of the patients.

(a) *Standard: Personnel qualifications.* The RNHCI must ensure that staff who supervise or furnish services to patients are qualified to do so and that staff allowed to practice without direct supervision have specific training to furnish these services.

(b) *Standard: Education, training, and performance evaluation.* (1) The RNHCI must ensure that staff (including contractors and other individuals working under arrangement) have the necessary education and training concerning their duties so that they can furnish services competently. This education includes, but is not limited to, training related to the individual job description, performance expectations, applicable organizational policies and procedures, and safety responsibilities.

(2) Staff must demonstrate, in practice, the skills and techniques necessary to perform their duties and responsibilities.

(3) The RNHCI must evaluate the performance of staff and implement measures for improvement.

§ 403.742 Condition of participation: Physical environment.

A RNHCI must be designed, constructed, and maintained to ensure the safety of the patients, staff, and the public.

(a) *Standard: Buildings.* The physical plant and the overall environment must be maintained in a manner that ensures the safety and well-being of the patients. The RNHCI must have the following:

(1) Emergency power for emergency lights, for fire detection and alarm systems, and for fire extinguishing systems.

(2) Procedures for the proper storage and disposal of trash.

(3) Proper ventilation and temperature control and appropriate lighting levels to ensure a safe and secure environment.

(4) A written disaster plan to address loss of power, water, sewage, and other emergencies.

(5) Facilities for emergency gas and water supply.

(6) An effective pest control program.

(7) A preventive maintenance program to maintain essential mechanical, electrical, and fire protection equipment operating in an efficient and safe manner.

(8) A working call system for patients to summon aid or assistance.

(b) *Standard: Patient rooms.* Patient rooms must be designed and equipped for adequate care, comfort, and privacy of the patient.

(1) Patient rooms must meet the following conditions:

(i) Accommodate no more than four patients.

(ii) Measure at least 80 square feet per patient in multiple patient rooms and at least 100 square feet in single patient rooms.

(iii) Have direct access to an exit corridor.

(iv) Be designed or equipped to assure full visual privacy for each patient.

(v) Have at least one window to the outside.

(vi) Have a floor at or above grade level.

(2) The RNHCI must furnish each patient with the following:

(i) A separate bed of proper size and height for the convenience of the patient.

(ii) A clean, comfortable mattress.

(iii) Bedding appropriate to the weather and climate.

(iv) Functional furniture appropriate to the patient's needs and individual closet space with clothes racks and shelves accessible to the patient.

(3) HCFA may permit variances in requirements specified in paragraphs (b)(1)(i) and (ii) of this section relating to rooms on an individual basis when the RNHCI adequately demonstrates in writing that the variances meet the following:

(i) Are in accordance with the special needs of the patients.

(ii) Will not adversely affect patients' health and safety.

§ 403.744 Condition of participation: Life safety from fire.

(a) *General.* An RNHCI must meet the following conditions:

(1) Except as provided in paragraph (b) of this section, the RNHCI must meet the new or existing health care occupancies provisions of the 1997 edition of the Life Safety Code of the National Fire Protection Association (NFPA 101), which is incorporated by reference. Incorporation by reference of NFPA 101, 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.[1] (See § 483.70).

(2) The RNHCI must have written fire control plans that contain provisions for prompt reporting of fires; extinguishing fires; protection of patients, staff, and the public; evacuation; and cooperation with fire fighting authorities.

(3) The RNHCI must maintain written evidence of regular inspection and approval by State or local fire control agencies.

(b) *Exceptions.* (1) If application of the Life Safety Code required under

[1] The 1997 edition of the Life Safety Code (NFPA 101) is available for inspection at the HCFA Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. Copies of this publication may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02263–9101.

paragraph (a)(1) of this section would result in unreasonable hardship upon the RNHCI, HCFA may waive specific provisions of the Life Safety Code, but only if the waiver does not adversely affect the health and safety of patients.

(2) If HCFA finds that the fire and safety code imposed by State law adequately protects patients in the institution, the provisions of the Life Safety Code required in paragraph (a)(1) of this section do not apply in that State.

§ 403.746 Condition of participation: Utilization review.

The RNHCI must have in effect a written utilization review plan to assess the necessity of services furnished. The plan must provide that records be maintained of all meetings, decisions, and actions by the utilization review committee.

(a) *Standard: Utilization review plan.* The utilization review plan must contain written procedures for evaluating the following:

(1) Admissions.

(2) Duration of care.

(3) Continuing care of an extended duration.

(4) Items and services furnished.

(b) *Standard: Utilization review committee.* The committee is responsible for evaluating each admission and ensuring that the admission is necessary and appropriate. The utilization review plan must be carried out by the utilization review committee, consisting of the governing body, administrator or other individual responsible for the overall administration of the RNHCI, the supervisor of nursing staff, and other staff as appropriate.

§ 403.750 Estimate of expenditures and adjustments.

(a) *Estimates.* HCFA estimates the level of expenditures for services provided under this subpart before the start of each FFY beginning with FFY 2000.

(b) *Adjustments to payments.* When the level of estimated expenditures is projected to exceed the FFY trigger level as described in paragraph (d) of this section, for the year of the projection, payments to RNHCIs will be reduced by a proportional percentage to prevent estimated expenditures from exceeding the trigger level. In addition to reducing payments proportionally, HCFA may impose alternative adjustments.

(c) *Notification of adjustments.* HCFA notifies participating RNHCIs before the start of the FFY of the type and level of expenditure reductions to be made and when these adjustments will apply.

(d) *Calculation of trigger level.* The trigger level for FFY 1998 is $20,000,000. For subsequent FFYs, the trigger level is the unadjusted trigger level increased or decreased by the carry forward as described in § 403.754(b). The unadjusted trigger level is the base year amount (the unadjusted trigger level dollar amount for the prior FFY) increased by the average consumer price index (the single numerical value published monthly by the Bureau of Labor Statistics that presents the relationship in United States urban areas for the current cost of goods and services compared to a base year, to represent the change in spending power) for the 12-month period ending on July 31 preceding the beginning of the FFY.

§ 403.752 Payment provisions.

(a) *Payment to RNHCIs.* Payment for services may be made to an RNHCI that meets the conditions for coverage described in § 403.720 and the conditions of participation described in §§ 403.730 through 403.746. Payment is made in accordance with § 413.40 of this chapter to an RNHCI meeting these conditions.

(b) *Review of estimates and adjustments.* There is no administrative or judicial review of the level of estimated expenditures or the adjustments in payments described in §§ 403.750(a) and (b).

(c) *Effect on beneficiary liability.* When payments are reduced in accordance with § 403.750(b), the RNHCI may bill the beneficiary the amount of the Medicare reduction attributable to his or her covered services.

(d) *Notification of beneficiary liability.* (1) The RNHCI must notify the beneficiary in writing at the time of admission of any proposed or current proportional Medicare adjustment. A beneficiary currently receiving care in the RNHCI must be notified in writing at least 30 days before the Medicare reduction is to take effect. The notification must inform the beneficiary that the RNHCI can bill him or her for the proportional Medicare adjustment.

(2) The RNHCI must, at time of billing, provide the beneficiary with his or her liability for payment, based on a calculation of the Medicare reduction pertaining to the beneficiary's covered services permitted by § 403.750(b).

§ 403.754 Monitoring expenditure level.

(a) *Tracking expenditures.* Starting in FFY 1999 HCFA begins monitoring Medicare payments to RNHCIs.

(b) *Carry forward.* The difference between the trigger level and Medicare expenditures for a FFY results in a carry forward that either increases or decreases the unadjusted trigger level described in § 403.750(d). In no case may the carry forward exceed $50,000,000 for an FFY.

§ 403.756 Sunset provision.

(a) *Effective date.* Beginning with FFY 2002, if the level of estimated expenditures for all RNHCIs exceeds the trigger level for 3 consecutive FFYs, HCFA will not accept as the basis for payment of any claim any election executed on or after January 1 of the following calendar year.

(b) *Notice of activation.* A notice in the **Federal Register** will be published at least 60 days before January 1 of the calendar year that the sunset provision becomes effective.

(c) *Effects of sunset provision.* Only those beneficiaries who have a valid election in effect before January 1 of the year in which the sunset provision becomes effective will be able to claim Medicare payment for care in an RNHCI, and only for RNCHI services furnished during that election.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SYSTEMS

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.90 [Removed]

2. In § 412.90, paragraph (c) is removed and reserved.

§ 412.98 [Removed]

3. Section 412.98 is removed and reserved.

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.170, paragraphs (b) and (c) are revised to read as follows:

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

* * * * *

(b) *Services furnished in a religious nonmedical health care institution.* Services furnished in a religious nonmedical health care institution are services furnished in an institution that:

(1) Is an institution that is described in (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under section 501(a) of that section.

(2) Is lawfully operated under all applicable Federal, State, and local laws and regulations.

(3) Furnishes only nonmedical nursing items and services to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs.

(4) Furnishes nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of nonmedical patients.

(5) Furnishes these nonmedical items and services to inpatients on a 24-hour basis.

(6) Does not furnish, on the basis of its religious beliefs, through its personnel or otherwise, medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients.

(7) Is not owned by, is not under common ownership with, or does not have an ownership interest of 5 percent or more in, a provider of medical treatment or services and is not affiliated with a provider of medical treatment or services or with an individual who has an ownership interest or 5 percent or more in a provider of medical treatment or services. Permissible affiliations are described in paragraph (c) of this section.

(8) Has in effect a utilization review plan that meets the following criteria:

(i) Provides for the review of admissions to the institution, duration of stays, cases of continuous extended duration, and items and services furnished by the institution.

(ii) Requires that the reviews be made by a committee of the institution that included the individuals responsible for overall administration and for supervision of nursing personnel at the institution.

(iii) Provides that records be maintained of the meetings, decisions, and actions of the utilization review committee.

(iv) Meets other requirements as HCFA finds necessary to establish an effective utilization review plan.

(9) Provides information HCFA may require to implement section 1821 of the Act, including information relating to quality of care and coverage determinations.

(10) Meets other requirements as HCFA finds necessary in the interest of the health and safety of patients who receive services in the institution. These requirements are the conditions of participation found at part 403, subpart G of this chapter.

(c) *Affiliations.* An affiliation is permissible for purposes of paragraph (b)(7) of this section if it is between one of the following:

(1) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of an RNHCI and a provider of medical treatment or services.

(2) An individual who is a director, trustee, officer, employee, or staff member of an RNHCI and an another individual, with whom he or she has a family relationship, who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(3) The RNHCI and an individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and RNHCIs.

* * * * *

PART 488—SURVEY, CERTIFICATION, AND, ENFORCEMENT PROCEDURES

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 488.2 is amended by adding ''1861(ss)(2)—Accreditation of religious nonmedical health care institutions.'' after ''1861(ee)—Discharge planning guidelines for hospitals'' and before ''1864—Use of State survey agencies.''

3. Section 488.6 (a) is amended by adding ''religious nonmedical health care institutions;'' after ''hospices;'' and before ''screening mammography services;''

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 489.102, introductory paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 489.102 Requirements for providers

(a) Hospitals, critical access hospitals, skilled nursing facilities, nursing facilities, home health agencies, providers of home health care (and for Medicaid purposes, providers of personal care services), hospices, and religious nonmedical health care institutions must maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care, or patient care in the case of a patient in a religious nonmedical health care institution, by or through the provider and are required to:

* * * * *

(2) Document in a prominent part of the individual's current medical record, or patient care record in the case of an individual in a religious nonmedical health care institution, whether or not the individual has executed an advance directive;

* * * * *

PARTS 431, 440, 442, 456 and 466—[AMENDED]

1. In the following sections, ''Christian Science Sanitoria operated or listed and certified, by the First Church of Christ Scientist, Boston, Mass.'' is revised to read ''religious nonmedical institutions as defined in § 440.170(b) of this chapter'':

a. § 431.610(b);

b. § 442.12(b); and

c. § 456.601.

2. In the following sections, ''a Christian Science Sanitorium, operated or listed and certified, by the First Church of Christ Scientist, Boston, Mass.'' is revised to read ''a religious nonmedical institution as defined in § 440.170(b) of this chapter'':

a. § 431.701(a); and

b. § 466.1

3. In § 440.155(b)(1), ''Christian Science sanatorium operated, or listed and certified by the First Church of Christ, Scientist, Boston Mass.'' is revised to read ''religious nonmedical institution as defined in § 440.170(b).''

4. In § 456.351, ''Christian Science Sanitoria'' is revised to read ''religious nonmedical institutions as defined in § 440.170(b) of this chapter''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: November 17, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 29, 1999.

Donna E. Shalala,

Secretary.

Note: This document was received at the Office of the Federal Register on November 15, 1999.

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Part IV

Department of Energy

10 CFR Parts 960 and 963

Office of Civilian Radioactive Waste Management; Nuclear Waste Repositories; Yucca Mountain Site Suitability Guidelines; Proposed Rulemaking

DEPARTMENT OF ENERGY

10 CFR Parts 960 and 963

[Docket No. RW–RM–99–963]

RIN No. 1901–AA72

Office of Civilian Radioactive Waste Management; General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories; Yucca Mountain Site Suitability Guidelines

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy (DOE).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: DOE invites public comment on a revised proposal to amend the policies under the Nuclear Waste Policy Act of 1982 for evaluating the suitability of Yucca Mountain, Nevada, as a site for development of a nuclear waste repository. Today's revised proposal focuses on the criteria and methodology to be used for evaluating relevant geological and other related aspects of the Yucca Mountain site. Consistent with longstanding policy to conform DOE regulations regarding its nuclear waste repository program to comparable regulations of the Nuclear Regulatory Commission, DOE's proposed criteria and methodology are based on the Nuclear Regulatory Commission's recently proposed regulations for licensing a nuclear waste repository at Yucca Mountain.

DATES: Written comments must be received by February 14, 2000. DOE requests one copy of the written comments. DOE will hold two public hearings on this supplemental notice of proposed rulemaking. A subsequent **Federal Register** document, that will announce hearing dates, locations, and times, will be issued during the comment period.

ADDRESSES: Written comments should be addressed to Dr. William J. Boyle, U.S. Department of Energy, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, Nevada 89193–8608, or provided by electronic mail to 10CFR963@notes.ymp.gov.

Copies of the transcripts of the hearings, written comments, and documents referenced in this notice may be inspected and photocopied in the Yucca Mountain Science Center, 4101B Meadows Lane, Las Vegas, Nevada, (702) 295–1312, and the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC (202) 586–3142, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except for Federal holidays. For more information concerning public participation in this rulemaking, please refer to the Opportunity for Public Comment section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Boyle, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, Nevada 89193–8608, (800) 967–3477.

SUPPLEMENTARY INFORMATION:

I. Introduction

DOE today publishes this supplementary notice of proposed rulemaking in order to revise its December 16, 1996, proposal (61 FR 66158) to amend the ''General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories'') (Guidelines) (10 CFR part 960) that DOE promulgated under the Nuclear Waste Policy Act (NWPA) in 1984 (42 U.S.C. 10101, *et seq.*). The General Guidelines describe the DOE policies applicable to three sequential stages of the NWPA siting process, which are: (1) Preliminary site screening; (2) nomination of sites for site characterization (geological investigation of selected sites); and (3) selection of a site for recommendation to the President. The Guidelines are consistent with the licensing regulations of the Nuclear Regulatory Commission (NRC) in 10 CFR part 60.

In its December 16, 1996, proposal, DOE published proposed regulatory amendments to the Guidelines to reflect the prevailing scientific view on how to evaluate the suitability of the Yucca Mountain site for the development of a nuclear waste repository. Because the preliminary site screening stage was complete and Congress has required DOE to focus on Yucca Mountain, Nevada, DOE's proposed regulatory amendments dealt with provisions of the Guidelines applicable to the site recommendation stage. Today DOE is revising the terms of its proposal for three reasons.

First, during the comment period on the December 16, 1996, proposal, DOE received comments from members of the public, State and local officials of Nevada, the U.S. Environmental

Protection Agency (EPA), and the U.S. Nuclear Waste Technical Review Board, that in substance criticized the omission from the proposed regulatory amendments of the essential details of the criteria and methodology for evaluating the suitability of the Yucca Mountain site for the location of a nuclear waste repository. Some of the comments made pointed recommendations for guidelines at a more definitive level of specificity than the proposed regulatory text provided. Also, there were comments critical of the legal basis for DOE's proposal and its consistency with what those commenters viewed as DOE's past position on the meaning of sections 112(a) and 113(b) of the Act. As explained in detail later in this notice, DOE concluded that there was enough merit in these comments to warrant revision of the proposed regulatory amendments and expansion of the explanation of the factual and legal bases for them.

Second, in December, 1998, DOE issued, pursuant to Congressional direction, the Viability Assessment of a Repository at Yucca Mountain (Viability Assessment) (DOE/RW–0508). This document, which is available through the Internet on the web site (www.ymp.gov) or in hard copy upon request (see above, Further Information) sets forth the bases for the site suitability criteria DOE is proposing to use and the methodology for applying the criteria to a design for a proposed repository at the Yucca Mountain site. DOE can now assist commenters in responding to DOE's proposal with appropriate descriptions of, and references to, key portions of the Viability Assessment in the Supplementary Information.

Third, after the close of the comment period, the U.S. Nuclear Regulatory Commission (NRC), consistent with Congressional direction to the EPA to develop a site-specific radiation protection standard for the Yucca Mountain site, proposed to issue site-specific licensing requirements for that site in a new 10 CFR part 63 and to eliminate the site from coverage under 10 CFR part 60. Thereafter, EPA issued the Congressionally-mandated proposal for site-specific public health and safety standards for a repository at Yucca Mountain, to be codified at 40 CFR part 197. Section 113(c) of the NWPA provides that a determination of site suitability for development as a repository is largely an *estimate* that an application to the NRC for a construction authorization would be successful. 42 U.S.C. 10133(c). Thus, the details of the NRC proposal, which were not available when DOE formulated its December 16, 1996, proposal, affect the continuing usefulness of existing 10 CFR part 960, the text of DOE's proposed regulatory amendments, and the bases for those amendments in performing the analysis required by section 113. For reasons explained in detail below, DOE is of the view that the proposed part 63, if finalized without significant change, would make it illogical to apply the existing provisions of 10 CFR part 960, which are explicitly linked to provisions of the NRC's part 60. Moreover, the details of the NRC's proposal suggest the need for making conforming changes to the December 16, 1996, proposal to set forth the requirements for carrying out a total system performance assessment as the method for applying the site suitability criteria to the data developed during site characterization of the Yucca Mountain site.

Consistent with EPA's proposal for site-specific public health standards and NRC's proposal to limit part 60 and to establish a new part 63 for the Yucca Mountain site, DOE today is proposing regulations to: (1) Limit 10 CFR part 960 to preliminary site screening for repositories located elsewhere than Yucca Mountain; and (2) establish a new part 963 to contain the site suitability criteria and the methods for considering the potential of the Yucca Mountain site for a nuclear waste repository under those criteria. The proposed suitability criteria and methods provide a link between the geologic considerations identified in section 112(a) of the NWPA as primary criteria for siting a repository, and the current scientific understanding of site characteristics and related processes that are important to assessing the performance and safety of a potential geologic repository at the Yucca Mountain site. Although closely linked to the NRC's proposed part 63 licensing criteria and requirements, as is necessary and appropriate, DOE's proposed regulations in part 963 are not the equivalent of a *determination* that the site necessarily will meet all requirements to obtain a license from the NRC, or to be recommended by the Secretary for development as a geologic repository. Rather, DOE is proposing this new rule to better define its policies and criteria for determining the suitability of the Yucca Mountain site only in terms of, and based on, the information and data developed through the program of site characterization activities DOE has conducted over the years at Yucca Mountain under section 113(b) of the NWPA.

In issuing this notice, DOE is seeking to improve its policies for determining site suitability by enhancing their transparency, validity, and verifiability. In terms of transparency, DOE is aiming at regulations that are easier to read and understand. In terms of validity, DOE is aiming at an explanation of the legal and scientific basis for the regulations that shows how DOE's policies logically follow from scientifically supportable and legally sound premises. In terms of verifiability, DOE is aiming to show that the scientific conclusions underlying its policies are based on documented empirical results of experiments, and computer analyses of relevant data sufficient to warrant the conclusions DOE may eventually draw from known facts in a supporting statement for site recommendation to the President.

DOE hereby invites interested members of the public, State and local officials, and other Executive Branch agencies to review today's revised proposal and to provide comments on how well this rulemaking achieves these objectives. In addition, DOE intends to follow the consultation procedures set forth in section 112(a) of the NWPA for promulgation of the Guidelines in seeking review and comment on this revised proposal.

II. Background

This section provides an overview of the developments which have led DOE to propose to revise certain sections of the existing General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories and to adopt a new rule governing the site suitability criteria for the Yucca Mountain site.

A. Enactment of the Nuclear Waste Policy Act of 1982

1. Development of the Nuclear Waste Policy Act

The Nuclear Waste Policy Act of 1982 (NWPA) was enacted to provide for the siting, construction, and operation of repositories for which there is a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by spent nuclear fuel and high-level radioactive waste (hereinafter referred to as ''spent fuel'' or ''high-level waste'' or both). The NWPA established the Federal responsibility and defined Federal policy for the disposal of spent fuel and high-level waste. Because this waste remains radioactive for many thousands of years, Congress recognized that disposal involved many complex and novel technical and societal issues. To develop an appropriate framework for the resolution of these issues, several

years of intense legislative effort were required before a political consensus emerged to support enactment of the NWPA.

To meet the well-recognized reluctance of communities to host such facilities, the NWPA included a national site selection process that was designed to ensure fairness and objectivity in the identification of potential candidate sites for a repository. To ensure that the DOE would consider only candidate sites that had good potential for being licensed by the NRC, the NWPA required the DOE to obtain NRC concurrence on the DOE's general siting guidelines. And to ensure that the regulatory requirements for a repository would be set independently of any responsibility assigned to the DOE to develop that repository, the EPA was authorized to promulgate generally applicable standards for the protection of the environment. The NRC was authorized to establish repository licensing requirements and criteria, although these requirements and criteria could not be inconsistent with any comparable standards promulgated by the EPA.

2. Overview of the Nuclear Waste Policy Act

As originally enacted in 1982, the NWPA set forth requirements for selecting sites for the disposal of spent fuel and high-level wastes in a geological repository. 42 U.S.C. 10101, *et seq.* Several stages were established for the evaluation of potential sites, and these stages were defined in section 112, Recommendation of Candidate Sites for Site Characterization; section 113, Site Characterization; and section 114, Site Approval and Construction Authorization.

Section 112 of the NWPA addresses the initial stage of the site selection process, and includes four distinct steps: (1) DOE preliminary site screening (42 U.S.C. 10132(a)); (2) DOE nomination of at least five sites as suitable for characterization (42 U.S.C. 10132(b)(1)(A)); (3) DOE recommendation to the President of three of the five nominated sites as candidates for characterization (42 U.S.C. 10132(b)(1)(B)); and (4) Presidential approval of nominated sites for characterization (42 U.S.C. 10132(c)). Specifically, section 112(a) directs the DOE to issue general guidelines for the recommendation of candidate sites for site characterization. Section 112 directed DOE to consult with several federal agencies and obtain NRC concurrence on these guidelines.

Under section 112(a), DOE was required to specify in the guidelines: (1) detailed geologic considerations that were to be the primary criteria for the selection of sites for characterization in various geologic media; (2) certain factors (e.g., hydrology, geophysics, seismic activity) that would either qualify or disqualify a site from characterization; and (3) population density and distribution factors that would disqualify any site for characterization. 42 U.S.C. 10132(a). Section 112(a) also required DOE to include certain factors related to the comparative advantages among candidate sites. The DOE was directed to use the guidelines to consider candidate sites for recommendation as candidates for characterization. Section 112(a) explicitly authorized DOE to modify the guidelines consistent with the provisions of section 112(a).

Furthermore, section 112(a) directed DOE to develop certain qualifying or disqualifying factors for the preliminary site screening stage of the site selection process. Except for population density, the specific content of the qualifying or disqualifying factors was left to DOE's informed discretion. Because these factors are part of the Guidelines, their specific content could be modified in accordance with the authority in section 112(a).

Section 112(b) of the NWPA addressed DOE's recommendation to the President of sites for site characterization, that is, for intensive investigation of geologically related characteristics through surface and subsurface testing, among other investigative techniques. DOE was to nominate at least five sites as suitable for characterization. Each nominated site was to be accompanied by an environmental assessment. Of the five sites, DOE was to recommend three to the President for characterization. Section 112(c) of the NWPA addresses the President's review and approval of candidate sites for characterization.

Section 113 of the NWPA addresses site characterization, which involves activities that could proceed only after the section 112 actions had been completed. Section 113(a) authorizes DOE to conduct site characterization activities at the sites that had been approved by the President for characterization. Section 113(b) establishes the scope of DOE's site characterization activities, and directs the publication of a general plan for these activities. 42 U.S.C. 10133(b)(1)(A). DOE is to report semiannually on its ongoing and planned site characterization activities and the information derived therefrom. 42 U.S.C. 10133(b)(3). Section 113(b) also directs that the DOE include in the site characterization plan, criteria to be used to determine the suitability of a site for the location of a repository, developed pursuant to section 112(a). 42 U.S.C. 10133(b)(1)(A)(iv). Section 113(c) establishes limits on DOE's site characterization activities, and provides direction on how DOE is to proceed if at any time it determines that a site would be unsuitable for development as a repository.

Section 114 addresses site approval and construction authorization, and can only proceed as the section 113 site characterization activities near completion. Four distinct steps are defined in this section: (1) DOE recommendation of a site to the President for approval to develop as a repository [42 U.S.C. 10134(a)]; (2) recommendation of a site by the President to Congress [42 U.S.C. 10134(a)(2)]; (3) Congressional designation of the site [42 U.S.C. 10134(b)]; and (4) conduct of a licensing proceeding by the NRC [42 U.S.C. 10134(c)]. Further, under section 115, after the President recommends a site to Congress, the Governor and the legislature of the host State may submit a notice of disapproval. If the State disapproves, Congress must enact a resolution of siting approval in order to designate the site. 42 U.S.C. 10135(b). If the Congressional designation takes effect, DOE must submit an application to the NRC for a construction authorization. 42 U.S.C. 10134(b).

Section 114(a) provides for DOE activities necessary to prepare a recommendation to the President for Presidential approval of a site for development as a repository. These activities include public hearings in the vicinity of the site to inform residents of the area and receive their comments, and the completion of site characterization. Upon completion of these hearings and site characterization, the Secretary may decide to recommend the site to the President. A comprehensive statement of the basis for this recommendation is to accompany the recommendation, and be made available to the public. 42 U.S.C. 10134(a)(1). Section 114(b) then authorizes DOE to apply to the NRC for construction authorization, if the President recommends a site to the Congress and that recommendation is permitted to take effect. Sections 114(c)-(e) direct the NRC and DOE on certain aspects of the construction authorization process. Section 114(f) requires that a final Environmental Impact Statement (EIS) accompany the Secretary's recommendation of a site to the President.

B. DOE Promulgation of General Guidelines at 10 CFR Part 960

1. Overview of the General Guidelines

Section 112(a) of the NWPA directed DOE to issue general guidelines for the recommendation of sites for characterization, in consultation with certain Federal agencies and interested Governors, and with the concurrence of the NRC. These general guidelines were to be comparative in nature, as DOE was required to consider various geologic media and such considerations as proximity to where spent fuel and high-level waste were stored. The general guidelines were also to consider non-geologic factors, such as population density and distribution, that would not be examined in site characterization. No other procedural requirements were imposed on the issuance of these guidelines.

DOE promulgated the section 112(a) guidelines by notice and comment rulemaking, in addition to the consultation and concurrence process specified in the NWPA. The DOE also conducted several public meetings on the guidelines. These additional activities, although not required by the NWPA, enabled DOE to receive comments from interested members of the public. The general guidelines were promulgated on December 6, 1984, and codified in the Code of Federal Regulations at 10 CFR part 960, General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories. 49 FR 47714.

2. Structure of the General Guidelines

The Guidelines promulgated by DOE defined the basic technical requirements that candidate sites must meet, and specified how DOE would implement its site-selection process. The Guidelines were structured according to three categories: implementation guidelines, preclosure guidelines and postclosure guidelines. The implementation guidelines addressed general application of all the guidelines, and established the methodology for applying the guidelines during the various stages of the siting process: site screening and nomination, recommendation for characterization, and recommendation for repository development. The preclosure guidelines governed the siting considerations that dealt with the operation of a geologic repository before it is closed. The postclosure guidelines governed the siting considerations that dealt with the long-term behavior of a geologic repository after waste emplacement and closure.

Both the preclosure and postclosure guidelines were organized under general categories of interest, for example, geohydrology and geochemistry. Each category was further divided into system guidelines and corresponding technical guidelines. The system guidelines addressed broad requirements for a geologic repository under preclosure and postclosure conditions; the corresponding technical guidelines specified conditions that would qualify or disqualify a site, and conditions that would be considered favorable or potentially adverse. 49 FR 47724. In effect, the technical guidelines and the associated qualifying and disqualifying conditions imposed specific ''subsystem'' performance requirements; each subsystem requirement would be used to evaluate the merits of a site, independent of the other requirements.

Section 112 of the NWPA described the minimum steps that DOE was to take during site screening and prior to site characterization. When promulgating the Guidelines in 1984, DOE determined that application of the Guidelines should extend beyond preliminary site screening to encompass site characterization activities and site recommendation to the President. Appendix III to the Guidelines explained how certain of the Guidelines would be applied at the principal decision points of the siting process: (1) identification of a site as being potentially acceptable under section 112(b); (2) nomination and recommendation of sites as suitable for characterization under sections 112(b) and (c); and (3) recommendation of a site for development as a repository (sections 113 and 114). 49 FR 47729–47730. With respect to the third decision point, which would be reached only after completion of site characterization activities and non-geologic data gathering activities, DOE did not promulgate separate Guidelines. Instead, DOE indicated that the preclosure and postclosure Guidelines would be applied to this decision, and appropriate findings issued, in the manner prescribed in Appendix III. Appendix III specified the types of findings that were to be issued from the application of the disqualifying and the qualifying conditions at each of the three decision points. The types of findings corresponded with the level of confidence required to make a finding; that is, a lower level finding required one degree of confidence in the finding, and a higher level finding required an increased level of confidence in the finding over the lower level. 49 FR 47728–47729. Appendix III included a table summarizing the level of the finding required at each of the three decision points.

Appendix III represents the analytical process DOE would follow to issue findings relative to the disqualifying and qualifying conditions of a site, and use in its decision-making on site selection. This analytical process dictates a higher-level of confidence in the findings of qualifying or disqualifying conditions at the last stage of the siting process, site selection for repository development, compared to the initial stage of the siting process, site nomination for site characterization. DOE anticipated that the higher-level of confidence in its technical findings would be obtained through the site characterization process undertaken at the later stages of the selection process.

3. Bases for the Structure of the General Guidelines

The structure and development of the Guidelines were based on four primary sources of information and considerations: (1) The direction in the NWPA, as originally enacted; (2) the extant understanding of geologic disposal in the scientific and technical community; (3) applicable regulations proposed by the NRC and the EPA governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories; and (4) public comments.

DOE initiated the rulemaking process by assembling a task force of program experts. 49 FR 47718. The task force developed draft Guidelines based on criteria used earlier in the National Waste Terminal Storage Program, including program objectives, system performance criteria, and site performance criteria. At the time, the task force reviewed other criteria defined for geologic repositories by the National Academy of Sciences and the International Atomic Energy Agency.

The task force also sought consistency with NRC regulations and proposed EPA regulations related to geologic repositories. 49 FR 47718. NRC is the statutory agency responsible for licensing the construction and operation of a geologic repository; EPA is the statutory agency responsible for setting public health and safety standards for a geologic repository. Consistency of the DOE Guidelines with these regulatory standards was essential, since any potential site would be evaluated based on its ability to meet applicable regulatory requirements. 49 FR 47721.

In sum, the structure and content of the Guidelines was based on the state of knowledge in the late-1970s and early-

1980s in the regulatory community, as well as the national and international scientific community, regarding the development of geologic repositories.

DOE sought and received extensive public comments on a draft of the Guidelines before submitting them to the NRC for concurrence. On February 7, 1983, the proposed Guidelines were published in the **Federal Register** (48 FR 5670) for public review and comment. In addition, DOE published a separate notice soliciting comment from the Governors of the six States with potentially acceptable sites, and then met individually with officials from each of these States. DOE also held a series of regional public hearings. After considering the comments received, DOE drafted a set of alternate Guidelines to address the comments. The alternate Guidelines and public comments were made available in a second notice on June 7, 1983 (48 FR 26441), followed by a second public comment period. Further regional meetings and consultations with Federal agencies were held before DOE submitted the Guidelines to NRC for concurrence on November 22, 1983. 49 FR 47718–47719.

4. Consistency With NRC Technical and Procedural Conditions

Of particular importance to DOE's formulation of the Guidelines was consistency with NRC licensing regulations for the disposal of waste in a geologic repository. 49 FR 47718. In June 1983, NRC amended its licensing regulations at 10 CFR part 60 with respect to subpart E, technical criteria addressing siting, design and performance objectives of a geologic repository. 48 FR 28194. NRC concurred in the Guidelines subject to conditions that would satisfy the overall need to maintain consistency between NRC regulations and the DOE Guidelines. Among the NRC conditions were: (1) DOE clarifications and deletions of certain limiting terms such as ''permanent'' and ''significant''; (2) DOE modifications for consistency with NRC criteria regarding anticipated processes and events, potentially adverse conditions, and the role of engineered barriers during the process for screening candidate sites for characterization; and (3) DOE revisions and additions to disqualifying conditions to ensure that unacceptable sites would be eliminated as early as practicable. 49 FR 47719–47722.

NRC concurrence conditions also addressed general, procedural aspects of how the DOE was to apply the Guidelines. For example, NRC concurrence was conditioned on a lack of conflict between NRC regulations at 10 CFR part 60 and the Guidelines, recognition by DOE that NRC regulations were controlling in the event of any differences, and a commitment that DOE would obtain NRC concurrence on any future revisions to the Guidelines. 49 FR 47719–47720. NRC also requested DOE to specify in greater detail how the Guidelines would be applied at each siting stage. This specificity was provided by the addition of Appendix III to the Guidelines. Appendix III indicated how the Guidelines would be applied at all of the site selection stages, including the recommendations to the President for site characterization and for the development of a site as a repository.

The NRC required additional changes after it met publicly with representatives of several interested states, Indian tribes, and DOE. After DOE committed to making those changes, the NRC voted to concur in the Guidelines. 49 FR 47720. Thus, the current Guidelines represent the substantial input provided by the NRC in 1984 through the statutory concurrence process.

C. DOE Application of the Guidelines

Consistent with section 112(b) of the NWPA, DOE applied the Guidelines to: (1) Nominate five sites as suitable for characterization; and (2) recommend to the President three of those five nominated sites for characterization as candidate sites for the first repository. On May 27, 1986, the President approved each of the sites that had been recommended for characterization. Yucca Mountain was one of the three sites that DOE recommended. The recommendation to the President was documented in a DOE report, Recommendation by the Secretary of Energy for Site Characterization for the First Radioactive-Waste Repository (May 1986; DOE/S–0048). In addition, a draft environmental assessment was prepared for each of the five sites and final environmental assessments were prepared for each of the three sites that were recommended.

This action concluded the process that had been established by the NWPA for identifying sites for characterization. The Guidelines' role of structuring DOE's process for identifying sites for characterization was completed in accordance with the Congressional directives to DOE. Under DOE's formulation of the Guidelines at that time, however, the Guidelines would remain relevant and applicable through the third principal siting decision point, the selection of a site to be recommended for the development of a repository.

D. 1987 Amendments to NWPA

In 1987, Congress amended the NWPA to mandate Yucca Mountain as the sole site to be characterized. 42 U.S.C. 10172 (Supp. V 1987). The processes for site characterization under section 113 and site approval under section 114 were made applicable to only Yucca Mountain. Under sections 113(a) and (b), Yucca Mountain was designated as the site for which site characterization activities would take place, and a site characterization plan would be issued, respectively. Under section 113(c), Congress amended the statute to name Yucca Mountain as the site for which the restrictions on site characterization activities would be applicable. That is, DOE was directed to conduct only such activities at Yucca Mountain that are necessary to evaluate the suitability of the site for an application to the NRC for a construction authorization, and to comply with requirements under the National Environmental Policy Act (NEPA). Section 114 was amended to restrict DOE's analysis of alternative sites in any environmental impact statement (EIS) that may be prepared for the Yucca Mountain site under NEPA. Any such EIS would analyze the Yucca Mountain site, and no other sites, for potential development of a geologic repository. Further, section 160(b) directed DOE to ''terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site.'' 42 U.S.C. 10172(a)(2).

In sum, Congress made clear its intent for DOE to focus its resources on investigating Yucca Mountain, and only Yucca Mountain, as a potential site for a high-level radioactive waste repository.

E. Yucca Mountain Site Characterization Plan

1. Statutory Requirements

Under sections 113 and 160 of the NWPA, as amended, DOE was authorized to conduct site characterization activities at the Yucca Mountain site. Prior to initiating site characterization under section 113, DOE was required to prepare a general plan for site characterization activities at the Yucca Mountain site. DOE was required to submit the plan to the NRC and the State of Nevada for their review and comment [42 U.S.C. 10133(b)(1)], as well as to members of the public in the vicinity of Yucca Mountain [42 U.S.C. 10133(b)(2)]. Certain contents of the

plan were mandated by section 113(b), including, among other things, a description of planned excavation and other testing activities, a description of the possible form or packaging of the high-level waste, and the criteria to be used to determine the suitability of the site for the location of a repository, developed pursuant to section 112(a). Section 113(b)(3) also required DOE to report every six months on the progress of site characterization activities at Yucca Mountain, and to provide the reports to the NRC, and the Governor and the legislature of the State of Nevada.

DOE prepared the site characterization plan in draft form in January 1988. In preparing the plan, DOE followed NRC guidance, as specified in the document, Standard Format and Content of Site Characterization Plans for High Level Waste Geologic Repositories, Regulatory Guide 4.17 (NRC 1987). After review and comment by NRC, the State of Nevada, and interested members of the public, DOE finalized the Site Characterization Plan: Yucca Mountain Site, Nevada Research and Development Area, Nevada (December 1988; DOE/RW–0198) (hereinafter also the SCP), in December 1988.

2. Structure of the Site Characterization Plan

''Site characterization'' is defined in the NWPA to include research activities undertaken to establish the geologic condition of a site, for example, borings and surface excavations, and in situ testing necessary to evaluate the suitability of a candidate site for the location of a repository. 42 U.S.C. 10101(21). In the SCP, DOE described the purpose of its site characterization program at Yucca Mountain was to obtain the information necessary to determine whether the site is suitable for a repository, and could satisfy NRC licensing requirements (which must be consistent with EPA public health and safety standards). DOE also explained there that the information obtained from site characterization, such as the geologic, geoengineering, hydrologic, and climatological conditions at a site, would be used to develop and optimize repository design and to evaluate the performance of the site and the engineered barriers as an integrated system.

The purpose of the SCP was threefold: (1) To describe the site, and the preliminary designs for the repository and the waste packages in sufficient detail to form the basis for the site characterization program; (2) identify issues to be resolved during site characterization and present the strategy for resolving the issues; and (3) describe the plans for the work needed to obtain the information deemed necessary and to resolve outstanding issues. The SCP was organized along two lines: (1) An issues hierarchy, which embodies the DOE, NRC and EPA regulations governing the repository system; and (2) an issue-resolution strategy.

The issues hierarchy was a three-tiered framework laying out what must be known before the Yucca Mountain site could be selected and licensed. ''Issues'' were defined as questions related to performance of the repository that must be resolved to demonstrate compliance with applicable regulations of DOE, NRC and EPA. DOE identified four key issues to be addressed, based on regulatory requirements and the four system guidelines in part 960: (1) Postclosure performance; (2) preclosure performance; (3) environment, socioeconomic, and transportation impacts of a repository; and (4) ease and cost of repository siting, construction, operation and closure. DOE also explained that only the first, second, and part of the fourth key issue would be addressed in the site characterization program, since resolution of these other key issues (that is, key issue 3 and part of key issue 4) were not dependent on information from site characterization activities. The issue-resolution strategy consisted of four parts: Issue identification, performance allocation, data collection and analysis, and documentation of issue resolution. This framework was used to develop test programs and explain why the test programs were adequate and necessary. The object was to collect information to be used in a concluding set of analyses to resolve the issues, and to document resolution of the issues.

As required by section 113(b)(1)(A)(iv), the SCP included criteria to determine the suitability of the site for development of a repository. Those ''criteria'' were the provisions within the Guidelines pertinent to site characterization activities, namely, the postclosure guidelines, and the preclosure guidelines related to radiological safety and technical feasibility of repository siting, construction and operation, to be applied in the manner described in Appendix III. Appendix III set out the level of findings DOE must make relative to the system and technical requirements found in the postclosure guidelines (subpart C) and preclosure guidelines (subpart D) at the final decision point of recommending a site for development as a repository. DOE believed that the information gained through site characterization and the issue resolution process would form the basis for these findings.

DOE also explained in the SCP that not all of the Guidelines would be addressed as part of site characterization activities. The SCP would not address the environmental, socioeconomic and transportation guidelines, or certain guidelines related to ease and cost of repository siting, construction, operation, and closure, since DOE would not develop information related to those guidelines through site characterization activities. Those guidelines would be addressed in other investigations and plans to be conducted concurrently with the site characterization program. Also, in light of the 1987 amendments to the NWPA permitting site characterization to proceed only at Yucca Mountain, DOE stated in the SCP that the comparative portions of the Guidelines would not be applied in the site suitability determination to be made under section 113(b).

In accordance with section 113(b)(3), approximately every six months DOE issues a report updating information on the conduct of site characterization activities at the Yucca Mountain site. Those reports briefly summarize the characterization activities undertaken at the site, the technical and scientific issues of key interest and their resolution, and issues that remain for further characterization and resolution. In addition, the semiannual reports provide references and a bibliography of other reports and documents containing more detailed information regarding site characterization activities. DOE provides the reports to the NRC, the Governor of Nevada, and the legislature of the State of Nevada.

The progress reports reflect DOE's ongoing interaction with the NRC. In July 1986, the NRC amended its regulations at 10 CFR part 60 (51 FR 27158) to establish the method of interaction between DOE and the NRC on the development and implementation of the site characterization plan. NRC established a system for DOE to report on the results of site characterization, identify issues, plan for additional studies, eliminate planned studies no longer necessary, and identify decision points reached. In this manner, the NRC established a clear pathway to interact with DOE in the management and direction of the site characterization program.

Site characterization activities have continued up to and including the present, and are described in greater detail below in section II.G.

F. Energy Policy Act of 1992

In 1992, Congress enacted certain provisions in the Energy Policy Act of 1992 (Pub. L. No. 102–486) impacting the nation's nuclear waste repository program. In section 801(a) of the Energy Policy Act of 1992 (EPACT), Congress directed EPA to promulgate a new, health-based standard to ensure protection of the public health from high-level radioactive waste that may be disposed in a geologic repository located at Yucca Mountain. The new standards could depart from the generic EPA standards promulgated at 40 CFR part 191, and would be specific to Yucca Mountain. In section 801(b), Congress also directed the NRC, within one year of EPA adopting a new standard, to modify its technical requirements and criteria under section 121(b) of the NWPA [42 U.S.C. 10141(b)] (i.e., 10 CFR part 60), as necessary, to be consistent with the new EPA standards.

Before setting the new standard, however, EPA was required to contract with the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. Under section 801(a) of the EPACT, EPA was required to promulgate its new standards based on, and consistent with, the NAS findings and recommendations. Under the EPACT and accompanying congressional instruction, NAS's charge was to answer three specific questions embodied in section 801(a)(2), and to advise EPA on the technical basis for the health-based standards it was mandated to prepare. The three questions posed in section 801(a)(2) addressed: (1) Whether a health-based standard based on doses to individual members of the public would provide a reasonable basis for protecting public health and safety; (2) whether it is reasonable to assume that a system for postclosure oversight of the repository, using active institutional controls, will prevent an unreasonable risk of breaching the repository's engineered or natural barriers, or of increasing the exposure of individual members of the public to radiation beyond allowable limits; and (3) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or natural barriers will be breached as a result of human intrusion over a period of 10,000 years.

In August 1995, NAS published the statutorily mandated report, entitled Technical Bases for Yucca Mountain Standards. In sum, NAS issued findings that: (1) A health standard for Yucca Mountain based on risk to individuals of adverse health effects from releases from the repository (rather than EPA's generic standards which contain both individual dose and release limits) was an appropriate standard that would adequately protect the health and safety of the general public; (2) it is not reasonable to assume that a system for postclosure oversight can be developed, based on active institutional controls, which will itself prevent an unreasonable risk of breaching the repository's engineered barriers or of increasing the exposure of individual members of the public to radiation beyond allowable limits; and (3) it is not possible to make scientifically supportable predictions of the probability that a repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years. Notwithstanding the latter two findings, the NAS recommended EPA include in its regulations a stylized human intrusion event. The NAS reasoned that such an analysis may provide useful insight into the degree to which the ability of a repository to protect the public health and safety would be degraded by an intrusion.

In reaching its findings and recommendations, the NAS consulted with numerous entities, including local, state and federal government agencies, private organizations, and scientists and engineers, both national and international, familiar with the technical issues under study, and held five open technical meetings to ensure a thorough review of the scientific literature on the subject. In the Technical Bases for Yucca Mountain Standards, the NAS provides a detailed explanation of the assumptions and analyses underlying the study, and the reasons for NAS's findings and recommendations. Among the more important of these is the NAS assumption, confirmed by its technical review, that it is possible to conduct scientifically justifiable analyses of repository behavior over thousands of years in order to assess whether a repository can comply with the applicable public health standard. In addition, based on its analyses, the NAS concluded that the proper way to evaluate the risks of adverse health effects, and to compare those risks to the proposed standard, is to assess the estimated potential future behavior of the entire repository system and its potential effect on humans. The procedure used to perform this analysis is called performance assessment (alternately called total system performance assessment).

In discussing the possible implications of its conclusions, the NAS noted that, if EPA issues standards based on individual risk (as recommended by the NAS), then the NRC would be required to revise its regulations embodied in 10 CFR part 60 to be consistent with EPA. This is because NRC's 10 CFR part 60 is directed in part to subsystem technical requirements, whereas the NAS concluded that it is the performance of the total system, rather than that of its individual elements in isolation, that is crucial in the context of a risk-based standard. Under a risk-based standard, imposing subsystem performance requirements might result in a deficient repository design even if each subsystem element meets or exceeds a certain performance standard. The NAS also observed that its recommendations, if adopted, implied the development by EPA of different regulatory and analytical approaches than those employed in the past, and that the process of establishing the new standards would require significant time and opportunity for public comment and review. Nevertheless, NAS noted that these potential changes should not impede site characterization work by DOE at Yucca Mountain.

At present, EPA is in the process of preparing new standards pursuant to EPACT and in light of the NAS findings and recommendations. Those new standards have proposed in a rulemaking proceeding for public review and comment. Also consistent with EPACT, section 801(b), the NRC has proposed new regulations governing the technical requirements and criteria for licensing a potential geologic repository at the Yucca Mountain site based on the NAS findings and recommendations and in anticipation of new EPA standards. The EPA's and NRC's proposed regulations are discussed in greater detail below, in section II.J, and II.K, respectively.

G. Evolution of the Site Characterization Program

Since publication of the SCP in 1988, DOE's site characterization program at Yucca Mountain has made substantial progress in developing information and data about the site and resolving outstanding technical issues. Over time, the site characterization program has evolved and been driven by advances in science and technology, as well as legislative and managerial changes. The following summarizes the evolution and status of the site characterization program.

Technical Components of the Site Characterization Program. The three main technical components of the site characterization program are testing, design, and performance assessment. Testing encompasses the investigation of natural features and processes at the site through field testing, conducted above and below ground, and laboratory testing of rock and water samples. Design refers to work on development of the description of a repository and waste packages tailored to the site features, supported by laboratory testing of candidate materials for waste packages and design-related testing in the underground tunnels similar to those in which waste would be emplaced. Performance assessment refers to the quantitative estimates of the performance of the total repository system, over a range of possible conditions and for different repository configurations, by means of computer modeling techniques that are based on site and materials testing data and accepted principles of physics and chemistry.

Through the testing program, DOE has learned a great deal about the geologic conditions of the site. The single largest effort undertaken in this regard has been construction of the Exploratory Studies Facility (ESF). Construction of this facility began in 1992 and was completed in 1998. The ESF, a 4.9 mile long underground tunnel, has enabled DOE to conduct testing and exploration activities at the depth of the proposed repository. Utilization of this facility has formed the basis for increased knowledge and understanding of the mechanical and hydrologic characteristics of the geologic formation in which the repository would be constructed. Ongoing work at this facility will focus primarily on thermal and hydrologic testing in the cross drift to extend and, where necessary, modify this understanding of the properties of the host rock.

The design component of the site characterization program comprises those activities aimed at developing concepts for the engineered components of the geologic repository. Design activities use information about the site gained through the testing program, and information about the engineered barrier system gained through other scientific investigations, to generate and develop design concepts that can meet the requirements placed on the engineered components of the repository. Site characterization activities are structured to acquire data needed to support the design. For example, a number of the site characterization program tests focus on the hydrological, geomechanical and thermal properties of Yucca Mountain. These tests are significant because they provide the fundamental information needed to specify the approach to be used in developing the geologic repository thermal loading and underground support schemes. Also, under the design program, DOE examines various approaches to meeting engineered facility requirements, and conducts comparative evaluations of the costs and benefits of different approaches to developing design concepts.

The performance assessment component of site characterization represents the analytical method (i.e., computer modeling) DOE uses to forecast the performance of the repository within the Yucca Mountain setting and assess that performance against regulatory standards. Put in simplified terms, performance assessment uses the information and data collected under the testing and design programs to feed computer models that describe how the site would behave in the presence of a repository and how the engineered system would behave within the environmental setting of the mountain. Each model, called a process model, is designed to describe the behavior of individual and coupled physical and chemical processes. A total system performance assessment (TSPA) links the results of individual process models to construct a computer model of the repository system and surrounding environment that are important to assessment of overall repository performance. With the TSPA model, DOE can estimate releases of radionuclides from a repository under a range of conditions, over thousands of years, and forecast the consequent probable doses to persons.

Performance assessment (or TSPA), as described above, is an accepted method to assess the performance of a repository at Yucca Mountain. DOE's use of performance assessment models began even before issuance of the SCP in 1988. Since that time, however, significant advancements have been made in the technical capability, acceptance, and use of this analytical tool. In 1991, the Nuclear Energy Agency Radioactive Waste Management Committee and the International Atomic Energy Agency International Radioactive Waste Management Advisory Committee confirmed that TSPA provides an adequate means to evaluate long-term radiological impacts of a waste disposal system. On a national level, the NRC, the NAS and the Nuclear Waste Technical Review Board (a Congressionally mandated committee of experts chartered to evaluate the technical and scientific validity of activities undertaken by DOE to characterize Yucca Mountain to determine its suitability as a location for a repository) have acknowledged the value of this method for evaluating postclosure performance for a repository at Yucca Mountain.

A significant portion of the DOE site characterization program has been aimed at developing the scientific bases that serve as the foundation for the process models used in performance assessment. DOE developed performance assessment models and conducted benchmark performance assessments of the total repository system in 1991, 1993 and 1995. Between these benchmark assessments, DOE conducted many performance assessments to evaluate selected features of the site and the evolving design. DOE used these total system and subsystem performance assessments to evaluate design options and to determine further data needed from site investigations. The most recent TSPA was conducted in 1998, the results of which are contained in the report, Viability Assessment of a Repository at Yucca Mountain (December 1998; DOE/RW–0508).

Redirection of the Site Characterization Program. In 1994, DOE conducted extensive internal and external reviews of the program. As a result of those reviews, documented in the Civilian Radioactive Waste Management Program Plan (December 1994; DOE/RW–0458) (Program Plan), DOE identified cost-cutting measures to reduce the cost of completing site characterization. In response to Congressional concern with the 1994 Program Plan, DOE submitted a revised Program Plan to Congress that was designed to maintain scientific investigations at the site, and retain target dates for determining site suitability and recommendation for construction authorization. Civilian Radioactive Waste Management Program Plan, Revision 1 (May 1996; DOE/RW–0458). As part of the revised strategy, DOE redirected project efforts to address the major unresolved technical questions and to complete an assessment of the viability of licensing and constructing a repository at Yucca Mountain. Congress indicated its approval of the revised Program Plan in the Conference Report on the Energy and Water Development Appropriations Act, 1997, H.R. Rep. No. 782, 104th Cong., 2d Sess. 82 (1996), by directing that the appropriated funds be used in accordance with the revised Program Plan issued by DOE in May 1996.

In the Fiscal Year 1997 Energy and Water Development Appropriations Act (Pub. L. No. 104–206), Congress directed DOE to provide the viability assessment of the Yucca Mountain site, referenced in DOE's revised Program Plan, to Congress and the President as a basis for making future decisions on program funding and direction. DOE issued the Viability Assessment of a Repository at Yucca Mountain (Viability Assessment) in December 1998. Drawing on 15 years of scientific investigation and design work, the Viability Assessment summarizes a large technical basis of field investigations, laboratory tests, models, analyses and engineering. The Viability Assessment also identifies major uncertainties relevant to the technical defensibility of DOE's analyses and designs, the approach to managing these uncertainties, and the status of work relative to the target dates of 2001 for a determination on recommendation of Yucca Mountain and 2002 for submittal of a license application to NRC. The Viability Assessment also includes the most recent iteration of the TSPA, and the results of that process.

Coordination with NRC. DOE's implementation of its site characterization program and the issue resolution strategy embodied in the SCP has been conducted in close coordination with the NRC. In 1995, the NRC revised its prelicensing repository program as a result of changes in the DOE civilian radioactive waste management program, the findings of a NAS committee recommending changes to the public health standard for a potential Yucca Mountain repository, and budgetary constraints imposed by Congress. The NRC adjusted the scope of its program to focus only on those topics most critical to repository performance, termed ''key technical issues.'' These issues were intended to be a vehicle to communicate to DOE those technical matters for which the NRC had remaining unanswered questions regarding the performance of the Yucca Mountain site, or the data needed to assess that performance. DOE's management of the site characterization program includes activities to obtain information to address the NRC key technical issues. DOE has structured the site characterization program such that one of its goals is for DOE and NRC to reach consensus that the remaining key technical issues have been addressed adequately, or that adequate plans are in place to address the issues.

H. The 1993–1995 Public Dialogue on the Guidelines

In the SCP, issued in December 1988, DOE described how it would apply the Guidelines as part of the site characterization program to evaluate the suitability of the site. DOE indicated in the SCP that the Guidelines related to site characterization activities would be applied as the suitability criteria. DOE also indicated there that the comparative provisions of those requirements would not be applied in light of the 1987 amendments to the NWPA limiting site characterization activities to Yucca Mountain. Notwithstanding this explanation, a number of interested parties suggested it remained unclear how DOE would apply the Guidelines in the future. Because of this continuing stated uncertainty, the DOE instituted an ongoing dialogue with external parties on the Guidelines.

In October 1993, DOE briefed the representatives of the affected units of local government and the State of Nevada on its plans for activities related to site suitability evaluation. DOE followed this briefing with a Notice of Inquiry in the **Federal Register** (59 FR 19680), dated April 25, 1994, eliciting the views of the public on the appropriate role of the Guidelines. A public meeting was held on May 21, 1994 in Las Vegas, Nevada. The purposes of the meeting were to follow-up on a previous public meeting held in August 1993; to update the public on site characterization activities; and to provide an opportunity to discuss the development of a process to evaluate site suitability. DOE then published a second **Federal Register** notice (59 FR 39766) on August 4, 1994, announcing that it intended to use the Guidelines as currently written, subject to the programmatic reconfiguration directed in the 1987 NWPA amendments. Through that notice, DOE also announced the availability of a draft description of the proposed process and its intention to hold two additional public meetings to discuss the matter. Although several options were discussed, DOE discerned no clearly preferred option from this public comment process. In response to public comments at the meetings, DOE committed to provide background information and its rationale for maintaining the use of the Guidelines as originally promulgated, with modification to eliminate application of the comparative portions of the Guidelines. In September 1995, DOE published in the **Federal Register** the background information and its rationale, as committed to in previous public meetings. 60 FR 47737.

In the September 1995 public notice, DOE explained that amending the Guidelines, either to remove those portions that are primarily used for comparative purposes or to develop guidelines tailored to evaluation of the suitability of the Yucca Mountain site, was not required at that time. DOE recognized then that the Guidelines might have to be amended at some future date to be consistent with any changes to EPA or NRC requirements. 60 FR 47740. Among the options considered in the 1993–1995 public dialogue was abandonment of the Guidelines and adoption of the NRC siting criteria in 10 CFR 60.122. DOE noted that the Guidelines were expressly derived from, and are tied to, the part 60 siting criteria. In addition, DOE noted that, should any differences between 10 CFR part 960 and 10 CFR part 60 be identified, 10 CFR part 60 would prevail in the licensing process. While recognizing that much of 10 CFR 960 subpart B, the implementation guidelines, was no longer applicable, DOE concluded that the Guidelines could be selectively interpreted to avoid the comparative aspects while applying the relevant provisions of subparts C and D, the postclosure and preclosure guidelines.

I. The 1996 Notice of Proposed Rulemaking

For many of the reasons described earlier in this notice, including changes in congressional direction of the repository program and advancements in site characterization, on December 16, 1996, DOE published in the **Federal Register** a notice of proposed rulemaking for 10 CFR part 960. 61 FR 66158. In that notice, DOE proposed to clarify and focus the Guidelines and to add a new, site-specific subpart E to the Guidelines. Subpart E would apply only to the Yucca Mountain site, and would contain preclosure and postclosure system guidelines, each with a single qualifying condition. 61 FR 66163. In each of the periods, the qualifying condition would be that a repository at Yucca Mountain be capable of limiting radiological releases within applicable standards to be set by EPA and implemented by the NRC through the repository licensing process. DOE would demonstrate this capability through performance assessments. 61 FR 66164. These performance assessments would forecast the performance of a proposed geologic repository at Yucca Mountain and compare the results of the assessments to the applicable regulatory standards to

determine whether the site would be suitable for development as a repository.

The 1996 proposal was consistent with the system-level evaluation originally envisioned for the conclusion of site characterization. DOE recognized in 1984 in the Guidelines that, only after the entire process of narrowing the number of potentially acceptable sites to one and after site characterization, would it be possible to conduct complete performance assessments. Such assessments require detailed information that can be obtained only during site characterization. 49 FR 47717. In addition, the 1996 proposal was consistent with DOE's longstanding position that the Guidelines must complement and not conflict with EPA and NRC regulations, since the ability to meet applicable public health and safety standards and develop information adequate to support a license application has always been central to the site suitability determination.

The 1996 proposal attracted a wide variety of comments from members of the public, the NRC, the EPA, and the Nuclear Waste Technical Review Board. The major issues that emerged from the public comment process are discussed in detail later in this Supplementary Information. For reasons also explained below, these comments persuaded DOE to reassess the clarity of the proposed regulations and the legal and policy basis for them.

J. Proposed NRC Regulation, 10 CFR Part 63

1. Background

On February 22, 1999, the NRC published in the **Federal Register** a proposed new rule, 10 CFR part 63, containing licensing criteria for disposal of spent nuclear fuel and high-level radioactive waste in the proposed geologic repository at Yucca Mountain, along with proposed revisions to 10 CFR part 60 and other related regulations. 64 FR 8640. The proposed licensing criteria at part 63 would apply exclusively to Yucca Mountain; part 60 would be revised to make it applicable to any geologic repository other than one at Yucca Mountain. NRC's proposal seeks to establish a new system of risk-informed, performance-based regulation. Under this approach, risk insights, engineering analysis and judgment, and performance history are used to: (1) Focus attention on the most important activities; (2) establish objective criteria based upon risk insights for evaluating performance; (3) develop measurable or calculable parameters for monitoring system and licensee performance; (4) provide flexibility to determine how performance criteria are met; and (5) focus on results as the primary basis for regulatory decision-making. 64 FR 8643.

The NRC's rationale for proposing part 63 stems from the requirements of the EPACT. 64 FR 8641–8643. Section 801(b) of EPACT requires that, within one year after EPA promulgates its new standards for protection of public health and safety, the NRC must modify its technical requirements and criteria for repository licensing (*i.e.*, part 60) to be consistent with the new EPA standards. In addition, the EPACT requires NRC to include in its modifications, consistent with the NAS findings and recommendations, certain assumptions that are specified in the EPACT with regard to the effectiveness of DOE's postclosure oversight of the repository.

The NAS issued its findings and recommendations in the report, Technical Bases for Yucca Mountain Standards, August 1995. The NAS findings and recommendations reported there, along with consultation NRC has had with EPA, provide the basis for NRC's proposed modifications. 64 FR 8641, 8643. The NAS recommended approach to setting a public health and safety standard has a different objective from the NRC approach reflected in the existing part 60 requirements and criteria. 64 FR 8643. Accordingly, the modifications proposed by the NRC, based on the NAS report, and the subsequently proposed EPA rule marked a change in methodology and licensing philosophy.

2. Structure of Proposed Part 63

Preclosure Requirements. Proposed part 63 would require DOE to demonstrate compliance with the applicable preclosure regulatory standards by the use of an integrated safety analysis. 64 FR 8652. An integrated safety analysis is a systematic examination of the geologic repository operations area's hazards and their potential for initiating events (for example, accidents), the potential consequences of the events, and the site, structures, systems, components, equipment and activities of personnel. The analysis would be conducted to ensure that all relevant hazards that could result in unacceptable consequences have been adequately evaluated and appropriate protective measures have been identified. ''Integrated'' means joint consideration of safety measures that otherwise might conflict, including such measures as fire protection, radiation safety, criticality safety, and chemical safety. The results of the analysis would be used to support a finding of compliance with a performance objective for the preclosure period of limiting radiation exposures and releases within a dose limit of 25 millirem (mrem) to any member of the public beyond the site boundary.

Postclosure Requirements. While certain parts of proposed part 63 are similar to part 60, in particular with respect to many procedural and administrative regulations, the substance of the regulations governing postclosure performance objectives is fundamentally different. The part 60 technical criteria for postclosure rely on several quantitative, subsystem performance objectives. In 1983–4, NRC believed this approach was best suited to meet its statutory requirement under section 121(b)(1)(B) of the NWPA to prescribe criteria that would involve use of a system of multiple barriers in the design of the repository. 64 FR 8648. At the time part 60 was written, NRC's technical opinion was that compliance with this requirement could be best demonstrated by specifying subsystem technical requirements, thereby assuring multiple, independent and redundant systems and barriers. Given advancements in technical understanding and analytical capability, and information acquired through site-characterization at Yucca Mountain, the NRC no longer believes this approach is an optimal and reliable approach to assure compliance with public health and safety standards. 64 FR 8648–8649.

Part 63 does not contain subsystem performance requirements, or analogs for those requirements, as found in part 60. The part 63 requirements are based on only one quantitative standard—demonstrating compliance with an individual dose limit. The part 63 technical criteria are compatible with the NRC's philosophy of risk-informed, performance-based regulation. This approach is consistent with NAS recommendations that would require compliance with a health-based standard established in consideration of risk to a hypothetical critical group as the only quantitative standard for postclosure repository performance. 64 FR 8643. The NRC concept of critical group means the hypothetical group of individuals reasonably expected to receive the greatest exposure to radioactive materials potentially released from a geologic repository at Yucca Mountain. The EPA proposes in its rule (described in section II. K) the use of a reasonably maximally exposed individual (RMEI). The RMEI is a hypothetical individual having certain characteristics that include where the RMEI lives, what the RMEI's diet would consist of and the amount of water consumed by the RMEI on daily basis.

For the purposes of this proposed rule, the term receptor is used in lieu of either the EPA or NRC concept. A receptor is intended to represent a member of the public, either an individual or group, that could be exposed to releases of radiation from a repository at Yucca Mountain. When the suitability determination is made, DOE would implement the regulatory concept applicable at that time.

This approach is also consistent with NRC's obligation to ensure a multiple barrier system by requiring DOE to demonstrate that the natural barriers and the engineered barriers will work in combination to enhance overall performance of the repository.

Part 63 would require DOE to demonstrate compliance with the applicable postclosure regulatory standard by the use of performance assessment. 64 FR 8650. Performance assessment is a systematic analysis that identifies the features, events, and processes that might affect performance of the geologic repository, examines their effects on performance, and estimates the resulting expected annual dose. Demonstrating compliance with the postclosure performance of 10 CFR part 63 would require a performance assessment to quantitatively estimate the expected annual dose, over the compliance period, to the average member of the critical group. The critical group would be a hypothetical group of individuals reasonably expected to receive the greatest exposure to radioactive materials released from the geologic repository. Consistent with the EPACT and the 1995 NAS report, the NRC proposed that the results of the performance assessment be the sole quantitative measure used to demonstrate compliance with the individual dose limit. 64 FR 8650.

Because of the importance of the performance assessment, part 63 is structured to establish certain minimum requirements governing the content and validation methods for the performance assessment. 64 FR 8650–8651. For example, DOE would be required to include in the performance assessment data related to the geology, hydrology and geochemistry of Yucca Mountain, as well as data related to the design of the engineered barrier system; to account for uncertainties and variabilities in the data used to model performance of the repository; to provide the technical basis for either inclusion or exclusion of specific features, events, and processes of the geologic setting; and to provide the technical basis for the models used in the overall performance assessment by providing, for example, comparisons of the output of detailed process-level models and empirical observations. In addition, part 63 would prescribe the characteristics of the reference biosphere and receptor to be used in the performance assessment. DOE also would be required to conduct a separate performance assessment based on a limited human intrusion scenario prescribed by the NRC.

K. Proposed EPA Regulation, 40 CFR Part 197

1. Background

On August 27, 1999, the EPA published in the **Federal Register** a proposed new rule, 40 CFR part 197, to establish public health and safety standards governing the storage and disposal of spent nuclear fuel and high level waste in a potential repository at Yucca Mountain, Nevada. 64 FR 46975. EPA is promulgating this rulemaking pursuant to section 801(a) of the EPACT. As explained earlier in this preamble (section I.F.), in section 801(a)(1) of the EPACT Congress directed EPA to promulgate a health-based standard for the protection of the public from releases from radioactive materials stored or disposed of in a repository at the Yucca Mountain site. Also under EPACT, Congress directed that the EPA standard was to be the only standard applicable to the Yucca Mountain site, and that the EPA standard must be based upon and consistent with NAS' findings and recommendations.

As directed by Congress in the EPACT, it is EPA's role to establish the public health and safety standard, and NRC's role to implement that standard in any licensing process NRC may conduct for a repository at Yucca Mountain. It is anticipated that NRC would conform its proposed licensing regulation at 10 CFR part 63 to the final EPA radiation protection standards, as necessary and appropriate.

2. Structure of Proposed Part 197

The proposed EPA rule is structured in two parts. Part A of the rule would establish the environmental standards for storage of spent nuclear fuel and high level waste at Yucca Mountain; part B would establish the environmental standards for disposal of spent nuclear fuel and high level waste at Yucca Mountain. The following is an overview of the main components of EPA's proposed rule; in many areas of the rule EPA has proposed alternative language and requirements for public review and consideration. For simplicity, not all of those alternative considerations will be presented here.

For storage of spent nuclear fuel and high level waste, EPA proposes a standard limiting the annual committed effective dose equivalent (CEDE) to no more than 15 millirems to any member of the public in the general environment. This limit would apply to releases from the combination of management and storage of spent nuclear fuel and high level waste that is within the Yucca Mountain repository (below ground) and outside the Yucca Mountain repository but within the Yucca Mountain site (aboveground). EPA proposes this standard to be consistent with the risk level set in its generic standards for management and storage of spent nuclear fuel, high level waste, and transuranic waste, codified at subpart A of 40 CFR part 191 and with its interpretation of section 801 of EPACT requiring it to set site-specific standards for storage of waste at Yucca Mountain. In EPA's view, storage of waste, whether inside the Yucca Mountain repository or outside the Yucca Mountain repository but within the Yucca Mountain site, presents the same technical situation and is analogous to the storage of radioactive waste at other facilities covered by 40 CFR part 191. Accordingly, EPA proposes the storage standard for Yucca Mountain be essentially the same as the standard applicable to other facilities subject to subpart A of 40 CFR part 191.

For disposal of spent nuclear fuel and high level waste, EPA proposes essentially three standards—an individual protection standard, a human intrusion standard, and a groundwater standard—that DOE would need to demonstrate to the satisfaction of the NRC to ensure protection of public health and safety. Under the individual protection standard, DOE would demonstrate that there is a reasonable expectation that for 10,000 years following disposal the reasonably maximally exposed individual (RMEI) receives no more than an annual committed effective dose equivalent (CEDE) of 15 millirems (mrem) from releases from the undisturbed Yucca Mountain disposal system. All potential pathways must be included in this analysis. In proposing this individual protection standard, EPA concluded that radiation release limits, such as those embodied in 40 CFR part 191, were not necessary in order to protect members of the general public from releases from a repository at Yucca Mountain.

For the proposed human intrusion standard, EPA proposes two alternative rules, one of which would impose a CEDE limit of 15 mrem to a RMEI based on an assumed human intrusion event,

while the alternative rule would impose the dose limit if complete waste package penetration can be shown to occur before 10,000 years after disposal. EPA also proposes a rule outlining the elements of the human intrusion scenario to be used in the analysis.

Under the proposed groundwater protection standard, EPA would require DOE to provide in its license application a reasonable expectation that for 10,000 years of undisturbed performance after disposal, releases of radionuclides from radioactive material in the Yucca Mountain disposal system will not cause the level of radioactivity in the representative volume of ground water at the point of compliance to exceed certain limits (*e.g.,* combined beta and photon emitting radionuclides cannot exceed a limit of 4 millirems per year to the whole body or any organ). EPA presents for public review and comment several alternatives for the selection of the representative volume of water and for the location of the point of compliance.

EPA's proposed approach to setting public health and safety standards for a repository at Yucca Mountain follows the NAS recommendations and findings, and the regulatory approach proposed by the NRC in its proposed licensing regulations. Although EPA has proposed some requirements in its rulemaking that differ from certain NAS findings and recommendations and NRC's proposed licensing regulations, (for example, EPA proposes use of a dose standard instead of a risk standard, and use of the RMEI concept instead of critical group), EPA's proposed rule is consistent with the primary NAS findings and recommendations that a public health standard based on risk or dose to an individual member of the public can be protective of general public health and safety, and that the Yucca Mountain-related physical and geologic processes are sufficiently quantifiable and the related uncertainties sufficiently boundable that the performance can be assessed over certain time frames.

EPA assumes, and, in the case of the individual protection standard, EPA would expressly require DOE to use performance assessment to calculate the dose limits established in its proposed radiation protection standards for disposal. Although EPA generally would not prescribe requirements on how the performance assessments would be conducted, it would impose certain limitations. For example, proposed section 197.40 would limit consideration by DOE in its performance assessments of events that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. In addition, EPA, similar to the NRC, acknowledges certain inherent limitations in DOE's ability to demonstrate compliance with the public health and safety standard through use of performance assessment, but nevertheless mandates the use of that method of assessment. EPA's rule recognizes, through the concept of reasonable expectation, that, among other things, there are inherent uncertainties in making long-term projections of the performance of the Yucca Mountain disposal system, that performance assessments and analyses should be focused upon the full range of defensible and reasonable parameter distributions, and that assessments should not exclude important parameters simply because they are difficult to precisely quantify to a high degree of confidence.

III. Basis for Proposal

A. Legal Authority and Necessity To Amend the Guidelines and Criteria

1. Overview

Section 112(a) of the NWPA explicitly establishes DOE authority to ''issue general guidelines for the recommendation of sites for repositories'' and to ''use [the] guidelines established under this subsection in considering candidate sites for recommendation under subsection (b).'' Subsection (b) of section 112 provides for a process, to be conducted following promulgation of the guidelines that would result in: (1) the nomination of 5 potential sites for characterization; and (2) the selection of 3 of those 5 sites for recommendation to the President as suitable for site characterization activities. Section 112(a) also includes explicit authority to revise the guidelines, from time to time, consistent with the provisions of 112(a).

Shortly after the enactment of the NWPA, DOE promulgated the Guidelines (codified at 10 CFR part 960) to implement section 112. The approach taken at that time was to structure the Guidelines to provide a framework not only for the section 112 decisions (for which it was statutorily required) but also for subsequent steps in the site selection process. Consistent with this view, the Guidelines as originally promulgated also addressed actions to be taken under sections 113 and 114. The rationale permitting that approach was the provision in section 113(b) that DOE include in its site characterization plan ''criteria to be used to determine the suitability of [a] site for the location of a repository, developed pursuant to section 112(a).'' 49 FR 47730. DOE reasoned that, since the site characterization plan was to be an element supporting any Secretarial recommendation of one site for development under section 114, the Guidelines were ''intended to be used in deciding which among the characterized sites is to be recommended to the President, the Congress, and finally to the NRC for appropriate approvals.'' 47 FR 47730. That approach was understandable in 1984 when DOE anticipated the need to evaluate by comparison multiple characterized sites, a comparison similar to the choosing of sites for characterization for which the Guidelines were required by section 112(a) of the NWPA. After the 1987 amendments to the NWPA designated Yucca Mountain as the only site to be characterized, DOE chose to apply some, but not all, of the Guideline provisions in the Site Characterization Plan prepared under section 113(b) of the NWPA as criteria to determine site suitability. DOE/RW–0199 (1988). In 1995, DOE reconsidered the Guidelines in the context of evaluating the suitability of the Yucca Mountain site under the Site Characterization Plan. DOE decided then that ''[b]ecause DOE need apply only the relevant provisions'' of the Guidelines, amending or supplanting them with ''Guidelines specifically tailored'' to evaluating the suitability of the Yucca Mountain site was ''not required at this time.'' 60 FR 47737, 47740 (1995).

As discussed in greater detail below, DOE now has determined that a new approach is called for in light of the cumulative effect of the intervening legislative, regulatory, and technical developments that have occurred since 1984. DOE now proposes to develop criteria, using section 112(a) in the development of the criteria, but not adopting the particular section 112(a) Guidelines as those criteria, to form the basis for a determination of the suitability of the Yucca Mountain site for the location of a repository. The rationale for this approach stems from the basic analysis recommended by the National Academy of Sciences, which differed from that embedded in the 1984 Guidelines, and the advent of new regulations proposed by the NRC that, under the NWPA's structure, must define the areas and methodology of DOE's inquiries into Yucca Mountain's suitability.

Accordingly, DOE today proposes to revise the existing Guidelines at 10 CFR part 960 to limit their application to only the initial site selection process set forth in section 112. DOE may make additional revisions to the Guidelines if, in the future, circumstances were to

change and DOE were to reinitiate a preliminary site screening process under section 112. Further, DOE proposes today to promulgate a new rule, consistent with section 113(b)(1)(A)(iv), to establish criteria to be used to determine the suitability of Yucca Mountain for the location of a geologic repository. The criteria identified in this new rule are based on the geologic factors and considerations referenced in section 112(a), as they relate to DOE's current scientific understanding and methodology for assessing the suitability of the Yucca Mountain site as a location for a repository.

2. Section 112

DOE's approach in today's proposal is grounded on the text of section 112(a) and the basic structure of the NWPA, as originally enacted and as amended. As originally enacted, the NWPA set up a sequential process for selecting, comparing, and evaluating potential sites for the development of a geologic repository for high-level waste. The 1987 amendments eliminated any continued comparison of sites; only Yucca Mountain is authorized for site characterization activities leading to possible recommendation as a repository site. Beyond the first step in the process, recommendation of multiple sites for site characterization (section 112), there is no explicit direction in the Act (in its original enactment or amendment) whether or how to utilize the Section 112(a) Guidelines in the succeeding site selection processes (sections 113 and 114). Instead, section 112(a) specifies the intended use of the Guidelines: ''[t]he Secretary shall use guidelines established under this subsection in considering sites to be recommended for site characterization under section 112(b).'' Likewise, the environmental assessment of the various sites nominated for characterization pursuant to section 112 is to include ''evaluation'' of each nominated site under each Guideline not requiring characterization for its application and all the Guidelines pertinent to whether a site is ''suitable for site characterization.'' 42 U.S.C. 10132(b)(1)(D)(i)&(ii). Nowhere in its text does section 112 require any additional use of the Guidelines.

In sum, the text of section 112 and its relation to other provisions in the NWPA indicate that the Guidelines are to govern the process of selecting and comparing among potential sites to determine which sites are appropriate to proceed to the next, more detailed evaluation stage, site characterization. In contrast, nothing in the text of section 112 specifies that the Guidelines are also to govern the process for determining site suitability and site recommendation under sections 113 and 114.

3. Section 113

Section 113 of the NWPA requires DOE to prepare a site characterization plan for a candidate site selected under section 112 for site characterization activities. A required element of a site characterization plan is ''criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 112(a).'' 42 U.S.C. 10133(b)(1)(A)(iv) (emphasis added). The NWPA does not define the term ''*criteria.*'' The NWPA does, however, define the term ''site characterization'' as activities ''undertaken to establish the geologic condition'' of a candidate site. 42 U.S.C. 10101(21)(B). This definition indicates that the required scope of the general site characterization plan and therefore of the section 113(b) ''criteria'' is limited to geologic considerations. This reading of section 113(b) is reinforced by the provisions of section 112(a) in which the only usage of the term ''criteria'' in that section are the ''primary criteria'' that are explicitly equated to ''geological considerations.''

Section 113(b) requires that the ''criteria'' to be included in the Site Characterization Plan be ''developed pursuant to section 112(a)'' of the NWPA. Because section 112(a) of the NWPA is devoted to the ''Guidelines'' for selecting candidate sites while section 113(b) is devoted to the ''criteria'' under which selected candidate sites subsequently are to be characterized, it is necessary to consider how the Guidelines are required to relate to the criteria by section 113's requirement that the criteria be ''developed pursuant to section 112(a).''

It is unlikely that the Congress intended to require the ''criteria'' to be the Guidelines themselves. It would have been simple enough for Congress to have legislated that policy in section 113(b) by a straightforward requirement that the Site Characterization Plan specify that the ''*Guidelines* developed pursuant to section 112(a)'' would be used ''to determine the suitability of each candidate site.'' Compare 42 U.S.C. 10133(b)(1)(A)(iv). Had Congress intended this policy result it is unlikely that it would have chosen such an elliptical and opaque way of expressing it as the actual statutory text that does not use the term ''Guidelines'' at all. And a construction of section 113(b) requiring the suitability ''criteria'' to be the same as the section 112 Guidelines would risk tension with section 113(c)'s restriction that limits DOE to conducting ''only'' characterization activities ''necessary to provide the data required'' to prepare an NRC license application. The NRC, of course, is not required to base its licensing standards on the Guidelines adopted by DOE under section 112(a) of the NWPA (although it was required to concur in them), nor does section 112 afford the NRC the ability to compel DOE to reformulate the Guidelines should the NRC determine to amend or supplant its licensing standards.

Section 112(a) contains specific procedural mandates required to be employed by DOE in issuing or revising the Guidelines. Before DOE may promulgate the Guidelines DOE must consult with several specified federal agencies and with ''interested Governors.'' 42 U.S.C. 10132(a). In addition, the NRC must ''concur[]'' in the issuance of the Guidelines. *Id.* These distinctive procedural requirements obviously are tailored to the particular circumstances of site decision-making under the NWPA and therefore specify procedural requirements that would not otherwise obtain under the rulemaking provisions of the Administrative Procedure Act or the rulemaking provisions of the Department of Energy Organization Act that were in force when the NWPA was adopted.

The requirement of section 113(b) that the SCP's ''criteria'' for characterizing sites be ''developed pursuant to section 112(a)'' therefore is best understood as mandating observance of the special procedural requirements of section 112(a) in formulating or altering the section 113(b) ''criteria.'' This understanding of the statutory text seems the most faithful to its explicit terms and the larger statutory context in which it occurs. Moreover, it seems the only understanding of section 113(b) that is consistent with the 1987 changes to the NWPA (which mandated exclusive characterization work for the Yucca Mountain site without amending section 113(b) despite amending the statute elsewhere to remove the element of comparing sites, to which the Guidelines of section 112(a) were devoted). This understanding of the requirements of section 113(b) also comports with DOE's prior understanding, as was described in the 1995 notice, that not all the original Guideline elements need be applied in site characterization under section 113 of the NWPA.

B. Events Necessitating Amendment of the Guidelines and Criteria

1. Congressional Redirection of the Program

Since the NWPA was enacted in 1982 and the Guidelines promulgated in 1984, Congress has made major changes to the framework for developing a geologic repository. Those changes are described below and, in part, form the basis for the revisions to 10 CFR part 960 and the promulgation of a new 10 CFR part 963 proposed in this notice.

1987 Amendments to the NWPA. Congress amended the NWPA in 1987 to select Yucca Mountain as the only site to be characterized. In support of that decision, Congress directed DOE to terminate site-specific activities at the two other sites that had been recommended for site characterization in 1986. 42 U.S.C. 10172. Further, Congress restricted DOE's characterization activities at Yucca Mountain to only those the Secretary considers necessary to provide the data required for evaluation of the suitability of the site for NRC construction authorization (*i.e.,* license application), and for compliance with the National Environmental Policy Act of 1969. A provision was added to the NWPA to provide for termination of site characterization activities at Yucca Mountain if at any time the Secretary determines that Yucca Mountain is unsuitable for development as a repository.

Although the 1987 amendments to the Act were decisive in focusing the repository program and DOE's efforts on one specific site, for many years DOE maintained that these changes were not so significant as to warrant amendment of the Guidelines. Instead, DOE believed the Guidelines, for the most part, could be applied to Yucca Mountain for purposes of determining the suitability of the site (because Yucca Mountain already had been found suitable for characterization under other provisions of the Guidelines) in support of a possible site recommendation by the Secretary. The only changes to the Guidelines necessitated by the 1987 amendments were to eliminate consideration of those parts of the Guidelines related to comparative analysis. Similarly, the NRC had not made significant modifications to its technical requirements and criteria in 10 CFR part 60 as a result of the 1987 amendments to the Act.

1992 Energy Policy Act. In the 1992 Energy Policy Act, Congress reinforced its intent that Yucca Mountain was the exclusive focus of the nation's repository program, not only for DOE, but also for the other federal agencies, EPA and NRC, with authority and responsibility over the repository program. Section 801 of the EPACT directed the EPA to promulgate, by rule, new public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in a repository at the Yucca Mountain site. Unlike the previous standard, which was generic to geologic repositories and included limits on radioactive releases to the environment, the new standards were required to prescribe maximum annual radioactive dose limits to individual members of the public based on releases to the accessible environment from materials stored or disposed of at Yucca Mountain. To aid EPA in this process, Congress directed a National Academy of Sciences (NAS) study to provide findings and recommendations on reasonable standards for protection of the public health and safety. EPA was required to base its new rule on the findings and recommendations of the NAS. For Yucca Mountain, these standards would replace the generally applicable standards for the protection of the general environment that the EPA had promulgated at 40 CFR part 191 under the authority of section 121 of the NWPA.

The EPACT also directed the NRC to modify its technical requirements and criteria, as necessary, to be consistent with the EPA's new standards. In addition, NRC was directed to ensure that, consistent with the NAS findings and recommendations, its requirements and criteria for postclosure oversight of a Yucca Mountain repository would be sufficient to prevent any activities at the site posing an unreasonable risk of breaching the engineered and natural barriers of the site, and to prevent any increase in exposure of individual members of the public beyond allowable limits.

These changes were significant because they set the stage for future regulatory changes governing the standards a Yucca Mountain repository must meet to ensure public health and safety, and to obtain a license for construction. The ability to meet regulatory standards has always been a dominant factor in the site selection process. This requirement is reflected in the structure of the Guidelines, is reinforced by the 1987 amendments to the Act, and is a prime focus of DOE's site characterization program. Thus, the Congressional mandate in the EPACT directing new and revised regulations governing geologic disposal at Yucca Mountain necessarily impacts DOE's formulation of the criteria that will be used to determine the suitability of Yucca Mountain as a site for development of a repository. Until recently, however, the full extent and nature of those impacts have not been defined. The NRC's recent proposal to amend 10 CFR part 60, its technical requirements and criteria for licensing a repository, to add a new part 63 specific to Yucca Mountain, provides DOE with an outline of anticipated regulatory changes, and signals for DOE how and why it must conform its Guidelines and criteria for determining the suitability of the Yucca Mountain site for the location of a repository.

Fiscal Years 1996 and 1997 Appropriations Acts and the Viability Assessment. Finally, in response to budgetary concerns, the Conference Report on the Energy and Water Development Appropriations Act, 1996 (Pub. L. No. 104–46) (H.R. Rep. No. 293, 104th Cong., 1st Sess. 68 (1995)) directed the DOE to focus on only those activities necessary to assess the performance of a repository at the Yucca Mountain site and to collect the scientific information needed to determine the site's suitability. DOE responded by revising its Program Plan for 1996 in which it indicated that, among other changes, DOE would complete a viability assessment of the Yucca Mountain site in 1998, and would develop a proposal to amend the Guidelines and develop new regulations specific to the Yucca Mountain site. Congress indicated its approval of the changes by directing that appropriated funds be used in accordance with the revised program plan. Congress reinforced this direction in the Fiscal Year 1997 Energy and Water Appropriations Act, where it mandated that DOE provide to the Congress and the President a viability assessment of the Yucca Mountain site in 1998.

These changes in budget for DOE's civilian radioactive waste management program indicate congressional intent for DOE to focus site characterization activities on assessing the viability and suitability of Yucca Mountain, and to complete those activities in the near term. In light of this congressional direction, it is reasonable for DOE to amend the Guidelines in a manner that acknowledges Yucca Mountain as the only site at which site characterization has occurred and for which DOE would need to conduct a suitability evaluation under section 113(b).

2. Consistency Between DOE and NRC Regulations

Procedural Consistency. The DOE's site characterization suitability criteria must be consistent with the NRC's

licensing criteria if the DOE is to present a potentially successful license application to the NRC. Such consistency originally was attained in the Guidelines through the NRC's concurrence process, as required by section 112(a) of the NWPA. DOE will preserve this consistency in these proposed suitability criteria by ensuring that they reflect the changes to the licensing criteria that recently have been proposed by the NRC in a new rule to be codified at 10 CFR part 63, and by soliciting NRC concurrence on DOE's proposed amendments to the Guidelines and the promulgation of a new regulation at 10 CFR part 963.

Substantive Consistency. NRC's proposed new rule establishing the technical requirements and criteria for repository licensing at Yucca Mountain, proposed 10 CFR part 63, is different from its existing general rule on repository licensing, 10 CFR part 60. DOE now has little choice but to propose site suitability criteria that are consistent with the NRC's proposed licensing requirements. The suitability of a site for the location of a repository is a function of the DOE's ability to demonstrate the site can meet applicable regulatory requirements. DOE has conducted the site characterization program at Yucca Mountain with the statutory objective [42 U.S.C. 10133(c)] of demonstrating its ability to obtain construction authorization from the NRC (*i.e.*, to meet NRC licensing requirements and EPA health and safety standards, as implemented by NRC through the license). DOE could not scientifically and technically support a suitability determination, and, hence, a license application, without conforming its criteria for suitability to the proposed NRC technical requirements and criteria for a repository license. Such conforming criteria are proposed in this notice.

The NRC proposed rule part 63 is a departure from the philosophy and technical requirements of 10 CFR part 60. The new rule would be based on the 1995 NAS report recommending a risk-limit standard for a repository at Yucca Mountain. The NRC timed publication of its proposal now to ensure NRC has sufficient time, once EPA issues its new standard, to put the new licensing standards in effect. The proposed rule embodies a new approach of risk-informed, performance-based regulation, and is specific to Yucca Mountain. The old rule relied on subsystem performance objectives and a release limit standard. Under the proposed rule, the performance of a Yucca Mountain repository would be evaluated against a health-based standard in consideration of risk to a hypothetical critical group and this standard would be the only quantitative standard for the postclosure performance of the repository. The new rule would require DOE to demonstrate compliance with postclosure technical criteria through performance assessments, and preclosure criteria through an integrated safety analysis. The new approach embodied in the proposed rule would eliminate current part 60 design and siting criteria, as well as quantitative subsystem requirements, but would add specific requirements for the content of performance assessments to ensure their sufficiency and adequacy. In other words, a proposed Yucca Mountain repository would be evaluated as an entire system, not by assessing its individual parts in isolation, in order to determine whether it meets applicable standards to protect public health and safety.

Once the proposal is finalized, the current structure of DOE's technical guidelines, which is premised on a demonstration of system and subsystem technical requirements, will no longer be consistent with, and in some cases may conflict with, the NRC technical requirements to support a license application. For example, several of DOE's technical guidelines require compliance with the siting and design requirements set forth in 10 CFR parts 60.113, 60.122 and 60.133. Those requirements would not exist in proposed part 63 and would not be applicable to Yucca Mountain under proposed amendments to part 60. Those requirements are subsystem performance requirements that are inconsistent with the NRC's new approach of evaluating the technical merits of a potential site based on the performance of the repository system as an integrated whole, and not on the performance of each part independent of the other parts.

A good example of this is the geohydrology guideline at 960.4–2–1. Under this guideline, DOE set qualifying and disqualifying conditions for the geohydrology of a site. The qualifying condition for geohydrology requires a site be capable of compliance with radionuclide release limits set by EPA in 40 CFR part 191, and by NRC in 10 CFR part 60.112, as well as compliance with DOE subsystem performance requirements that mirror NRC requirements in 60.113. At present, there is no applicable release limit set by EPA under 40 CFR part 191, and the NRC's proposed amendments to 10 CFR part 60 would nullify the applicability of 60.113 to Yucca Mountain and create a new part 63 for which there is no analogous release limit or subsystem performance objective for geohydrology. Accordingly, it would be illogical for DOE to reach a finding relative to this qualifying condition, as required by Appendix III, based on regulatory requirements that no longer would be applicable to the Yucca Mountain site and would not support a determination of site suitability for the Yucca Mountain site.

The DOE Guideline 960.4–2–1 also contains a disqualifying condition. Under this condition, DOE would disqualify a site if the pre-waste emplacement ground water travel time from the disturbed zone to the accessible environment is expected to be less than 1,000 years along any pathway of likely and significant radionuclide travel. Under the analogous NRC provision, 60.113, there is a performance objective directing that the pre-waste emplacement ground water travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment must be at least 1,000 years or such other travel time as approved by the NRC. Under NRC's proposed revisions to its regulations, this subsystem performance requirement would no longer apply to a repository at Yucca Mountain under part 60, and it would not exist, nor would there be any requirement similar to it, under new part 63. Accordingly, it would be illogical for DOE to reach a finding relative to this disqualifying condition, as required by Appendix III, based on regulatory requirements that no longer would be applicable to the Yucca Mountain site and would not support a determination of site suitability for the Yucca Mountain site.

Below is a table further illustrating the inconsistencies between the current Guidelines and the proposed part 63. Table 1 provides a cross walk between the technical guidelines to be applied as the criteria under section 113(b), their analog in existing part 60, and their analog, if any, in proposed part 63.

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Table 1

Section	Guideline	Condition	10 CFR 60	New 10 CFR 63
4-1(a)	System	Qualifying	60.112	63.113
4-2-1(a)	Geohydrology	Qualifying	60.112/113	63.113/None
4-2-1(d)	" "	Disqualifying	60.113(a)(2)	None
4-2-2(a)	Geochemistry	Qualifying	60.112/113	63.113/None
4-2-3(a)	Rock Characteristics	Qualifying	60.112/113	63.113/None
4-2-4(a)	Climatic Changes	Qualifying	60.112	None
4-2-5(a)	Erosion	Qualifying	60.112	None
4-2-5(d)	" "	Disqualifying	60.122(b)(5)	None
4-2-6(a)	Dissolution	Qualifying	60.112	None
4-2-6(d)	" "	Disqualifying	60.112	None
4-2-7(a)	Tectonics	Qualifying	60.112	None
4-2-7(d)	" "	Disqualifying	60.112	None
4-2-8(a)	Natural Resources	Qualifying	60.122(c)(1)	None
4-2-8(d)(1)	" "	Disqualifying	60.122(c)(1)	None
4-2-8(d)(2)	" "	Disqualifying	60.122(c)(1)	None
4-2-9 (a)	Site Ownership and Control	Qualifying	60.121	63.121
5-1(a)(1)	System	Qualifying	60.111	63.111
5-1(a)(3)	System	Qualifying	None	None
5-2-1(a)	Population Density and Distribution	Qualifying	60.111	63.111
5-2-1(a)(1)	" "	Disqualifying	60.122(6)	None
5-2-1(a)(2)	" "	Disqualifying	60.122(6)	None
5-2-1(a)(3)	" "	Disqualifying	None	None
5-2-2(a)	Site Ownership and Control	Qualifying	60.121	63.121
5-2-3(a)	Meteorology	Qualifying	60.111	63.111
5-2-4(a)	Offsite Installations and Operations	Qualifying	None	None
5-2-4(d)	" "	Disqualifying	None	None
5-2-8(a)	Surface Characteristics	Qualifying	60.122(c)(1)	None
5-2-9(a)	Rock Characteristics	Qualifying	60.133(a)(1)	None
5-2-9(d)	" "	Disqualifying	None	None
5-2-10(a)	Hydrology	Qualifying	60.111	None
5-2-10(d)	" "	Disqualifying	None	None
5-2-11(a)	Tectonics	Qualifying	60.122(b)(1)	None
5-2-11(d)	" "	Disqualifying	None	None

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As demonstrated in the above table, in most cases there is no analog between the DOE Guidelines and NRC's proposed part 63. In addition, the Guidelines could not continue to reference and rely on revised part 60, since NRC's proposed revisions to part 60 would make them inapplicable to a repository at Yucca Mountain. Under the circumstances, it would be irrational and difficult, if not impossible, for DOE to apply the Guidelines in their current form.

Under these changed circumstances, DOE must act to propose amendments to its outdated Guidelines and conform its site suitability criteria to the NRC proposed rule for licensing a Yucca Mountain repository.

3. Improvements in Analytical Methods

DOE's proposed changes will also serve to conform the rules for assessing the suitability of a site with the current scientific and technical methods developed and utilized by DOE in its site characterization program. The proposed changes in the regulatory scheme reflect the advances in the scientific and technological understanding of the processes relevant to assessing the long-term performance of a geologic repository. The regulatory revisions proposed by EPA, NRC and DOE, mark a change from generic regulations based on limited information about geologic disposal developed early in the Nation=s quest for sites for geologic disposal, to regulations promulgated specifically for the Yucca Mountain site that reflect over 20 years of data collection and intensive site characterization activities at the Yucca Mountain site. It would be irrational for DOE to ignore these changes, and continue to rely on technical requirements that are not aligned with, and are not supported by, the prevailing scientific knowledge and understanding.

As recognized by the NRC in its proposed part 63, during the more than 15 years since the NRC promulgated its initial technical criteria at 10 CFR part 60 (and DOE promulgated matching technical requirements in 10 CFR part 960), there has been considerable evolution in the capability of technical methods for assessing the performance of a geologic repository at Yucca Mountain. 64 FR 8640–8641. These advances result from both improved computer capability and better analytical methods. Indeed, these changes for the first time enable the vast quantities of data that have been collected through site characterization to all be used in models that more accurately model site performance. NRC stated that these new methods were not envisioned when the part 60 criteria were established, and that their implementation allows for the use of more effective and efficient methods of analysis for evaluating conditions at Yucca Mountain than do the existing NRC generic criteria in part 60. 64 FR 8641. Moreover, NRC believes that implementation of these new analytical methods for evaluating Yucca Mountain will avoid the imposition of unnecessary, ambiguous, or potentially conflicting criteria that could result from the application of some of the generic requirements of 10 CFR part 60. 64 FR 8641.

The evolution in performance assessment methodology formed the basis for DOE's 1996 proposal to amend the Guidelines. In that proposal, DOE explained that only by assessing how specific design concepts will work within the natural system at Yucca Mountain and comparing the results of these assessments to the applicable regulatory standards, can DOE reach a meaningful conclusion regarding the site's suitability for development as a repository. The proposed amendments to the Guidelines would have required a comprehensive evaluation focused on whether a geologic repository at Yucca Mountain would adequately protect the public and the environment from the hazards posed by high-level radioactive waste and spent nuclear fuel (61 FR 66160). DOE explained that recent results in four major areas have advanced the ability to evaluate the Yucca Mountain site, and geologic disposal, to the point that a system approach is now appropriate. These four areas are: (1) Analysis and integration of data collected from surface-based testing and regional studies; (2) examination of the potential repository horizon made possible by the excavation of the Exploratory Studies Facility; (3) the site-specific conceptual design of the engineered facilities; and (4) performance assessment analyses (61 FR 66161).

As with the NRC, DOE recognizes that this improved understanding now allows the reconsideration of general Guidelines that may be unnecessary, ambiguous, or potentially conflicting for Yucca Mountain. Based on the DOE's accumulated knowledge, and significantly enhanced understanding, DOE has determined that a system performance approach provides the most meaningful method for evaluating whether the Yucca Mountain site is suitable for development as a repository. In this revised proposal, DOE expands on its earlier proposal to modify the Guidelines and incorporate performance assessment as the appropriate approach to assess the forecasted performance of a repository, and to serve as the basis for site characterization suitability criteria. This revised proposal provides greater detail, comprehension and transparency of information describing the performance assessment methodology, and how it serves as a foundation for site characterization suitability criteria.

IV. Response to Public Comments on the 1996 Proposal

DOE requested public comments and announced a public hearing on the proposed amendments to the Guidelines in the Notice of Proposed Rulemaking published in the **Federal Register** on December 16, 1996. 61 FR 66157.

DOE received written and oral comments on the proposed amendments to the Guidelines from numerous organizations including Federal, state, and local government agencies; citizen and environmental groups; a nuclear industry group; a Native American group; and from individual citizens. Oral comments were also received during the January 23, 1997, public hearing in Las Vegas, Nevada. DOE received many comments concerned with issues that are not related to the proposed amendments to the Guidelines, such as issues that pertain to activities at the Nevada Test Site, the continued use of nuclear power, the broad powers of the federal government, as well as activities related generally to the civilian radioactive waste program but not at issue in this rulemaking, such as consideration of alternatives to geologic disposal, the Western Shoshone claims to land under the Ruby Valley Treaty, and opposition to or support of geologic disposal and the study of Yucca Mountain. Because these issues lie outside the scope of the proposed amendments to the Guidelines, they are not addressed in this notice. DOE notes that many of the comments received, especially from individuals, expressed a strong opposition to the selection of Yucca Mountain as the only site to be characterized. As explained in section II above, in the 1987 amendments to the NWPA, Congress limited DOE to characterizing only the site at Yucca Mountain. The wisdom of that decision is not the subject of this rulemaking proceeding.

The following discussion summarizes the issues emerging from the comments that bear on DOE's current proposal, and DOE's response to those comments. All issues and comments on the 1996 proposal may not be addressed here in light of DOE's decision in this notice to revise the 1996 proposal and provide a

full public comment period on the revised proposal.

A. Legal Authority.

Several commenters, including the State of Nevada, stated that DOE's proposal to amend the Guidelines is contrary to section 112(a) of the Act and cited the following three decisions by the U.S. Court of Appeals for the Ninth Circuit as support for this view: Nevada versus Watkins, 914 F.2d 1545 (9th Cir. 1990) (Watkins I), Nevada versus Watkins, 939 F.2d 710 (9th Cir. 1991) (Watkins II), and Nevada versus Watkins, 943 F.2d 1080 (9th Cir. 1991) (Watkins III). Specifically, the Attorney General of Nevada stated at the public hearing that section 112(a) of the Act and the Watkins I and II decisions stand for the proposition that the Guidelines were to be used to determine the suitability of the site, and at the time of a suitability determination the validity of the current Guidelines would be subject to review by the Court.

DOE recognizes that it did not set forth in the 1996 Notice of Proposed Rulemaking a full legal analysis of the statutory basis for the proposed rule, nor did DOE address the rulings of the 9th Circuit Court of Appeals in the three ''Watkins'' decisions cited by the State. In this notice, DOE has included an extensive discussion entitled ''Legal Authority and the Necessity to Amend the Guidelines and Criteria'' in order to more fully explain to the public DOE's interpretation of the pertinent sections of the NWPA and why DOE believes that it not only may but must amend the Guidelines and promulgate a new part 963. While DOE believes that the ''Watkins'' rulings are instructive in interpreting various provisions of the NWPA, DOE does not believe that these rulings support the contention that DOE may not amend the Guidelines, or that the criteria used for the suitability determination under section 113 must be identical to the conditions in the Guidelines that are used for site selection under section 112.

B. Relationship between DOE suitability determination and NRC licensing requirements.

Nye County expressed the view that due to funding cuts DOE was attempting to cut corners and accelerate the process toward licensing. Nye County was concerned that this would mask what it views as the distinction between site suitability and NRC licensing. Several individual commenters stated that DOE appeared to be: (1) Dropping the NRC licensing requirements for Yucca Mountain; (2) lowering the licensing requirements; or (3) deleting some of the NRC requirements.

The following responds to the Nye County comments. First, although DOE suffered funding shortages in 1996, funding shortages were not the reason for the decision to propose amendments to the Guidelines in 1996. DOE stated the reasons for the 1996 proposal in the **Federal Register** notice announcing the proposal, and included DOE's intent to focus and clarify the site suitability evaluation of the Yucca Mountain site to reflect anticipated regulatory changes and the most current scientific and technical methods for assessing the expected performance of a geologic repository at Yucca Mountain.

Second, the 1996 proposed amendments to the Guidelines, as well as those proposed in this notice, are not an attempt to accelerate the licensing process, or otherwise mask the distinction between site suitability and licensing. Rather, they are an attempt to carry out the site characterization program for its intended purpose, that is, to determine if the site is suitable and potentially licensable. The site suitability criteria developed by DOE within the context of the site characterization program, and proposed here as new rule 963, are closely linked to the determination of the site's potential licensability, as they must be. DOE must conduct its site characterization process in accordance with section 113(c) of the NWPA, which provides that DOE may conduct only such site characterization activities as DOE considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the NRC for a construction authorization (often referred to as a ''license'') at such site, and for compliance with NEPA. 42 U.S.C. 10133(c). Therefore, DOE is required to base its site characterization activities on NRC licensing requirements and the environmental impact statement to be conducted under NEPA.

While today's proposal relies, in part, on newly proposed NRC licensing requirements, it is completely consistent with the letter and the purpose of the NWPA. Although DOE is utilizing NRC's proposal to develop DOE's own proposal, DOE is not attempting to accelerate the licensing process. DOE must first complete all the steps in section 113 and section 114(a)(1) of the NWPA before making a recommendation to the President, and receive presidential and congressional approval before submitting an application for a construction authorization to the NRC. Then, DOE would have to participate in the licensing process outlined by NRC in its regulations. DOE, as a potential licensee subject to NRC regulation, has no authority to accelerate the licensing process; only NRC is authorized to do that.

The following responds to concerns raised by other commenters that DOE's proposal to change to part 960 is an attempt to eliminate or degrade NRC licensing requirements. That was not DOE's intent in the 1996 proposal, nor in today's proposal. To the contrary, DOE's proposed amendments to the Guidelines and new part 963 are designed to better align DOE's suitability criteria with newly proposed NRC licensing requirements. The NRC's recent proposed amendments to 10 CFR part 60 and proposed new part 63 are based on its own legal responsibilities and technical judgment. DOE has no authority to amend NRC requirements. DOE's objective in promulgating a new part 963 is to conform to, rather than deviate from, NRC requirements so that DOE can determine whether NRC is likely to approve an application from DOE for a construction authorization for a repository at Yucca Mountain.

C. The rules should not be changed to fit the site.

Some commenters stated their belief that Yucca Mountain would be disqualified under the existing Guidelines and therefore DOE is attempting to change the rules to fit the site.

DOE is not proposing to amend part 960 and adopt a new part 963 because it believes Yucca Mountain cannot satisfy the conditions in the current Guidelines. Rather, this proposal is intended to implement the statutory mandate in section 113 in a rational manner, consistent with the current regulatory framework and technical basis for assessing the performance of a geologic repository as an integrated system. DOE is convinced that the transition to a system performance approach will not result in a lower level of protection of public health and safety. DOE's reasons for proposing amendments to the Guidelines in 1996 were provided in the notice announcing that proposal. In this notice, DOE provides an extensive discussion of the basis and reasons for its revised proposal to amend part 960 and add new part 963.

Notwithstanding these explanations, DOE recognizes that many commenters believe that DOE is changing the Guidelines because of the fear that those requirements cannot be met. In particular, several commenters stated

their belief that the site could not meet the ground-water travel time disqualifying condition in the Guidelines (§ 960.4–2–1(d)).

DOE has not reached a conclusion on this issue. The disqualifying condition at § 960.4–2–1(d) requires disqualification if DOE determines that the pre-waste emplacement ground-water travel time is expected to be less than 1,000 years along any pathway of likely and significant radionuclide travel. Calculations performed in 1998 as part of the total system performance assessment for the Viability Assessment indicate that the average ground-water travel time is greater than 1,000 years. Based on investigations and calculations to date, DOE has not determined whether the ground-water travel time along any pathway of likely and significant radionuclide travel is less than 1,000 years. DOE continues to investigate and conduct research on ground-water travel time at Yucca Mountain to reduce uncertainties, to the extent possible, and to gain confidence in its calculations. In the meantime, DOE believes that there is no basis at this time to find that this disqualifying condition exists at Yucca Mountain.

In addition, under NRC's proposed changes to its licensing criteria and requirements for high-level waste repositories, the analogous provision to 960.4–2–1 in existing 10 CFR part 60 would no longer be applicable to a geologic repository at Yucca Mountain, and new 10 CFR part 63 would not contain such a condition, or any condition similar to it. As previously explained in section III.B.2. of this Supplementary Information, it would be illogical—and questionable in view of the characterization restrictions contained in section 113(a)(1) of the NWPA—for DOE to apply the Guidelines as currently written, including this particular guideline, in light of these proposed regulatory changes by the NRC.

D. Any amendments to the Guidelines should continue to address all the pre- and post-closure factors, as well as the qualifiers and disqualifiers.

Several commenters requested that DOE leave the Guidelines virtually intact and apply all of the pre-or post-closure guidelines. Some suggested that DOE only amend those specific guidelines that need to be amended. Some commenters were concerned that by eliminating certain individual guidelines and the qualifiers and disqualifiers, DOE was trying to ensure that Yucca Mountain would be found suitable for a repository even if it is an inadequate site.

As explained in previous sections of this Supplementary Information, DOE is proposing revisions to the Guidelines that are permissible under the NWPA, and that are intended to conform the Guidelines to anticipated changes in EPA and NRC regulations, and to the current state of scientific understanding of how to assess the suitability of a repository at Yucca Mountain. Nevertheless, in response to the comments about maintaining the pre- and post-closure factors in the Guidelines, DOE has structured the proposed suitability criteria to make transparent what characteristics and traits of a geologic repository at Yucca Mountain are most important to determining the suitability of the site during the preclosure and postclosure periods. The suitability criteria address and reflect the geologic considerations identified in section 112(a) that are relevant to and informed by site characterization activities. Siting considerations that are not addressed in the suitability criteria developed under section 113 (that is, as part of the site characterization program) would be addressed elsewhere by the Secretary when deciding whether to recommend the site to the President under section 114 of the NWPA. For example, environmental, transportation, and socioeconomic impacts would be considered in the EIS; the technical feasibility of constructing, operating, and closing a repository at the site would be included in the design work required for recommending the site. In sum, the considerations listed in section 112(a) of the NWPA and in the current Guidelines that are not addressed in either the preclosure or postclosure site suitability criteria proposed in part 963 would be addressed during the section 114 site recommendation process.

With respect to qualifying and disqualifying conditions, DOE believes that it is not reasonable or necessary to maintain these conditions in a proposed new rule. DOE proposes eliminating individual disqualifiers, since maintaining them would mask how the system as an integrated whole would function, and would be inconsistent with the NRC proposal. The only appropriate disqualifier is the applicable public health and safety standard.

As explained previously, the prevailing scientific view is that the most appropriate method for evaluating whether a site is suitable for a repository is through TSPAs. Under the proposed 10 CFR part 963, DOE would use the total system performance assessment method to evaluate whether a repository at the Yucca Mountain site is likely to meet applicable NRC regulations, and thus is suitable for development of a repository.

In response to the 1996 proposal, several commenters expressed the common view that use of TSPA is appropriate and the Guidelines should be revised to match current technical understandings. For example, the NWTRB commented that the proposal's linking of suitability directly and unambiguously to overall system performance is a sounder approach than the approach in the original Guidelines. Also, the U.S. Department of the Interior (DOI) commented that the original guidelines are a relic of the early 1980s and now impose an unnecessary burden on the program. DOI observed that it makes little sense to comply with existing Guidelines based on EPA and NRC regulations that no longer apply to Yucca Mountain.

E. DOE rationale for changing its position on the need to revise the Guidelines.

In 1994, DOE issued a **Federal Register** notice stating that it had decided not to revise the Guidelines (59 FR 39766), despite the 1987 amendments to the NWPA. In a 1995 **Federal Register** notice, following continued public dialogue on this issue, DOE provided its rationale for not revising the Guidelines ''at this time.'' 60 FR 47737. Ignoring the qualifying phrase ''at this time,'' some commenters argued that by issuing the 1996 Notice of Proposed Rulemaking, DOE reversed its position from the 1994 and 1995 notices without a credible and persuasive explanation.

DOE has reassessed its 1994 and 1995 positions and has determined that now is the proper time to amend the Guidelines. DOE believes that events have transpired since the 1994 and 1995 notices were published and the 1996 amendments proposed, in particular NRC's proposed changes to its licensing regulations, that present DOE with a situation in which the most responsible and appropriate action is for DOE to amend the Guidelines. The nature of those amendments and the reasons for DOE's proposal to amend are provided in this notice. The public will be provided a full and fair opportunity to comment on DOE's proposal, and DOE will respond to those comments.

F. Public participation process.

The NWTRB suggested that DOE formally connect its site suitability determination to a public process for making the decision on whether to recommend to the President that Yucca Mountain be developed as a repository.

Such a process is provided for in section 114(a) of the NWPA. Before recommending the site for development as a repository, DOE must hold public hearings in the vicinity of the Yucca Mountain site to inform residents of the area and to receive their comments regarding the possible site recommendation. The preliminary suitability evaluation conducted under this proposed part 963 would be part of the information provided for public comment. In addition to these subsection 114(a) consideration hearings, the public will have opportunities to comment on the DOE's analyses of the potential impacts of developing a repository at the Yucca Mountain site during the repository EIS process.

Further, the site recommendation must be accompanied by a comprehensive statement of DOE's basis for the recommendation that will include the final EIS and the views and comments of the Governor and legislature of any State, or the governing body of any Indian tribe, together with the Secretary's response to those views. This comprehensive statement must be made available to the public, as well as submitted to the President. As further required by section 114 of the Act, the Secretary will notify the Governor and legislature of the State of Nevada of a decision to recommend the site at least 30 days before submitting a recommendation to the President.

G. Clarification of, and suggested modifications to, the performance assessment methodology.

A number of commenters asked for clarification or further explanation of the method and process for implementing the proposed total system performance assessment approach. The EPA and the NWTRB noted that a comprehensive explanation of TSPA would provide transparency and verifiability to DOE's evaluation process.

DOE has decided not to finalize the proposed Subpart E of the Guidelines but, instead, to propose a new part 963 that provides the level of detail, transparency and verifiability requested by the commenters. In this preamble, in particular sections II.G and VI, DOE provides a more comprehensive explanation of the background and evolution of the TSPA methodology and approach, and a description of how this methodology will be implemented in the postclosure suitability evaluation, than was provided for proposed Subpart E. In addition, DOE has structured the 963 rule itself to contain more specific requirements than those enunciated in proposed Subpart E as to how and what must be evaluated in the TSPA analysis of postclosure suitability. For example, section 963.16 would require that DOE determine postclosure suitability based on TSPA analyses of repository performance in cases with and without a stylized human intrusion event. That section also enumerates certain required elements of those analyses, such as, inclusion of data related to the suitability criteria specified in 963.17, an accounting of uncertainties and variabilities in parameter values, identification of the natural and engineered barriers important to waste isolation, demonstration of the technical bases for the models used in the TSPA, and the conduct of appropriate sensitivity analyses. Moreover, DOE's proposed method and process for implementing the TSPA approach in part 963 is consistent with the TSPA concepts and requirements proposed by the NRC in section 63.102 and 63.114, as well as the implementation requirements proposed by EPA in proposed 40 CFR 197.13. DOE believes that conducting the TSPA analysis in the manner prescribed by the requirements of proposed 963 are responsive to public comments on the TSPA approach, and will provide a level of transparency and verifiability comparable to that proposed by the regulatory requirements of NRC and EPA.

Role of Natural and Engineered Barriers. Some commenters suggested that the proposed approach should include explicit requirements for performance of the natural and engineered barriers. The EPA recommended that the site suitability evaluation approach should distinguish contributions of site features to performance for extended periods of time and should make the role of natural barriers in containing waste clear to the public. The NWTRB also commented that the DOE should assess the relative roles of natural and engineered barriers and their interactions, but noted that specific requirements for individual components of the system could be arbitrary and unworkable.

DOE has responded to this comment by providing the specifications for how it will conduct a TSPA in support of determining site suitability. The relative contribution of the natural and engineered barriers to the waste containment and their interaction will be demonstrated through the conduct of the TSPA. Through the TSPA, the requirements of which are contained in proposed part 963, DOE can examine the contributions of site features important to performance and the relative roles of the natural and engineered barriers. For example, by conducting sensitivity analyses, DOE can examine a specific feature, whether natural or engineered, and thereby determine its relative impact on the performance of the total repository system.

Robust Compliance. The NWTRB suggested that, in responding to comments that the proposed amendments ''change the rules in the middle of the game,'' DOE should modify the amendments to strengthen confidence in the technical validity of the overall system performance assessment. The NWTRB submitted that the TSPA should not only show that the repository system complies with a standard, but does so ''robustly.'' The NWTRB suggested three indicators of robust compliance: (1) Address uncertainties fully and accurately; (2) describe the results of sensitivity studies; and (3) specify a margin of safety, *i.e.,* require performance in excess of applicable radiation protection standards.

In conducting and documenting the TSPA under the proposed rule, DOE would identify the processes used to carry out the performance assessment, state the assumptions used in the assessments, address all uncertainties fully and accurately, and describe the results of sensitivity studies. By so doing, DOE would address two of the three indicators the NWTRB identified for showing robust compliance.

The NWTRB's third indication of robust compliance would be for DOE to require performance in excess of applicable standards. The EPA is required to establish radiological protection standards that are adequately protective of public health and safety. DOE believes that compliance with the required applicable standards, as described in this proposed rule, is a sufficient basis for evaluating the Yucca Mountain site's suitability for development. However, DOE would indicate, in its underlying technical documentation, by what margin the expected performance of the repository exceeds the applicable radiation protection standards.

Specific Level of Confidence. The NWTRB also suggested that DOE should modify the amendments to strengthen confidence in the technical validity of the overall system performance assessment. The NWTRB suggested that DOE specify the level of confidence that must be reached in its performance calculation before it is prepared to make a positive site suitability determination.

In the proposed rule, DOE is defining the criteria that would be considered in conducting the overall total system performance assessment. In this way, DOE believes that overall confidence in the calculation will be increased because the key building blocks (criteria) of the TSPA would each be identified and considered.

Moreover, while DOE appreciates the importance of the NWTRB comment that there should be a level of confidence in the performance calculation, DOE does not believe it is appropriate or most effective to address that comment by specifying or quantifying a level of confidence as part of the proposed rule. The reasons not to quantify the level of confidence in the rule are threefold. First, at this time, there is no universally accepted or standard technical basis for DOE to rely upon to quantify that level of confidence for inclusion in the proposed rule for a first of its kind facility for spent fuel and high-level waste; to adopt such a quantitative standard could inappropriately constrain the Secretary's determination of site suitability. Second, through the TSPA described in the proposed rule, DOE will generate, and the public will have access to, information about the probabilistic distribution of values around the expected value in order to assess the level of confidence in the performance calculation. Finally, in its proposed regulations at part 63 (which serve as the model for the TSPA method described in this proposed rule), the NRC does not specify or require a quantitative level of confidence to be shown in order to determine whether the Yucca Mountain site would meet applicable radiation protection standards. Taken together, these reasons suggest the better course is for DOE to not quantify the level of confidence for the performance calculation, but to utilize other mechanisms, such as defining the criteria that would be considered, to strengthen confidence in the technical completeness and validity of the performance calculation.

Defense-in-Depth. Another specific NWTRB comment was that DOE should demonstrate in its performance assessment how the repository system preserves the principle of defense-in-depth using multiple barriers.

In response, DOE believes that the issue of defense-in-depth will be addressed by the NRC's proposed requirements for using multiple barriers for the repository. Those requirements include descriptions of site characteristics and design components, process and performance assessment model analyses, and sensitivity studies. However, DOE does not believe that it is appropriate for part 963 to articulate an explicit defense-in-depth strategy nor to require significant redundancy in repository design. The DOE rejected this approach in 1984 when the general Guidelines were promulgated (49 FR 47721) in choosing not to set numerical limits on individual site characteristics. The NRC, in its proposed part 63, also has rejected explicit, subsystem performance requirements as a means to demonstrate defense-in-depth.

H. Data requirements for performance assessment.

Two commenters expressed concern that, if DOE issues amended Guidelines prior to the EPA's promulgation of radiological standards specific to Yucca Mountain, the DOE may not have a full understanding of the health and safety standards, may need additional data collection and analysis, and may need to alter the Guidelines again after the EPA standards are issued. The EPA also commented that the new standards may warrant gathering different or additional data to provide the basis for compliance with the standards.

DOE responds to these comments by including in the proposed part 963 criteria that must be considered in a TSPA that are important to assessing the ability of a repository at the Yucca Mountain site to meet applicable NRC standards for the preclosure and postclosure periods, which will implement applicable EPA public health and safety standards. DOE believes that the criteria in proposed part 963 are related sufficiently to the data and analytical needs to address the proposed EPA standard as to warrant proposing it at this time. In addition, NRC's proposed part 63 is based on a dose standard, and includes data and analytical requirements necessary to meet that standard. DOE has structured the proposed part 963 based on NRC's proposed Part 63 and consistent with EPA's proposed 40 CFR part 197. Therefore, DOE believes that part 963 could be implemented without substantial revision.

In a similar vein, a variety of commenters questioned the state of DOE's understanding of the site and the potential repository system at Yucca Mountain. Some commenters indicated that the DOE does not yet know enough about the site to make the proposed changes to the Guidelines, others questioned whether the DOE would know enough at the planned time for a site recommendation, and others contended that the DOE could never know enough to apply a total system performance assessment approach to a suitability evaluation.

In response, DOE notes that, although it is advantageous to limit uncertainties and strive to gain as much data and scientific understanding as practicable, the prevailing scientific view is that certainty, in the normal sense of that word, is not possible to achieve with respect to assessing the postclosure performance of a geologic repository intended to last for tens of thousands of years. The NRC's existing regulations at part 60 and proposed regulations at part 63 require ''reasonable assurance'' that the public and environment will be adequately protected from the radiation hazards posed by a repository. That standard reflects that there are inherent uncertainties in understanding the evolution of the geologic setting, the reference biosphere, and an engineered barrier system. Performance assessments are necessarily probabilistic; they can only analyze future repository performance in terms of the probabilities of different events and results.

Equally important, EPA recognizes the inherent uncertainty in this process in its proposed public health and safety standards. EPA would have the NRC implement the public health standard based on ''reasonable expectation.'' According to EPA, reasonable expectation ''means that the Commission is satisfied that compliance will be achieved based upon the full record before it. Reasonable expectation (a) requires less than absolute proof because absolute proof is impossible to attain for disposal due to the uncertainty of projecting long-term performance; (b) is less stringent than the reasonable assurance concept that NRC uses to license nuclear power plants; (c) takes into account the inherently greater uncertainties in making long-term projections of the performance of the Yucca Mountain disposal system; (d) does not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence; and (e) focuses performance assessments and analyses upon the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values.''

I. The ability to understand results of total systems performance assessment.

The NWTRB commented that the performance assessment should be carried out in a manner that is highly transparent to the technical community, regulators, and interested members of the general public. Some commenters

stated that total system performance assessment would not likely be easily understood. Other commenters asserted that the approach in the 1996 proposed rule would be misleading or mask uncertainties and, therefore, not recognize potentially insufficient waste isolation capabilities of the site.

DOE has developed proposed part 963 taking into account these considerations. Proposed part 963 includes specific site suitability criteria and a description of the evaluation method to ensure the public is informed of how and what DOE will consider in reaching a suitability evaluation for completion of site characterization. DOE will conduct performance assessments in a manner that is transparent, valid and verifiable. In other words, these assessments will be clear, logical, technically defensible and adequately documented. A transparent system performance assessment will be clear not only to the technical analysts, but also to readers who are familiar with the particular aspects of the assessment, such as the fundamental scientific and engineering principles, numerical analytical methods, or regulatory implications.

In addition, DOE is currently using several methods to increase the traceability of these analyses. Analyses are traceable to the extent that a complete and unambiguous record exists of decisions and assumptions, and of models and data, and their use in arriving at the results of the analyses. These methods include abstraction workshops to ensure the completeness of models and approaches used in performance assessment, detailed documentation of each model, formal expert elicitations, and a participatory external peer review of the development, documentation, and results of the performance assessment for the Viability Assessment. The results of this peer review will be considered, as will be the comments of all oversight groups, to assist DOE's development of a TSPA for a possible site recommendation and subsequent license application. These actions should enhance confidence in the analyses and help communicate the complexities of predicting system behavior to a wide range of audiences.

A related concern is that system analyses could dilute or somehow mask the importance of specific, independent technical characteristics. On the contrary, it is the system analyses that assess the significance of any independent technical characteristic. The Yucca Mountain total system performance assessment is not a single computer model or analysis, but the integrated result of several discrete process models, each of which in turn is supported by a group of more detailed data sets, models, and analyses. The total system performance assessment method permits evaluation of how certain individual characteristics, either alone or in combination, could cause the site to fail to meet the applicable standards, and how such failures are related to the performance of the total system. By not placing reliance on any single component of the system, the total system performance assessment method supports a multiple barriers approach, as required by NRC licensing regulations in order to provide reasonable assurance that the repository system will perform adequately.

J. The relation of DOE and NRC requirements.

The NRC commented that its regulations have a broader role than just to implement the EPA standards. They contain the technical criteria and requirements for licensing a geologic repository, as provided by subsection 121(b) of the NWPA. The NRC recommended that the DOE proposed postclosure guideline be changed to reflect that broader role and proposed that it be revised to read, '' * * * repository shall perform in accordance with both the EPA standards established specifically for the Yucca Mountain site and NRC's regulations applicable to the Yucca Mountain site.''

DOE understands that the applicable NRC regulations containing the technical requirements and criteria for construction, operation, and closure of a geologic repository, as provided for by section 121 of the NWPA, will have a broader role regarding Yucca Mountain than just to implement the EPA standards for the Yucca Mountain site. The NRC regulations will govern the licensing process if the Yucca Mountain site is recommended by the Secretary to the President, approved by the President, and is designated by Congress under section 115 of the Act.

The use of the phrase ''likely to meet applicable radiation protection standard'' in the proposed part 963 is meant to clarify the role of NRC and EPA regulations in evaluating suitability and reaching a suitability determination. DOE would refer to applicable health and safety standards, both those promulgated by EPA and NRC, in determining site suitability in the preclosure and postclosure periods. In recognition of NRC's broader role in the licensing process, and in anticipation of submitting an application for a license, DOE has structured its rule regarding the methods and procedure for evaluating suitability to be consistent with proposed NRC licensing criteria and requirements.

Notwithstanding these similarities in DOE's and NRC's proposed rules, DOE's determination of suitability is not the equivalent of a licensing decision. DOE's assessment of whether the Yucca Mountain site is suitable is a more preliminary assessment than the subsequent NRC licensing decision. Proposed part 963 would include many but not all NRC licensing requirements in the suitability determination; the intent is to provide the Secretary with sufficient information to determine whether the site should be recommended to the President based on, among other things, the likelihood the site would meet applicable regulatory standards for licensing.

K. Definition of closure.

Nye County, Nevada, suggested that the language of the general guidelines should allow for the possibility of having an open, naturally ventilated repository, to ensure that regulatory flexibility exists if such a design provides for greater protection of the public's health and safety and the environment. The County proposed that the definition of ''closure'' at § 960.2 be amended to eliminate reference to the ''sealing of shafts'' and add an explicit reference to ''any extended period of natural ventilation.''

DOE agrees that, during the design process, it would be appropriate to consider the potential benefits and consequences of maintaining a ventilated repository for an extended period of time. Any decision of whether and how to continue ventilation of the repository will consider the costs and benefits of that option, in light of the information available at that time. In response to this comment, DOE has modified the prior definition of ''closure'' by proposing in § 963.2 a definition including the phrase ''except those openings that may be designed for ventilation or monitoring'' to ensure that the option of a ventilated repository is not foreclosed.

V. Description of Proposal—10 CFR Part 960

A. Subpart A—General Provisions

This section of the Guidelines contains the statement of applicability and definitions. The proposed revisions to section 960.1, Applicability, would limit the application of the Guidelines to evaluations of the suitability of sites for site characterization under section 112(b) of the NWPA. The revisions

would eliminate the applicability of the Guidelines to determinations of suitability of a site at the site characterization stage under section 113, or the site recommendation stage under section 114. These revisions would clarify the applicability of the Guidelines to the preliminary site screening stage, which entails a comparative analysis process, and thereby better align the application of the Guidelines with the structure of the NWPA, as originally enacted and as amended in 1987. The revisions to the third and fourth sentences would update the reference to other regulatory requirements of the NRC and EPA, in light of the current status of applicable NRC and EPA regulations relative to high-level waste geologic repositories. The fifth through seventh sentences would remain unchanged.

The proposed revisions to the definitions section would make the terms consistent with the NWPA and with the other proposed revisions to the Guidelines limiting applicability of subparts B, C, and D of the Guidelines to determinations of site suitability for site characterization under section 112 of the NWPA.

B. Subpart B—Implementation Guidelines

The proposed revisions to the Implementation Guidelines would limit the procedures and basis for application of the postclosure and preclosure guidelines of subparts C and D, respectively, to evaluations of the suitability of sites for site characterization.

Section 960.3, Implementation Guidelines, would be revised to eliminate the sentences in that section setting forth the procedures and basis for application of subparts C and D in evaluations and determinations of the suitability of a site under section 113 and section 114 of the NWPA. These revisions would remove section 960.3–1–4–4, Site Recommendation for Repository Development, in its entirety. That section pertains to the procedure and evidence required to make a site recommendation decision under section 113 and 114. Those decisions would not be governed by the Guidelines, and therefore reference to them would be removed. Section 960.3–1–5, Basis for Site Evaluation, would be revised to eliminate all references to Appendix III and the application of the requirements of that section in making suitability determinations at the site characterization or site recommendation stages. Only the last sentence of section 960.3–2, Siting Process, would be revised. This revision would limit the applicability of the siting process to the recommendation of sites for site characterization. Section 960.3–2–4, Recommendation of Sites For the Development of Repositories, would be removed in its entirety. That section pertains to the comparison of characterized sites, leading to a recommendation by the Secretary to the President of a site for development as a repository. The proposed revisions would eliminate that decision process from evaluation under the Guidelines, and the section in its entirety would be removed.

C. Appendix III

The proposed revisions to Appendix III would remove and eliminate the applicability of this Appendix to decisions for repository site selection and siting decisions. The qualifying and disqualifying conditions of the technical guidelines in subparts C and D would apply only to the decision point for selecting sites for site characterization. All references to the site selection and site recommendation decisions under sections 113 and 114 would be removed, including the tabular column in Appendix III referencing the repository site selection siting decision.

With respect to the guidelines listed in Appendix III that apply to environmental quality, socioeconomics and transportation considerations, DOE considered whether to propose continuing to require their applicability to a Yucca Mountain site recommendation under section 114 of the NWPA. DOE decided not to do so because the issues addressed by these guidelines will be covered in the environmental impact statement for the Yucca Mountain site, and section 114(a)(1)(D) requires that the final environmental impact statement be part of the comprehensive statement of the basis for a site recommendation to the President. 42 U.S.C. 10134(a)(1)(D). Members of the public concerned about the analysis of environmental quality, socioeconomics and transportation issues will have ample opportunity to comment on these issues as part of the public review and comment process on the draft environmental impact statement and in additional public hearings required by section 114. In sum, DOE is of the view that the environmental quality, socioeconomics and transportation guideline requirements are substantially and unnecessarily duplicative of requirements under the procedures for developing an environmental impact statement and for formulating and informing a site recommendation under section 114.

VI. Description of Proposal—10 CFR Part 963

The purpose of this part of the Supplementary Information is to explain the meaning and basis for those provisions of proposed part 963 that are not self-explanatory. The following is a section by section analysis of the proposed rule, and the accompanying explanation.

A. Subpart A—General Provisions

Subpart A comprises two parts, the statement of Purpose, section 963.1, and Definitions, section 963.2.

(a) Purpose—section 963.1. The purpose of the proposed rule is as stated in this section: to establish the methods and criteria for determining the suitability of the Yucca Mountain site for the location of a geologic repository in completing DOE's site characterization program activities to be conducted under section 113(b) of the NWPA. The suitability evaluation methods to be used by DOE are consistent with the methods proposed by the NRC for assessing the potential of a geologic repository at the Yucca Mountain site to meet licensing criteria and requirements. The suitability criteria relate to the geologic considerations identified in section 112(a) as they reflect current scientific understanding and regulatory expectations (both NRC and EPA) regarding the performance and safety of a geologic repository during the preclosure and postclosure periods of operation. Because the suitability criteria are part of the site characterization program, these criteria relate to site characterization activities. Site characterization activities relate to scientific and technical investigations of the site to determine its natural properties and features, for example, studying the geohydrology and geochemistry of the site, as distinct from consideration of other features, such as cost, socioeconomics and transportation of waste to the repository. An explanation of how the suitability criteria were derived is provided below.

The proposed rule does not address the site recommendation process in its entirety. Other information required under section 114 of the NWPA that must be considered and submitted to the President and made available to the public if the site is recommended for development as a geologic repository is not addressed by the proposed rule. Regarding any repository site recommendation the Secretary of Energy shall make available to the public, and submit to the President, a comprehensive statement of the basis of

such recommendation, including the following: (a) A description of the proposed repository, including preliminary engineering specifications for the facility; (b) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between the waste form or packaging and the geologic medium of the site; (c) a discussion of data, obtained in site characterization activities, relating to the safety of such site; (d) a final environmental impact statement prepared for the Yucca Mountain site; (e) the preliminary comments of the NRC concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository; (f) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views; (g) such other information as the Secretary considers appropriate; and (h) any impact report submitted under section 116(c)(2)(B) of the NWPA [42 U.S.C. 10136(c)(2)(B)] by the State of Nevada.

(b) Definitions—section 963.2. The proposed rule includes definitions of certain words and terms. The definitions clarify DOE's intent and meaning in the context of this rule. The definitions are also intended to make the terms consistent with proposed NRC regulation governing the construction and licensing of a repository at the Yucca Mountain site. Several of the terms are important to understanding the suitability evaluation process, and are addressed here.

Criteria are those characterizing traits that are relevant to assessing the performance of a geologic repository at the Yucca Mountain site. The criteria relate to the geologic considerations identified in section 112(a) of the NWPA that are relevant to the assessment of the performance of a geologic repository at the Yucca Mountain site. The geologic repository includes the natural barriers of the geologic setting and the engineered barriers of the repository design. The suitability criteria of the proposed rule are specific characterizing traits of the Yucca Mountain site that, through the site characterization process, DOE has identified as important indicators of the performance of the total repository system (that is, the integrated natural and engineered barrier systems).

Consistent with varying definitions in standard dictionaries, DOE considered narrowly defining the term ''criteria'' as benchmark, pass-fail standards rather than more broadly as ''characterizing traits.'' DOE decided not to adopt the more narrow definition for four reasons. First, in section 112(a) of the NWPA, the term ''primary criteria'' is used synonymously with the term ''detailed geologic considerations,'' a term that does not necessarily imply any benchmark. Second, as used in context in section 113 of the NWPA, the term ''criteria'' appears to refer to the considerations for evaluating whether a repository in a particular geologic medium is likely to meet applicable NRC standards, thus indicating that the site suitability criteria and the NRC standards are not one and the same. Third, section 121 of the NWPA (which addresses NRC's regulatory responsibilities) distinguishes between ''criteria'' and ''standards,'' a distinction which implies that ''criteria'' are not necessarily benchmark standards themselves. Finally, although some are inclined to define the term ''criteria'' narrowly, that inclination is not universal. For example, in 10 CFR part 50, the NRC sets forth quality assurance ''criteria'' that are in the nature of considerations, rather than benchmark, pass-fail standards.

The performance of the total system is evaluated using a computer modeling tool called total system performance assessment. Total system performance assessment identifies the features, events and processes that might affect the performance of a repository, as well as the probabilities and significance of occurrence. Total system performance assessment examines the effects of those features, events and processes on that performance by estimating the expected annual dose to the receptor as a result of releases from the repository.

For the preclosure period, suitability would be evaluated through a preclosure safety evaluation method. The preclosure safety evaluation would consider site characteristics and preliminary engineering specifications to assess the adequacy of the repository facilities to perform their intended functions and to mitigate the effects of design basis events, or credible accidents that could affect the ability of the geologic repository to operate safely. Design basis events are categorized in two ways: (1) those events, both natural and human-induced, that are expected to occur one or more times before permanent closure; or (2) those events, both natural and human-induced, that have at least one chance in 10,000 of occurring before permanent closure. The preclosure safety evaluation would assess the ability of the geologic repository to meet the applicable radiation protection standard for the preclosure period under both categories of design basis events.

DOE's evaluation of the suitability of a geologic repository at the Yucca Mountain site would be based on consideration of a preliminary design for the geologic repository. The design is the description of the potential geologic repository, which includes multiple barriers to the release and transport of radionuclides. These multiple barriers consist of both the natural barriers and an engineered barrier system. The geologic repository includes not only the facilities and areas where radioactive wastes are handled, but also that portion of the geologic setting that provides isolation of the radioactive wastes. As used in the proposed rule, and in NRC's proposed part 63, isolation means inhibiting the movement of radioactive material from the repository to the location where the receptor resides, so that radiation exposures will be less than the radiation dose limits prescribed in NRC's proposed regulation.

B. Subpart B—Site Suitability Determination, Methods and Criteria

(a) Scope—section 963.10. The scope of subpart B includes, for both the preclosure and postclosure periods, the basis for DOE's suitability determination for the Yucca Mountain site. There are separate sections of the proposed rule for the preclosure and postclosure time periods. The scope of these sections also includes the site suitability criteria to be applied in accordance with section 113(b) of the NWPA, the methods for applying the criteria and evaluating suitability, and the basis for the resulting suitability determination.

The proposed rule is divided into two sections corresponding to the preclosure and postclosure periods, and within each period, three subsections. The subsections present for each period: (1) the suitability determination; (2) the suitability evaluation method; and (3) the criteria to be used for the evaluation. The purpose of separating the preclosure and the postclosure periods is to make clear the differences in determining the suitability of a geologic repository during these two periods. This separation is consistent with the current structure of the Guidelines, and the structure of the current and proposed new NRC licensing regulations, which have separate performance objectives for the preclosure and the postclosure periods.

The preclosure method and criteria govern the suitability considerations that deal with the operation of the repository before it is closed, while waste is being received, stored and emplaced, and allow for the possibility of retrieval. These are the considerations important in protecting the public and repository workers from exposures to radiation during repository operations, especially if an accident should occur. The postclosure method and criteria govern the suitability considerations that deal with the long-term behavior of the repository. The behavior of interest here is after waste emplacement and repository closure.

(b) Suitability determination—section 963.11. This section describes how DOE will determine the suitability of the site based on the information and data developed through the program of site characterization activities at Yucca Mountain. DOE may find the Yucca Mountain site suitable for the location of a repository based on its determinations relative to the preclosure and postclosure suitability evaluations under sections 963.12 and 963.15. Those determinations, in turn, entail assessment of preclosure and postclosure suitability using the designated evaluation method and criteria for each time period. The overall suitability determination, if affirmative, will be one part of the Secretary's decision, under section 114, whether to recommend the Yucca Mountain site to the President for development of a repository.

(c) Preclosure suitability determination—section 963.12. The suitability evaluation of the Yucca Mountain site will consider the safety of the geologic repository during the operational or preclosure time period. The preclosure criteria to evaluate the suitability of a geologic repository operations area at Yucca Mountain will be considerations that are important to determining safety during construction and active operation and to demonstrating compliance with the applicable radiation protection standard.

(d) Preclosure suitability evaluation method—section 963.13. The preclosure suitability criteria will be applied through a preclosure safety evaluation method. The preclosure safety evaluation would support the recommendation to approve the Yucca Mountain site for submittal of a license application. The NRC provides a framework indicating how to conduct this type of evaluation in proposed 10 CFR 63.112. DOE designed the preclosure safety evaluation method proposed in this rule based on this NRC framework and a DOE assessment of what information would be necessary and sufficient to determine, at the site suitability stage, whether a proposed geologic repository at Yucca Mountain is likely to meet the applicable radiation protection standards for the preclosure period.

The preclosure safety evaluation method, using preliminary engineering specifications, will assess the adequacy of the repository facilities to perform their intended functions and prevent or mitigate the effects of postulated design basis events that are deemed sufficiently credible to warrant consideration. The preclosure safety evaluation will consider: a preliminary description of the site characteristics, the surface facilities, and the underground facilities; a preliminary description of the expected design bases for the operating facilities and a preliminary description of any associated limits on operation; a preliminary description of potential hazards (for example, seismic activity, flooding and severe winds), event sequences, and their consequences; and, a preliminary description of the structures, systems, components, equipment, and operator actions intended to mitigate or prevent accidents. The purpose of the preclosure safety evaluation is to ensure that relevant hazards that could result in unacceptable consequences have been adequately evaluated and appropriate protective measures have been identified such that the geologic repository operations area will comply with the preclosure requirements for protection against radiation exposures and releases of radioactive material.

The preclosure safety evaluation will emphasize performance requirements, analytical bases and technical justifications, and evaluations that show how safety functions will be accomplished. The adequacy of the facility design will be evaluated by consideration of postulated design basis events viewed as sufficiently credible that the facility should be designed to prevent or mitigate their effects. Design basis events are those natural and human-induced events that are either expected to occur before closure, or have one chance in 10,000 of occurring before permanent closure. DOE will evaluate the probability of the event and the associated consequences. For events of high frequency, the consequences should be low. For less probable accidents that are potentially more severe, the allowable consequences are higher. In either case, the suitability determination will be supported by a design that DOE considers likely to meet the applicable radiation protection standard.

(e) Preclosure suitability criteria—section 963.14. DOE will evaluate the suitability of the Yucca Mountain site during the preclosure period using the following criteria: (a) ability to contain and limit releases of radioactive materials; (b) ability to implement control and emergency systems to limit exposures to radiation; (c) ability to maintain a system and components that perform their intended safety functions; and (d) ability to preserve the option to retrieve wastes during the preclosure period. These criteria are considerations important to determining the performance of a potential repository at Yucca Mountain. For example, in applying the first criterion, DOE will ensure repository facilities are designed to keep the radioactive materials confined in order to limit releases of radioactive material. The second and third criteria address DOE's ability to ensure that emergency controls and procedures are developed to limit releases should an accident occur, and that the system and its components will perform their safety function as intended. The fourth and final criterion is also important to the safe functioning of a repository; that is, ensuring the capability to retrieve or recover the wastes from the repository should conditions warrant.

These criteria also relate to certain geologic considerations in section 112(a) of the NWPA. The geologic considerations identified in section 112(a) that are relevant to the preclosure period are hydrology, geophysics, seismic activity, atomic energy defense activities, proximity to water supplies and proximity to populations. These considerations are relevant to the evaluation of preclosure suitability because they bear on the evaluation of repository system safety during the preclosure period. The hydrology and geophysics of the site are important to preclosure safety because they are indicators of possible initiating events for accidents. Seismic activity is also important in this regard, as it is an indication of the potential for earthquake activity to disrupt normal functioning of a repository surface facility. The location of atomic energy defense activities in relation to the Yucca Mountain site is important to preclosure safety and would be considered to the extent they exist and may impact operations of the repository facility. Proximity to water supplies and proximity to populations are important to preclosure safety because they relate to potential locations where people could eventually be exposed to

radionuclides either through airborne transport or through a water pathway.

(f) Postclosure suitability determination—section 963.15. The postclosure suitability evaluation of the Yucca Mountain site will consider the safety of the geologic repository during the time after operations cease, the postclosure period. DOE will determine the suitability of the Yucca Mountain site for the postclosure period by examining the results of a TSPA conducted under section 963.16. If the results indicate a repository at Yucca Mountain is likely to meet the applicable radiation protection standard, then DOE may determine, on the basis of site characterization activities, that the site is suitable for the postclosure period.

(g) Postclosure suitability evaluation method—section 963.16. DOE will evaluate the suitability of a potential repository at the Yucca Mountain site using the TSPA method (described in greater detail below). Using the TSPA method, DOE will estimate quantitatively the expected annual dose, over the compliance period, to the receptor. With this estimate, DOE will evaluate the performance of the repository and its ability to limit radiological exposures within the applicable radiation protection standard.

(1) Section 963.16(a). Section 963.16(a) describes how DOE will conduct separate performance assessments in order to evaluate the postclosure performance of a geologic repository at Yucca Mountain. One TSPA will be conducted in accordance with the method described in 963.16(b) and using all of the criteria identified in section 963.17, except the criterion assuming a human intrusion into the repository. A second TSPA will be conducted in accordance with the method described in 963.16(b) (except not all engineered and natural barriers will be considered), and using all of the criteria in section 963.17, including the criterion assuming a stylized human intrusion into the repository, as defined by NRC regulations. The results of each performance assessment will be examined by DOE to determine the suitability of the site for the postclosure period.

The conduct of separate assessments is consistent with EPA's proposed 40 CFR part 197 and NRC's proposed regulations at 10 CFR part 63. The proposed regulations, in turn, are based on NAS recommendations in the report, Technical Bases for Yucca Mountain Standards, on how best to assess the performance and resilience of a potential repository. Because the manner and likelihood of human intrusion occurring many hundreds or thousands of years into the future cannot be estimated reliably by examining either the historic or geologic record, the NAS recommended an approach that will assess how resilient the geologic repository would be against a postulated intrusion. The consequences of the assumed human intrusion event will be addressed in a ''stylized'' manner, that is, by assuming a particular human intrusion event occurs in a certain way, at a specified time. Proposed EPA and NRC regulations define different stylized human intrusion events to be examined by DOE. At the time of the suitability determination, DOE will conduct the human intrusion analysis within the framework of the applicable regulatory concept, and use the results of the performance assessment to evaluate the suitability of the site for the postclosure period.

(2) Section 963.16(b). Section 963.16(b) provides an outline of the contents and manner in which DOE will conduct its performance assessments. As described previously in this notice, and briefly summarized here, performance assessment in this context is a method of forecasting how a system or parts of a system designed to contain radioactive waste will behave over time. Its goal is to aid in determining whether the system can meet established performance requirements. A TSPA is a type of performance assessment analysis in which the components of a system are integrated or linked into a single analysis.

The TSPA treats both the engineered and natural system components. The engineered system is to some extent controllable, but the natural system generally is not. The responses of the total system extend over periods beyond those for which data have been or can be obtained. The relationship of the components of a TSPA is often described as a pyramid. The lowest level of the pyramid represents the complete suite of process and design data and information (that is, field and laboratory studies that are the first step in understanding the system). The next higher level indicates how the data feed into conceptual models that portray the operation of the individual system components. The next higher level represents the synthesis of information from the lower levels of the pyramid into computer models. The term abstraction often is used to indicate the extraction of essential information from large quantities of data. The TSPA models are usually referred to as abstracted models. At this point, the subsystem behavior may be described by linking models together into representations; this is the point at which performance assessment modeling is usually thought to begin. This is also the basis for the identification of the Yucca Mountain specific suitability criteria contained in the proposed rule.

The upper level is the final level of distillation of information into the most significant aspects to represent the total system. At this point, the models are linked together. These are the models used to forecast system performance and estimate the likelihood that the performance will comply with regulations and ensure long-term safety.

As information flows up the pyramid, it generally is distilled into progressively more simplified or essential forms, or becomes more abstracted. However, abstraction is not synonymous with simplification. If a particular component model cannot be simplified without losing essential aspects of the model, then the model becomes part of the TSPA calculation tool. Thus, an abstracted model in a TSPA may take the form of something as simple as a table of values that were calculated using a complex computer model, or the abstraction may take the form of a fully three dimensional computer simulation.

The TSPA method described in section 963.16(b) is a systematic analysis that identifies the features, events, and processes (*i.e.,* specific conditions or attributes of the geologic setting, degradation, deterioration, or alteration processes of engineered barriers, and interactions between the natural and engineered barriers) that might affect performance of the geologic repository; examines their effects on performance; and estimates the expected annual dose. The features, events, and processes considered in the TSPA will represent a wide range of effects on geologic repository performance. Those features, events, and processes expected to affect compliance significantly or be potentially adverse to performance are included, while events of very low probability can be excluded from the analysis. The expected annual dose to the receptor is estimated using the selected features, events, and processes, and incorporating the probability that the estimated dose will occur.

The TSPA method described in section 963.16(b) is a systematic analysis that identifies the features, events, and processes (*i.e.,* specific conditions or attributes of the geologic setting, degradation, deterioration, or alteration processes of engineered

barriers, and interactions between the natural and engineered barriers) that might affect performance of the geologic repository; examines their effects on performance; and estimates the expected annual dose. The features, events, and processes considered in the TSPA will represent a wide range of effects on geologic repository performance. According to proposed EPA and NRC regulations, those features, events, and processes expected to affect compliance significantly or be potentially adverse to performance are included, while events of very low probability (less than one chance in 10,000 of occurring within 10,000 years of disposal) can be excluded from the analysis. The expected annual dose to the average member of the critical group is estimated using the selected features, events, and processes, and incorporating the probability that the estimated dose will occur.

The TSPA that will be used to assess the postclosure performance of the Yucca Mountain repository will be conducted in the manner described in section 963.16(b). It will synthesize data and information into a set of models that simulate the behavior of the individual system components. DOE will abstract essential information from its initial models and refine them into linked models, including computer models, that represent important aspects of system performance. DOE will use these models to forecast system behavior and the likelihood of system compliance with the applicable radiation protection standard.

The TSPA calculations will be used to address conditions in the natural and engineered components of a repository at Yucca Mountain over the time that the standards apply. The TSPA calculations will also be used to consider disruptive events that are improbable, but that are important to understanding the repository behavior in the future. A requirement for TSPA will be to identify the identification of those natural features of the geologic setting and the design features of the engineered barrier system that are considered barriers important to waste isolation. TSPA will be used to assess the capability of the barriers, identified as important to waste isolation, to isolate waste, taking into account uncertainties in characterizing and modeling the barriers. Sensitivity studies and the regulatory definition of very-low probability events will provide the technical basis for inclusion or exclusion of specific features, events, and processes of the geologic setting in the TSPA.

Specific features, events, and processes of the geologic setting will be evaluated through sensitivity analyses to determine if the magnitude and time of the resulting expected annual dose would be significantly changed by their omission. Sensitivity analysis is a technique that is used to examine how a system responds if one of its components is changed. Systems are said to be sensitive to such a component if the results of the calculation are changed significantly in response to changes in that component's values. The sensitivity calculations will also provide the technical basis for either inclusion or exclusion of degradation or alteration processes of engineered barriers in the TSPA. Degradation or alteration processes will be evaluated further if the magnitude and timing of the resulting expected annual dose would be significantly changed by their omission.

Using the TSPA results, DOE can examine the sensitivity of one or more components of the calculations in the assessment. DOE can examine the response of the geologic repository system with regard to sensitivities of the system to the suitability criteria, in order to evaluate whether the geologic repository meets the applicable radiation protection standard.

As part of the TSPA, DOE will account for uncertainties and variabilities in both calculations and data, and provide the technical bases for parameter ranges, probability distributions, and bounding values. The reason for this accounting is that it is recognized, by the NRC and others, that there are inherent uncertainties in the understanding of the evolution of the geologic setting, biosphere, and engineered barrier system. Under the circumstances, proof that the geologic repository will be in conformance with the applicable radiation protection standard is not to be had in the ordinary sense of the word. Instead, DOE will demonstrate compliance and the performance of the potential repository using sophisticated, complex predictive models that are supported by limited data from field and laboratory tests, site-specific monitoring, and natural analog studies that may be supplemented with expert judgment.

Another aspect of DOE's conduct of the TSPA is the analysis of alternative models of features and processes. Under 963.16(b)(3), DOE will consider alternative models of features and processes that are consistent with available data and current scientific understanding, and evaluate the effects that alternative models would have on the estimated performance of the geologic repository. In this regard, if other interested persons suggest and present to DOE alternative models that are consistent with available data and current scientific understanding, DOE will evaluate those other models. In implementing this requirement, however, DOE does not believe it would be scientifically or technically useful, and may be administratively burdensome, to require that, in every case, DOE provide the bases for not using an alternative model suggested by another party. Other interested persons may suggest any number of alternative models, some of which may not be consistent with available data and current scientific thinking and therefore not add significant value to the TSPA analysis. Nevertheless, DOE may decide, on a case-by-case basis, to document consideration of alternative models that were suggested by other interested persons, but not used because, among other things, the model is not consistent with available data and current scientific understanding.

(h) *Postclosure suitability criteria*—section 963.17. The postclosure criteria to evaluate the suitability of a geologic repository at Yucca Mountain will be considerations that reflect both the processes and the models used to simulate those processes that are important to the total system performance of the geologic repository. These criteria are characterizing traits that are relevant and important in the processes to be modeled in the TSPA that evaluates the suitability of the Yucca Mountain site for the postclosure period. These criteria also are related to the section 112(a) geologic considerations identified in the NWPA. Following is a description of how the section 112(a) geologic considerations relate to the postclosure suitability criteria, as well as a discussion of the criteria as they relate to the processes and computer models to be used in evaluating the performance of a geologic repository in the postclosure period.

(1) Section 112(a) geologic considerations. The geologic considerations identified in section 112(a) of the NWPA that are relevant to the postclosure performance of a repository at Yucca Mountain are: location of valuable natural resources, hydrology, geophysics, seismic activity, proximity to water supplies, and proximity to populations. These considerations are relevant to postclosure performance because they impact components and processes of the repository system related to potential transport of radionuclides via ground water to members of the public.

The location of valuable natural resources is a relevant geologic

condition for postclosure performance because the presence of these resources in the geologic setting of Yucca Mountain could lead to exploratory drilling or excavation and a consequent breach of the repository's safety barriers. Hydrology- and geophysics-related conditions are relevant because they describe some of the geologic features of the site that are related to safety and the physical characteristics that are related to potential transport of radionuclides to the biosphere. Seismic activity is relevant to postclosure performance because it is related to the potential for changes in geologic structures that could lead to enhanced transport of radionuclides. Proximity to water supplies and populations are relevant to postclosure performance because they are related to potential locations where people could eventually be exposed to radionuclides in their water.

Table 2 provides a cross-reference between the section 112(a) factors related to geologic considerations, and the postclosure suitability criteria. As previously stated, the postclosure suitability criteria largely represent the process model components of the total system performance assessment that DOE will use to evaluate the performance of the repository during the postclosure period. DOE has identified these processes as pertinent to assessing the performance of a repository at Yucca Mountain through information and data developed under its site characterization program. These processes also are related to, and impacted by, the geologic considerations found in section 112(a) of the NWPA.

TABLE 2

NWPA § 112(a) factors	Postclosure suitability criteria
(a) Processes pertinent to total system performance:	
Hydrology, geophysics, seismic activity	(1) Site characteristics.
Hydrology, geophysics, seismic activity	(2) Unsaturated-zone flow characteristics.
Hydrology, geophysics, seismic activity	(3) Near-field environment characteristics.
Hydrology, geophysics, seismic activity	(4) Engineered barrier system degradation characteristics.
Hydrology, geophysics, seismic activity	(5) Waste form degradation characteristics.
Hydrology, geophysics, seismic activity	(6) Engineered barrier system degradation, flow, and transport characteristics.
Hydrology, geophysics, seismic activity	(7) Unsaturated-zone flow and transport characteristics.
Hydrology, geophysics, seismic activity	(8) Saturated-zone flow and transport characteristics.
Hydrology, proximity to water supplies, proximity to populations	(9) Biosphere characteristics.
(b) Disruptive processes and events:	
Hydrology, geophysics	(1) Volcanism.
Seismic activity, geophysics	(2) Seismic events.
Hydrology, geophysics, seismic activity	(3) Nuclear criticality.
Location of valuable natural resources, proximity to populations	(4) Inadvertent human intrusion.

(2) Suitability criteria. DOE has developed its site characterization program to address those processes of the repository system that are pertinent to understanding how a repository at Yucca Mountain would comply with applicable radiation protection standards. The program also has been developed to better understand these processes, and resolve or put in place methods to resolve issues related to those processes. DOE has described these processes, and the methods to resolve issues related to the processes, in the SCP, semi-annual progress reports on site characterization program activities, in several TSPAs conducted over the years, and most recently in the Viability Assessment. These processes are simulated through performance assessment models; those models are integrated and refined to a point resulting in a representation of the performance of the system in total.

Put in simple terms, the processes that are pertinent to understanding the performance of a repository at Yucca Mountain, and that form the basis for the numerical models in the TSPA and the suitability criteria in section 963.17, are those physical processes of water falling on Yucca Mountain as rain and snow, moving into the mountain, down through the unsaturated zone to the potential repository level, from the repository level to the saturated zone, and from there to the outside environment. At the repository level, the water would be affected by the physical processes associated with the repository and with the waste packages and the waste forms. Eventually, the water could move out of the repository horizon and further downward through the unsaturated zone. Subsequently, it could move into the saturated zone where it could be transported to a point where humans could be exposed to any radionuclides carried in the water. Disruptive events could potentially affect these processes and, therefore, need to be considered. This set of physical processes is simulated in the numerical modeling method of the TSPA that will be used to assess quantitatively the radionuclide releases to the public and, consequently, the safety and suitability of the Yucca mountain site.

The suitability criteria proposed in this rule are derived from these pertinent physical processes. These criteria represent the characteristic traits pertinent to assessing the performance of a geologic repository at the Yucca Mountain site. They also reflect and represent in a larger sense the geologic considerations identified in section 112(a) of the NWPA such as hydrology, geophysics, seismic activity, and proximity to water supplies and populations.

The sequence in which the suitability criteria are presented in the proposed rule generally corresponds to the process of water flow presented above. In general, the criteria can be thought of as building blocks; each criterion in the sequence is evaluated on its own, with the results of that evaluation incorporated into the evaluation of the succeeding criteria, and so on until the final analysis. As the site characterization program evolves, DOE may refine these process models to better reflect and assess the processes pertinent to performance of a geologic repository at the Yucca Mountain site. It is possible that the processes, as well as the design selected, could dictate other ways to arrange the information included under the individual criteria. While the individual components of the process models may vary according to improvements in data and information, DOE's resultant suitability

determination would be based on an evaluation of each of the postclosure suitability criteria.

The criteria are separated into two categories. The first category, presented in section 963.17(a), represent those criteria important to the total system performance assessment without accounting for disruptive processes and events that could impact that performance. The second category, presented in section 963.17(b), are those criteria representing disruptive processes and events that could adversely affect the characteristics of the repository system, and consequently release radionuclides to the human environment. Each criterion in the first category is linked to a specific TSPA model component that will be used to evaluate the performance of that criterion. Each criterion in the second category is generally treated as an effect imposed on the system at a time that reflects the probability of occurrence of the disruptive event.

Under section 963.17(a), the first and a fundamental criterion that will be modeled to assess performance of a repository at the Yucca Mountain site is the representation of pertinent site characteristics. The criterion of site characteristics includes: (a) The geologic properties of the site—for example, stratigraphy, rock type and physical properties, and structural characteristics; (b) the hydrologic properties of the site—for example, porosity, permeability, moisture content, saturation, and potentiometric characteristics; (c) the geophysical properties of the site—for example, thermal properties, densities, velocities and water contents, as measured or deduced from geophysical logs, and (d) the geochemical properties of the site—for example, precipitation, dissolution characteristics, and sorption properties of mineral and rock surfaces. Together, as reflected in the performance assessment, these characteristics enable a representative simulation of the behavior of a geologic repository at the Yucca Mountain site.

The second criterion, unsaturated zone flow characteristics, relates to the processes affecting the limitations and amount of water entering the unsaturated zone above the repository and contacting wastes in the repository. Unsaturated zone flow characteristics include: (a) Climate—for example, precipitation and postulated future climatic conditions; (b) infiltration—for example, precipitation entering the mountain in excess of water returned to the atmosphere by evaporation and plant transpiration; (c) unsaturated-zone flux—for example, water movement through the pore spaces, or flowing along fractures or through perched water zones above the repository; and (d) seepage—for example, water dripping into the underground repository openings from the surrounding rock. Together, the first and second criteria define the temporal and spatial distribution of water flow through the unsaturated zone above the water table at Yucca Mountain, and the temporal and spatial distribution of water seepages into the underground openings of the repository.

The third criterion, near field environment characteristics, also relates to processes important to limiting the amount of water that could contact wastes. This criterion includes: (a) Thermal hydrology—for example, effects of heat from the waste on water flow through the site, and the temperature and humidity at the engineered barriers; and, (b) near-field geochemical environment—for example, the chemical reactions and products resulting from water contacting the waste and the engineered barriers materials. The thermal regime generated by the decay of the radioactive wastes can mobilize water over the first hundreds to thousands of years. For these reasons, the amount of water flowing in the rock and seeping into drifts is expected to vary with time.

The fourth criterion, engineered barrier system degradation characteristics, relates to the processes important to long waste package lifetimes. This criterion includes: (a) engineered barrier system component performance—for example, drip shields, backfill, coatings, or chemical modifications; and (b) waste package degradation—for example, the corrosion of the waste package materials within the near-field repository environment. This criterion and the first criterion, site characteristics, define the spatial and temporal distribution of the time periods when waste packages are expected to breach. The thermal, hydrologic, and geochemical processes acting on the waste package surface are the most important environmental factors affecting the waste package lifetime. In addition, the degradation characteristics of the waste package materials significantly impact the timing of waste package breaches.

The fifth criterion, waste form degradation characteristics, addresses the initial aspects of low rate of release of radionuclides. This criterion includes: (a) cladding degradation—for example, corrosion or break-down of the cladding on the individual spent fuel pellets; and, (b) waste form dissolution—for example, the ability of individual radionuclides to dissolve in water penetrating breached waste packages. This criterion is important to understanding how and in what manner the waste forms will break down, permitting the release of radionuclides to the immediately surrounding environment.

The sixth criterion, engineered barrier system degradation, flow, and transport characteristics, addresses the processes important to the manner in which radionuclides can begin to move outward once the engineered barrier system has been degraded. This criterion includes : (a) colloid formation and stability—for example, the formation of colloidal particles and the ability of radionuclides to adhere to these particles as they may be washed through the remaining barriers; and (b) engineered barrier transport—for example, the movement of radionuclides dissolved in water or adhering to colloidal particles to be transported through the remaining engineered barriers and in the underlying unsaturated zone. This criterion and the first criterion, site characteristics, lead to a determination of the spatial and temporal distribution of the mass of radioactive wastes released from the waste packages. Each characteristic depends on the thermal, hydrologic, and geochemical conditions inside the waste package, which change with time.

The next two criteria—unsaturated zone flow and transport characteristics (criterion seven), and saturated zone flow and transport characteristics (criterion eight)—relate to processes important to radionuclide concentration reduction during transport. To assess the movement of radionuclides away from the degraded engineered barrier system, the first important process to understand is the unsaturated zone flow characteristics in combination with the unsaturated zone transport characteristics. The unsaturated zone flow and transport characteristics criterion includes: (a) unsaturated-zone transport—for example, the movement of water with dissolved radionuclides or colloidal particles through the unsaturated zone underlying the repository, including retardation mechanisms such as sorption on rock or mineral surfaces; and (b) thermal hydrology—for example, effects of heat from the waste on water flow through the site. The next criterion, saturated zone flow and transport characteristics, addresses similar radionuclide transport processes, only in the saturated zone. This criterion includes: (a) saturated zone transport—for example, the movement of water with dissolved

radionuclides or colloidal particles through the saturated zone underlying and beyond the repository, including retardation mechanisms such as sorption on rock or mineral surfaces; and (b) dilution—for example, diffusion of radionuclides into pore spaces, dispersion of radionuclides along flow paths, and mixing with non-contaminated ground water.

The ninth criterion, biosphere characteristics, addresses the characteristics that describe the lifestyle and habits of individuals who potentially could be exposed to radioactive material at a future time. Because of the difficulty in predicting the lifestyles and habits of future generations, such assessments are to be based on representative current conditions. Both the EPA and the NRC have proposed rules that would require DOE to apply current conditions in assessments of the reference biosphere. This criterion includes: (a) a reference biosphere and receptor defined, for example, by considering pathways, location and behavior representative of current conditions; and (b) biosphere transport and uptake—for example, the consumption of ground or surface waters through direct extraction or agriculture, including mixing with non-contaminated waters and exposure to contaminated agricultural products.

Together, the criteria of unsaturated zone flow and transport characteristics, saturated zone flow and transport characteristics, and biosphere characteristics, address the spatial and temporal variations of radionuclide concentrations in ground water. The ground water concentration ultimately yields the mass of radionuclides that may be ingested or inhaled by individuals exposed to that ground water, which in turn leads to a level of radiological dose or risk associated with that potential exposure. The concentration depends on both the mass release rate of the radionuclides as well as the volumetric flux of water along the different pathways in the different components.

Section 963.17(b) presents four final criteria (separately enumerated from section 963.17(a)) under the category of disruptive processes and events. These criteria relate to disruptive processes and events that could potentially release radionuclides directly to the human environment, or otherwise adversely affect the characteristics of the system. The criteria pertinent to assessing repository performance relative to this attribute include: (1) Volcanism—for example, the probability and potential consequences of a volcanic eruption intersecting the repository; (2) seismic events—for example, the probability and potential consequences of a earthquake on the underground facilities or hydrologic system; and (3) nuclear criticality—for example, the probability and potential consequences of a self-sustaining nuclear reaction as a result of chemical or physical processes affecting the waste either in or after release from breached waste packages.

The last of the four disruptive processes and events criteria, inadvertent human intrusion, is a special criterion to be applied and assessed in its own performance assessment. Although characterization of the Yucca Mountain site and region indicates that it is not a likely choice for future exploration for natural resources, the NRC has identified the examination of a human intrusion scenario through drilling as a requirement for a TSPA in its proposed part 63. Accordingly, inadvertent human intrusion—for example, consequences to repository system performance following a stylized human intrusion scenario, is included in the criteria for disruptive processes and events, although it will be treated in a separate performance assessment. In making its suitability determination, DOE would apply the regulatory concept for human intrusion applicable at that time.

VII. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this rulemaking. Individuals, coalitions, states or other government entities, and others are urged to submit written comments on the proposal.

B. Written Comment Procedures

The DOE invites public comments on the proposed rule. Written comments should be identified on the outside of the envelope, and on the comments themselves, with the designation: ''Site Characterization Suitability Criteria NOPR, Docket Number [RW–RM–99–963]'' and must be received by the date specified at the beginning of this notice in order to be considered. In the event any person wishing to submit written comments cannot provide them directly, alternative arrangements can be made by calling [(800) 967–3477]. All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by the DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in the Yucca Mountain Science Center in Las Vegas, Nevada, and the DOE's Freedom of Information Reading Room. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information considered confidential has been deleted. The Department of Energy will make its own determination of any such claim and treat it according to its determination.

C. Hearing Procedures

At the beginning of this notice, DOE indicated that there would be a separate **Federal Register** Notice informing the public of the time and location of the public hearings on this supplemental notice of proposed rulemaking. For obvious reasons, DOE will hold these hearings in the vicinity of Yucca Mountain because nearby residents would be especially impacted by the location of a nuclear waste repository at Yucca Mountain. These hearings will not be trial-type evidentiary hearings that require a lawyer. They will be informal, and DOE intends to use a facilitator in an effort to ensure they are fair and productive.

DOE is considering a format wherein DOE officials would make a presentation that summarizes the supplemental notice of proposed rulemaking, and members of the public would have the opportunity to make oral comments. Prior to or following the hearing, DOE officials may be available to answer technical questions about the proposed regulation articulated in this notice. However, the DOE officials could not make any commitments about the final rule, and in some instances, they might be limited to taking the oral comments under advisement. In fairness to all commenters, decisions about the final rule must await the close of the comment period and consideration by DOE senior policy makers.

VIII. Regulatory Review

A. Review for Compliance with the National Environmental Policy Act (NEPA)

The issuance of these amendments to the guidelines is a preliminary decision-making activity pursuant to subsection 112(d) and 113(d) of the Act and therefore does not require the preparation of an environmental impact statement pursuant to subsection

102(2)(C) of the NEPA or any other environmental review under subsection 102(2)(E) or (F) of the NEPA.

B. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that a substantial number of small entities do not unnecessarily face significant negative economic impact as a result of Government regulations. The DOE certifies that the rule amending the guidelines will not have a significant impact on a substantial number of small entities. The final rule will not regulate or otherwise economically burden anyone outside of the DOE. It merely articulates considerations for the Secretary of Energy to use in determining whether the Yucca Mountain site is suitable for development as a repository. Moreover, in response to the initial notice of proposed rulemaking , a few entities who commented were small entities, and none of them identified economic burdens that the proposed regulations would impose. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act.

C. Review under the Paperwork Reduction Act

The DOE has determined that this rule, as proposed, contains no new or amended record keeping, reporting, or application requirements, or any other type of information collection requirements subject to the Paperwork Reduction Act (Pub. L. No. 96–511).

D. Review under Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) generally requires Federal agencies to closely examine the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose an enforceable duty upon State, local, or tribal governments, except, among other things, a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This rule, as proposed, is not likely to result in any Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Further, the guidelines in 10 CFR part 960, the proposed amendments to part 960 and the proposed part 963 largely incorporate requirements specifically provided in Sections 112 and 113 of the Act. Moreover, Sections 112, 113 and 114 of the Act provide for meaningful and timely input from elected officials of State, local and tribal governments. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

E. Review under Executive Order 12612

Executive Order 12612, 52 FR 41685, requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

The rule, as proposed in this notice, will not have a substantial direct effect on the institutional interests or traditional functions of the States. Accordingly, no assessment or analysis is required under Executive Order 12612.

F. Review under Executive Order 12866

Section 1 of Executive Order 12866 (''Regulatory Planning and Review''), 58 FR 51735, establishes a philosophy and principles for Federal agencies to follow in promulgating regulations. Section 1(b)(9) of that Order provides: ''Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions.''

Section 6 of Executive Order 12866 provides for a review by the Office of Information and Regulatory Affairs (OIRA) of a ''significant regulatory action,'' which is defined to include an action that may have an effect on the economy of $100 million or more, or adversely affect, in a material way, the economy, competition, jobs, productivity, the environment, public health or safety, or State, local, or tribal governments. The Department has concluded that this proposed rule is a significant regulatory action that requires a review by the OIRA. DOE submitted this rule for OIRA clearance, and OIRA has completed its review.

G. Review under Executive Order 12875

Executive Order 12875 (''Enhancing Intergovernmental Partnership''), provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local and tribal governments of unfunded Federal mandates not required by statute. The analysis under the Unfunded Mandates Reform Act of 1995, above, satisfies the requirements of Executive Order 12875. Accordingly, no further analysis is required under Executive Order 12875.

H. Review under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting

simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, the rule, as proposed, meets the relevant standards of Executive Order 12988.

I. Review under Executive Order 13084

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 10 CFR Parts 960 and 963

Environmental protection, Geologic repositories, Nuclear energy, Nuclear materials, Radiation protection, Waste disposal.

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

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

For the reasons stated in the preamble, DOE hereby proposes to amend part 960, and to add a new part 963 to, Chapter II of Title 10 of the Code of Federal Regulations as follows:

PART 960—GENERAL GUIDELINES FOR THE PRELIMINARY SCREENING OF POTENTIAL SITES FOR A NUCLEAR WASTE REPOSITORY

1. The authority for 10 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 2011, *et seq.,* 42 U.S.C. 7101, *et seq*., 42 U.S.C. 10101. *et seq*.

2. The part heading for Part 960 is revised to read as set forth above:

§ 960.1 [Amended]

3. Section 960.1 is amended by removing the phrase ''for the development of repositories'' from the first sentence and removing the phrase ''and any preliminary suitability determinations required by Section 114(f)'' from the second sentence.

4. Section 960.2 is amended by revising the definitions of ''Act,'' ''Application'' and ''Determination'' to read as follows:

§ 960.2 Definitions.

* * * * *

Act means the Nuclear Waste Policy Act of 1982, as amended.

* * * * *

Application means the act of making a finding of compliance or noncompliance with the qualifying or disqualifying conditions specified in the guidelines of subparts C and D of this part.

* * * * *

Determination means a decision by the Secretary that a site is suitable for site characterization for the selection of a repository, consistent with applications of the guidelines of subparts C and D of this part in accordance with the provisions set forth in subpart B of this part.

* * * * *

§ 960.3 [Amended]

5. Section 960.3 is amended by removing the phrase ''for the development of repositories'' from the first sentence.

§ 960.3–1–4–4 [Removed]

6. Section 960.3–1–4–4 is removed.

7. Section 960.3–1–5 is revised to read as follows:

§ 960.3–1–5 Basis for site evaluations.

(a) Evaluations of individual sites and comparisons between and among sites shall be based on the postclosure and preclosure guidelines specified in subparts C and D of this part, respectively. Except for screening for potentially acceptable sites as specified in § 960.3–2–1, such evaluations shall place primary significance on the postclosure guidelines and secondary significance on the preclosure guidelines, with each set of guidelines considered collectively for such purposes. Both the postclosure and the preclosure guidelines consist of a system guideline or guidelines and corresponding groups of technical guidelines.

(b) The postclosure guidelines of subpart C of this part contain eight technical guidelines in one group. The preclosure guidelines of subpart D of this part contain eleven technical guidelines separated into three groups that represent, in decreasing order of importance, preclosure radiological safety; environment, socioeconomics, and transportation; and ease and cost of siting, construction, operation, and closure.

(c) The relative significance of any technical guideline to its corresponding system guideline is site specific. Therefore, for each technical guideline, an evaluation of compliance with the qualifying condition shall be made in the context of the collection of system elements and the evidence related to that guideline, considering on balance the favorable conditions and the potentially adverse conditions identified at a site. Similarly, for each system guideline, such evaluation shall be made in the context of the group of technical guidelines and the evidence related to that system guideline.

(d) For purposes of recommending sites for development as repositories, such evidence shall include analyses of expected repository performance to assess the likelihood of demonstrating compliance with 40 CFR part 191 and 10 CFR part 60, in accordance with § 960.4–1. A site shall be disqualified at any time during the siting process if the evidence supports a finding by the DOE that a disqualifying condition exists or the qualifying condition of any system or technical guideline cannot be met.

(e) Comparisons between and among sites shall be based on the system guidelines, to the extent practicable and in accordance with the levels of relative significance specified above for the postclosure and the preclosure guidelines. Such comparisons are intended to allow comparative evaluations of sites in terms of the capabilities of the natural barriers for waste isolation and to identify innate deficiencies that could jeopardize compliance with such requirements. If the evidence for the sites is not adequate to substantiate such comparisons, then the comparisons shall be based on the groups of technical guidelines under the postclosure and the preclosure guidelines, considering the levels of relative significance appropriate to the

postclosure and the preclosure guidelines and the order of importance appropriate to the subordinate groups within the preclosure guidelines. Comparative site evaluations shall place primary importance on the natural barriers of the site. In such evaluations for the postclosure guidelines of subpart C of this part, engineered barriers shall be considered only to the extent necessary to obtain realistic source terms for comparative site evaluations based on the sensitivity of the natural barriers to such realistic engineered barriers. For a better understanding of the potential effects of engineered barriers on the overall performance of the repository system, these comparative evaluations shall consider a range of levels in the performance of the engineered barriers. That range of performance levels shall vary by at least a factor of 10 above and below the engineered-barrier performance requirements set forth in 10 CFR 60.113, and the range considered shall be identical for all sites compared. The comparisons shall assume equivalent engineered barrier performance for all sites compared and shall be structured so that engineered barriers are not relied upon to compensate for deficiencies in the geologic media. Furthermore, engineered barriers shall not be used to compensate for an inadequate site; mask the innate deficiencies of a site; disguise the strengths and weaknesses of a site and the overall system; and mask differences between sites when they are compared. Releases of different radionuclides shall be combined by the methods specified in appendix A of 40 CFR part 191.

(f) The comparisons specified above shall consist of two comparative evaluations that predict radionuclide releases for 100,000 years after repository closure and shall be conducted as follows. First, the sites shall be compared by means of evaluations that emphasize the performance of the natural barriers at the site. Second, the sites shall be compared by means of evaluations that emphasize the performance of the total repository system. These second evaluations shall consider the expected performance of the repository system; be based on the expected performance of waste packages and waste forms, in compliance with the requirements of 10 CFR 60.113, and on the expected hydrological and geochemical conditions at each site; and take credit for the expected performance of all other engineered components of the repository system. The comparison of isolation capability shall be one of the significant considerations in the recommendation of sites for the development of repositories. The first of the two comparative evaluations specified in the preceding paragraph shall take precedence unless the second comparative evaluation would lead to substantially different recommendations. In the latter case, the two comparative evaluations shall receive comparable consideration. Sites with predicted isolation capabilities that differ by less than a factor of 10, with similar uncertainties, may be assumed to provide equivalent isolation.

8. In section 960.3–2, the last sentence is revised to read as follows:

§ 960.3–2 Siting process.

* * * The recommendation of sites as candidate sites for characterization shall be accomplished in accordance with the requirements specified in § 960.3–2–3.

§ 960.3–2–4 [Removed]

9. Section 960.3–2–4 is removed.

Appendix III to Part 960 [Amended]

10. Appendix III to Part 960 is amended as follows:

In paragraph 1, introductory text, first sentence, revise the phrase ''the ''principal to read acertain''

In paragraph 1, remove the definition (decision point) for ''Repository Site Selection.''

In paragraph 2, remove the definition for the numeral ''4'' and paragraphs ''(a)'' and ''(b)'' which follow.

In the table, Findings Resulting From the Application of the Qualifying and Disqualifying Conditions of the Technical Guidelines at Major Siting Decisions, remove the column heading and corresponding entries for ''Repository Site Selection'' under the heading ''Siting Decision.''

4. New part 963 is added to read as follows:

PART 963—YUCCA MOUNTAIN SITE SUITABILITY GUIDELINES

Subpart A—General Provisions

Subpart B—Site Suitability Determination, Methods and Criteria

Authority: 42 U.S.C. 2011 *et seq.*; 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 10101, *et seq.*

Subpart A—General Provisions

§ 963.1 Purpose.

(a) The purpose of this part is to establish DOE methods and criteria for determining the suitability of the Yucca Mountain site for the location of a geologic repository. DOE will use these methods and criteria in analyzing the data from the site characterization activities required under section 113 of the Nuclear Waste Policy Act.

(b) This part does not address other information that must be considered and submitted to the President, and made available to the public, by the Secretary under section 114 of the Nuclear Waste Policy Act if the Yucca Mountain site is recommended for development as a geologic repository.

§ 963.2 Definitions.

For purposes of this Part:

Barrier means any material, structure or process that prevents or substantially delays the movement of water or radionuclides.

Cladding means the corrosion-resistant material, typically a zirconium alloy, that binds and contains the nuclear fuel material in individual fuel pellets.

Closure means the final closing of the remaining open operational areas of the underground facility and boreholes after termination of waste emplacement, culminating in the sealing of shafts and ramps, except those openings that may be designed for ventilation or monitoring.

Colloid means any fine-grained material in suspension, or any such material that can be easily suspended.

Criteria means the characterizing traits relevant to assessing the performance of a geologic repository, as defined by this section, at the Yucca Mountain site.

Design means a description of the engineered structures, systems, components and equipment of a geologic repository at Yucca Mountain that includes the engineered barrier system.

Design basis event means:

(1) Those natural and human-induced events that are expected to occur one or more times before permanent closure; or

(2) Other natural and human-induced events that have at least one chance in 10,000 of occurring before permanent closure.

DOE means the U.S. Department of Energy, or its duly authorized representatives.

Engineered barrier system means the waste packages and the underground facilities.

Expected means assumed to be probable on the basis of existing

evidence and in the absence of significant evidence to the contrary.

Geologic repository means a system that is intended to be used for, or may be used for, the disposal of radioactive wastes in excavated geologic media including the engineered barrier system and the portion of the geologic setting that provides isolation of the radioactive waste.

Geologic setting means geologic, hydrologic, and geochemical system of the region in which a geologic repository operations area at Yucca Mountain is or may be located.

Infiltration means the flow of a fluid into a solid substance through pores or small openings; specifically, the movement of water into soil and fractured or porous rock.

Near-field means the region where the adjacent natural geohydrologic system has been significantly impacted by the excavation of the repository and the emplacement of the waste.

NRC means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

Perched water means ground water of limited lateral extent separated from an underlying body of ground water by an unsaturated zone.

Preclosure or *preclosure period* means the period of time before and during closure of the geologic repository.

Preclosure safety evaluation means a preliminary assessment of the adequacy of repository support facilities to prevent or mitigate the effects of postulated design basis events (including fire, radiation, criticality, and chemical hazards), and the site, structures, systems, components, equipment, and operator actions that would be relied on for safety.

Postclosure means the period of time after the closure of the geologic repository.

Radioactive waste means high-level radioactive waste and other radioactive materials, including spent nuclear fuel, that are received for emplacement in the geologic repository.

Reference biosphere means the description of the environment, inhabited by the receptor, comprising the set of specific biotic and abiotic characteristics of the environment, including, but not limited to, climate, topography, soils, flora, fauna, and human activities.

Repository support facilities means all permanent facilities constructed in support of site characterization activities and repository construction, operation, and closure activities, including surface structures, utility lines, roads, railroads, and similar facilities, but excluding the underground facility.

Seepage means the inflow of ground water moving in fractures or pore spaces of permeable rock to an open space in the rock such as an excavated drift.

Sensitivity study means an analytic or numerical technique for examining the effects on outcomes, such as radionuclide releases, of varying specified parameters, such as the infiltration rate due to precipitation, when a model run is performed.

Site characterization means activities, whether in the laboratory or in the field, undertaken to establish the geologic conditions and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

Surface facilities means repository support facilities within the restricted area located on or above the ground surface.

System performance means the complete behavior of a geologic repository system at Yucca Mountain in response to the conditions, processes, and events that may affect it.

Total system performance assessment means a probabilistic analysis that is used to:

(1) Identify the features, events and processes that might affect the performance of the geologic repository;

(2) Examine the effects of such features, events, and processes on the performance of the geologic repository; and

(3) Estimate the expected annual dose to the receptor as a result of releases from the geologic repository.

Underground facility means the underground structure, backfill materials, if any, and openings that penetrate the underground structure (e.g., ramps, shafts and boreholes, including their seals)

Waste is synonymous with ''*radioactive waste.*''

Waste form means the radioactive waste materials and any encapsulating or stabilizing matrix.

Waste package means the waste form and any containers, shielding, packing, and other absorbent materials immediately surrounding an individual waste container.

Yucca Mountain site means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) of the Nuclear Waste Policy Act of 1982 (NWPA) [42 U.S.C. 1032(b)(1)(B)] on May 27, 1986.

Subpart B—Site Suitability Determination, Methods, and Criteria

§ 963.10 Scope.

(a) The scope of this subpart includes the following for both the preclosure and postclosure periods:

(1) The bases for the suitability determination for the Yucca Mountain site as a location for a geologic repository;

(2) The suitability evaluation methods for applying the site suitability criteria to a geologic repository at the Yucca Mountain site; and

(3) The site suitability criteria that DOE will apply in accordance with section 113(b)(1)(A)(iv) of the NWPA.

(b) DOE will seek NRC concurrence on any future revisions to this subpart.

§ 963.11 Suitability determination.

DOE will evaluate whether the Yucca Mountain site is suitable for the location of a geologic repository on the basis of the preclosure and postclosure determinations described in §§ 963.12 and 963.15. If DOE's evaluation of the Yucca Mountain site for the location of a geologic repository under §§ 963.12 and 963.15 shows that the geologic repository is likely to meet the applicable radiation protection standards for the preclosure and postclosure periods, then DOE may determine that the site is a suitable location for the development of such a repository.

§ 963.12 Preclosure suitability determination.

DOE will apply the method and criteria described in §§ 963.13 and 963.14 to evaluate the suitability of the Yucca Mountain site for the preclosure period. If DOE finds that the results of the preclosure safety evaluation conducted under § 963.13 show that the Yucca Mountain site is likely to meet the applicable radiation protection standard, DOE may determine the site suitable for the preclosure period.

§ 963.13 Preclosure suitability evaluation method.

(a) DOE will evaluate preclosure suitability using a preclosure safety evaluation method. DOE will evaluate the performance of the geologic repository at the Yucca Mountain site using the method described in paragraph (b) of this section and the criteria in § 963.14. DOE will consider the performance of the system in terms

of the criteria to evaluate whether the geologic repository is likely to comply with the applicable radiation protection standard.

(b) The preclosure safety evaluation method, using preliminary engineering specifications, will assess the adequacy of the repository facilities to perform their intended functions and prevent or mitigate the effects of postulated design basis events that are deemed sufficiently credible to warrant consideration. The preclosure safety evaluation will consider:

(1) A preliminary description of the site characteristics, the surface facilities and the underground operating facilities;

(2) A preliminary description of the design bases for the operating facilities and a preliminary description of any associated limits on operation;

(3) A preliminary description of potential hazards, event sequences, and their consequences; and

(4) A preliminary description of the structures, systems, components, equipment, and operator actions intended to mitigate or prevent accidents.

§ 963.14 Preclosure suitability criteria.

DOE will evaluate preclosure suitability using the following criteria:

(a) Ability to contain radioactive material and to limit releases of radioactive materials;

(b) Ability to implement control and emergency systems to limit exposure to radiation;

(c) Ability to maintain a system and components that perform their intended safety functions; and

(d) Ability to preserve the option to retrieve wastes during the preclosure period.

§ 963.15 Postclosure suitability determination.

DOE will apply the method and criteria described in §§ 963.16 and 963.17 to evaluate the suitability of the Yucca Mountain site for the postclosure period. If DOE finds that the results of the total system performance assessments conducted under § 963.16 show that the Yucca Mountain site is likely to meet the applicable radiation protection standard, DOE may determine the site suitable for the postclosure period.

§ 963.16 Postclosure suitability evaluation method.

(a) DOE will evaluate postclosure suitability using the total system performance assessment method. DOE will conduct a total system performance assessment to evaluate the ability of the geologic repository to meet the applicable radiation protection standard under the following circumstances:

(1) DOE will conduct a total system performance assessment to evaluate the ability of the geologic repository to limit radiological exposures in the case where there is no human intrusion into the repository. DOE will model the performance of the geologic repository at the Yucca Mountain site using the method described in paragraph (b) of this section and the criteria in § 963.17, excluding the criterion in paragraph (b)(4) of § 963.17. DOE will consider the performance of the system in terms of the criteria to evaluate whether the geologic repository is likely to comply with the applicable radiation protection standard.

(2) Consistent with applicable NRC regulations regarding a stylized human intrusion case, DOE will conduct a total system performance assessment to evaluate the ability of the geologic repository to limit radiological exposures in a stylized limited human intrusion case. DOE will model the performance of the geologic repository at the Yucca Mountain site using the method described in paragraph (b) of this section and the criteria in § 963.17. DOE will consider the performance of the system in terms of the criteria to evaluate whether the geologic repository is likely to comply with the applicable radiation protection standard. The human intrusion evaluation under this paragraph will be separate from the evaluation conducted under paragraph (a)(1) of this section.

(b) In conducting a total system performance assessment under this section, DOE will:

(1) Include data related to the suitability criteria in § 963.17;

(2) Account for uncertainties and variabilities in parameter values and provide the technical basis for parameter ranges, probability distributions, and bounding values;

(3) Consider alternative models of features and processes that are consistent with available data and current scientific understanding, and evaluate the effects that alternative models would have on the estimated performance of the geologic repository;

(4) Consider only events that have at least one chance in 10,000 of occurring over 10,000 years;

(5) Provide the technical basis for either inclusion or exclusion of specific features, events, and processes of the geologic setting, including appropriate details as to magnitude and timing regarding any exclusions that would significantly change the expected annual dose;

(6) Provide the technical basis for either inclusion or exclusion of degradation, deterioration, or alteration processes of engineered barriers, including those processes that would adversely affect natural barriers, (such as degradation of concrete liners affecting the pH of ground water or precipitation of minerals due to heat changing hydrologic processes), including appropriate details as to magnitude and timing regarding any exclusions that would significantly change the expected annual dose;

(7) Provide the technical basis for models used in the total systems performance assessment such as comparisons made with outputs of detailed process-level models and/or empirical observations (for example, laboratory testing, field investigations, and natural analogs);

(8) Identify natural features of the geologic setting and design features of the engineered barrier system important to isolating radioactive waste;

(9) Describe the capability of the natural and engineered barriers important to isolating radioactive waste, taking into account uncertainties in characterizing and modeling such barriers;

(10) Provide the technical basis for the description of the capability of the natural and engineered barriers important to isolating radioactive waste;

(11) Use the reference biosphere and group receptor assumptions specified in applicable NRC regulations; and

(12) Conduct appropriate sensitivity studies.

§ 963.17 Postclosure suitability criteria.

(a) DOE will evaluate the postclosure suitability of a geologic repository at the Yucca Mountian site through suitability criteria that reflect both the processes and the models used to simulate those processes, that are important to the total system performance of the geologic repository. The applicable criteria are:

(1) *Site characteristics,* which include:

(i) Geologic properties of the site—for example, stratigraphy, rock type and physical properties, and structural characteristics;

(ii) Hydrologic properties of the site—for example, porosity, permeability, moisture content, saturation, and potentiometric characteristics;

(iii) Geophysical properties of the site—for example, densities, velocities and water contents, as measured or deduced from geophysical logs; and

(iv) Geochemical properties of the site—for example, precipitation, dissolution characteristics, and sorption properties of mineral and rock surfaces.

(2) *Unsaturated zone flow characteristics,* which include:

(i) Climate—for example, precipitation and postulated future climatic conditions;

(ii) Infiltration—for example, precipitation entering the mountain in excess of water returned to the atmosphere by evaporation and plant transpiration;

(iii) Unsaturated zone flux—for example, water movement through the pore spaces, or flowing along fractures or through perched water zones above the repository;

(iv) Seepage—for example, water dripping into the underground repository openings from the surrounding rock;

(3) *Near field environment characteristics,* which include:

(i) Thermal hydrology—for example, effects of heat from the waste on water flow through the site, and the temperature and humidity at the engineered barriers.

(ii) Near field geochemical environment—for example, the chemical reactions and products resulting from water contacting the waste and the engineered barrier materials;

(4) *Engineered barrier system degradation characteristics,* which include:

(i) Engineered barrier system component performance—for example, drip shields, backfill, coatings, or chemical modifications, and

(ii) Waste package degradation—for example, the corrosion of the waste package materials within the near-field environment;

(5) *Waste from degradation characteristics,* which include:

(i) Cladding degradation—for example, corrosion or break-down of the cladding on the individual spent fuel pellets;

(ii) Waste from dissolution—for example, the ability of individual radionuclides to dissolve in water penetrating breached waste packages;

(6) *Engineered barrier system degradation, flow, and transport characteristics,* which include:

(i) Colloid formation and stability—for example, the formation of colloidal particles and the ability of radionuclides to adhere to these particles as they may be washed through the remaining barriers; and

(ii) Engineered barrier transport—for example, the movement of radionuclides dissolved in water or adhering to colloidal particles to be transported through the remaining engineered barriers and in the underlying unsaturated zone;

(7) *Unsaturated zone flow and transport characteristics,* which include:

(i) Unsaturated zone transport—for example, the movement of water with dissolved radionuclides or colloidal particles through the unsaturated zone underlying the repository, including retardation mechanisms such as sorption on rock or mineral surfaces;

(ii) Thermal hydrology—for example, effects of heat from the waste on water flow through the site;

(8) *Saturated zone flow and transport characteristics,* which include:

(i) Saturated zone transport—for example, the movement of water with dissolved radionuclides or colloidal particles through the saturated zone underlying and beyond the repository, including retardation mechanisms such as sorption on rock or mineral surfaces; and

(ii) Dilution—for example, diffusion of radionuclides into pore spaces, dispersion of radionuclides along flow paths, and mixing with non-contaminated ground water;

(9) *Biosphere characteristics,* which include:

(i) Reference biosphere and receptor—for example, biosphere water pathways, location and behavior of receptor; and

(ii) Biosphere transport and uptake—for example, the consumption of ground or surface waters through direct extraction or agriculture, including mixing with non-contaminated waters and exposure to contaminated agricultural products.

(b) DOE will evaluate the postclosure suitability of a geologic repository at the Yucca Mountain site using criteria that consider disruptive processes and events important to the total system performance of the geologic repository. The applicable criteria related to disruptive processes and events include:

(1) *Volcanism*—for example, the probability and potential consequences of a volcanic eruption intersecting the repository;

(2) *Seismic events*—for example, the probability and potential consequences of an earthquake on the underground facilities or hydrologic system;

(3) *Nuclear criticality*—for example, the probability and potential consequences of a self-sustaining nuclear reaction as a result of chemical or physical processes affecting the waste either in or after release from breached waste packages;

(4) *Inadvertent human intrusion*—for example, consequences to repository system performance following a stylized human intrusion scenario.

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federal register

Tuesday
November 30, 1999

Part V

Environmental Protection Agency

40 CFR Part 60

Commericial and Industrial Solid Waste Incineration Units; Proposed Standards and Guidelines; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6478–9]

RIN 2060–AG31

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed standards and guidelines.

SUMMARY: The EPA is proposing standards and guidelines for new and existing commercial and industrial solid waste incineration (CISWI) units. The standards and guidelines fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA) which require EPA to promulgate standards and guidelines for solid waste incineration units. These requirements are based on the Administrator's determination that these waste incinerators cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. These standards and guidelines will protect public health by reducing exposure to air pollution. These regulations address only nonhazardous wastes.

DATES: *Comments.* Comments on the proposed standards and guidelines or on the Information Collection Request (ICR) document associated with these standards and guidelines must be received on or before January 31, 2000.

Public Hearing. The EPA will hold a public hearing if individuals request to speak. Persons wishing to speak at a public hearing must contact EPA by December 20, 1999. If the EPA receives requests to speak, the hearing will take place on January 11, 2000.

ADDRESSES: *Comments.* Submit comments (in duplicate, if possible) to: The Air and Radiation Docket and Information Center, Attn: Docket No. A–94–63 (industrial and commercial waste incineration), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rick Crume, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5294, e-mail: crume.rick@epa.gov.

SUPPLEMENTARY INFORMATION:

Comment Information. Comments may be submitted electronically via electronic mail (e-mail) or on disk. Electronic comments on this proposed rule may be filed via e-mail at most Federal Depository Libraries. E-mail submittals should be sent to: ''A-and-R-Docket@epamail.epa.gov''. Electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file avoiding the use of special characters or any form of encryption. Comments and data will also be accepted on disks or as an e-mail attachment in WordPerfect® 5.1, 6.1, or Corel 8.0 file format or ASCII file format. All comments and data for this proposal, whether in paper form or electronic forms such as through e-mail or on diskette, must be identified by Docket No. A–94-63. No confidential business information should be submitted through e-mail.

Persons wishing to submit proprietary information for consideration must clearly distinguish such information from other comments by clearly labeling it ''Confidential Business Information'' (CBI). Submit CBI directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Rick Crume, c/o Ms. Melva Toomer, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality is made with the submission, the submission may be made available to the public without further notice.

Public Hearing. If a public hearing is held, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, NC, or at an alternate site nearby. Persons wishing to speak at a public hearing should contact Libby Bradley, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5578.

Background Information. A list of combustion related rules is available on the Combustion Group website on the EPA Technology Transfer Network website (TTN Web) at http://www.epa.gov/ttn/uatw/combust/list.html. You may obtain background information, technical documents, and a docket index on these combustion related rules.

Docket. Docket No. A–94–63 contains the supporting information used in developing the proposed standards and guidelines and is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. The docket is available at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

Regulated Entities. The promulgation of these standards and guidelines would affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	325	34	Manufacturers of electronic equipment.
	421	36	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.
Any State, local, or Tribal government using a solid waste incinerator as defined in the regulations.	922	9229	Law enforcement agencies.
Any Federal government agency using a solid waste incinerator as defined in the regulations.	928	9711	Department of defense (labs, military bases, munition facilities).
Any university using a solid waste incinerator as defined in the regulations.	6113	8221	Research centers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 60.2010 of subpart CCCC and 40 CFR 60.2505 of subpart DDDD. If you have any questions regarding the applicability of this action to your solid waste incineration unit, refer to the **FOR FURTHER INFORMATION CONTACT** section.

Organization of This Document. The following outline is provided to aid in locating information in this preamble. Each section heading of the preamble is presented as a question and the text in the section answers the question.

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
ASME—American Society of Mechanical Engineers
Btu—British thermal units
CBI—Confidential Business Information
CAA—Clean Air Act
CEMS—Continuous emission monitoring systems
CFR—Code of Federal Regulations
CISWI—Commercial and industrial solid waste incineration
EPA—Environmental Protection Agency
FACA—Federal Advisory Committee Act
FR—Federal Register
HMIWI—Hospital/medical/infectious waste incineration
ICCR—Industrial Combustion Coordinated Rulemaking
ICR—Information Collection Request
kg/hr—Kilograms per hour
kWh/yr—Kilowatt hours per year
lbs/hr—Pounds per hour
MACT—Maximum achievable control technology
mg/dscm—Milligrams per dry standard cubic meter
Mg/yr—Megagrams per year
MWC—Municipal waste combustor
NAICS—North American Industrial Classification System
ng/dscm—Nanograms per dry standard cubic meter
NSPS—New source performance standards
NTTAA—National Technology Transfer and Advancement Act
OMB—Office of Management and Budget
Pub. L.—Public Law
ppm—parts per million
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SIC—Standard Industrial Classification
SWDA—Solid Waste Disposal Act
TTN Web—Technology Transfer Network Website
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code

I. Background Information

A. What Information Is Covered in This Preamble and How Is It Organized?

In this preamble, EPA summarizes the important features of these proposed standards and guidelines that apply to CISWI units. This preamble describes the environmental, energy, and economic impacts of these standards and guidelines; describes the basis for each of the decisions made regarding the proposed standards and guidelines; requests public comments on certain issues; and discusses administrative requirements relative to this action.

B. Where in the Code of Federal Regulations Will These Standards and Guidelines Be Codified?

The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. The code is divided into 50 titles that represent broad areas subject to Federal regulation. These proposed rules for solid waste incineration units would be published in Title 40, Protection of the Environment. Part 60 of title 40 includes standards of performance for new stationary sources and emission guidelines and compliance times for existing sources. The table below lists the subparts in which the standards and guidelines will be codified.

Title of the regulation	Subpart in title 40, part 60
Standards of Performance for New Stationary Sources: Commercial and Industrial Solid Waste Incineration Units.	Subpart CCCC.
Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units.	Subpart DDDD.

C. What Is the Regulatory Development Background of This Source Category?

Section 129 of the CAA requires the EPA to develop new source performance standards (NSPS) and emission guidelines for ''solid waste incineration units combusting commercial or industrial waste.'' On December 28, 1994 (59 FR 66850), the EPA published an advance notice of proposed rulemaking. That notice requested information and data concerning the operation, location, emissions, and emission controls for CISWI units. The data from that information request were compiled by the EPA to assist in identifying and characterizing CISWI units.

In September 1996, the EPA chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, known as the Coordinating Committee, formed Source Work Groups for the various combustor types covered under the ICCR. One work group, the Incinerator Work Group, was formed to research issues related to CISWI units. The Incinerator Work Group submitted recommendations, information, and data analysis results to the Coordinating Committee, which in turn considered them and submitted recommendations and information to the EPA. The Committee's recommendations were considered by EPA in developing these regulations for CISWI units. The Committee's 2-year charter expired in September 1998.

Pursuant to a February 1995 consent decree (as modified in July 1997), EPA was required to complete the entry of responses received from an ICR (issued by the ICCR) into an electronic database by October 15, 1997, and to develop regulatory options for the CISWI rulemaking by November 16, 1998. The EPA met both of these deadlines. That consent decree also requires the Administrator to sign a notice of proposed rulemaking to establish emission standards and other requirements applicable to commercial and industrial solid waste incinerators, pursuant to section 129 of the CAA, by November 15, 1999. Additionally, a July 23, 1997 consent decree requires the EPA to promulgate final emission standards and other requirements for CISWI units, pursuant to section 129, by November 15, 2000.

This proposed rule satisfies the consent decree requirement for the Administrator to sign a notice of proposed rulemaking for emission standards applicable to CISWI units by November 15, 1999.

D. What Is the Statutory Authority for These Standards?

Section 129 of the CAA requires EPA to develop and adopt performance standards and emission guidelines for solid waste incineration units pursuant to section 111 of the CAA. Section 111(b) requires EPA to establish standards of performance for new sources, and section 111(d) requires EPA to establish procedures for States to submit plans for implementing emission guidelines for existing sources. Under section 111, performance standards and guidelines must be developed for new and existing stationary sources that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare.

Congress specifically added section 129 to the CAA to address concerns about emissions from solid waste combustion units. Under section 129, the standards and guidelines adopted for solid waste combustion units must reflect maximum achievable control technology (MACT). The MACT is the maximum degree of reduction in emissions of specified air pollutants that the Administrator determines is achievable, taking into consideration the cost of achieving the reductions and any non-air quality health and environmental impacts and energy requirements.

E. What Are New Source Performance Standards?

The NSPS for solid waste incineration units are developed according to sections 111 and 129. These standards apply to new stationary sources of emissions, that is, sources whose construction begins after a standard is proposed or that are modified on or after a specified date. An NSPS is the end product of a series of decisions related to certain key elements for the source category being considered for regulation. The key elements in this rulemaking are generally defined as:

1. *Source category to be regulated* means the industries or types of processes that are regulated. Today's proposed standards apply to the CISWI category specified in section 129.

2. *Affected facility* means the solid waste incineration units that will be sources subject to the NSPS. Today's proposed standards will affect each individual CISWI unit.

3. *Pollutants to be regulated* means the particular substances emitted by the affected facility that the standards regulate. Section 129 specifies nine pollutants: cadmium, carbon monoxide, dioxins/furans, fine and total particulate matter, hydrogen chloride, lead, mercury, oxides of nitrogen, and sulfur dioxide. Opacity standards may also be required as appropriate. The EPA is not proposing emission limits for fine particulate matter because testing and monitoring methods are not available. The section 129 pollutants represent the minimum requirements; EPA can add other pollutants, if appropriate, but has elected not to do so in this rulemaking.

4. *Maximum achievable control technology* means the technology on which the emission standards will be based. Section 129(a)(2) specifies that standards be based on ''the maximum degree of reduction in emissions * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable * * *.'' (Note that solid waste incineration standards under section 129 are different from typical NSPS under section 111, which are based on ''best demonstrated technology'' rather than MACT.)

5. *Format for the standards* means the form in which the standards are expressed; for example, as pollutant concentration emission limits, as a percent reduction in emissions, or as equipment or work practice standards. Section 129 also directs EPA to establish siting requirements for new incineration units and operator certification and training requirements for all units.

6. *Actual standards* generally means emission limits based on the level of reduction that the MACT can achieve. Under certain circumstances, it may not be possible to develop emission limits if the level of performance cannot be identified. Only in unusual cases do standards require that a specific technology be used. In general, the source owner or operator may select any method for complying with the standards.

7. *Other considerations in addition to emission limits* for NSPS usually include: standards for visible emissions, modification and reconstruction provisions, monitoring requirements, performance test methods and compliance procedures, and reporting and recordkeeping requirements.

F. What Are Emission Guidelines?

Emission guidelines are similar to the NSPS, except that they apply to existing sources, that is, sources whose construction begins on or before the date a standard is proposed or that are

modified before a specified date. Unlike NSPS, the emission guidelines are not enforceable until EPA approves a State plan or adopts a Federal plan for implementing and enforcing them, and the State or Federal plan becomes effective.

G. How Are the Emission Guidelines Implemented?

When standards of performance for solid waste incineration units are promulgated under sections 111 and 129, the CAA requires States under sections 111(d) and 129(b) to submit plans that: (1) Establish emission standards for existing sources and (2) provide for implementation and enforcement of these emission standards.

States are required to adopt and submit to the Administrator a State plan implementing the emission guidelines within 1 year after the promulgation of the guidelines (section 129(b)(2)). The State plan carries out and provides for enforcing the emission guidelines. Section 129 provides that the State plan for existing incineration units must be at least as protective as the emission guidelines and must provide for compliance by affected facilities no later than 3 years after the Administrator approves the State plan, but no later than 5 years after EPA promulgates the guidelines. The CAA (section 111(d)) further requires that the procedures for submitting a State plan must be similar to the procedures for submitting State implementation plans under section 110 of the CAA. (The EPA has established specific procedures in 40 CFR part 60, subpart B.) Sections 111(d) and 129(b) also require EPA to develop, implement, and enforce a Federal plan if a State fails to submit a satisfactory State plan.

II. Summary of the Standards and Guidelines

This preamble discusses the proposed standards and guidelines as they apply to ''you,'' the owner or operator of a new or existing CISWI unit. This preamble describes the major requirements of the CISWI regulations. For a full description of the proposed requirements and compliance times, see the attached regulations.

A. Do the Proposed Standards and Guidelines Apply to Me?

The proposed standards and guidelines apply to you if you own or operate an incineration unit burning solid waste (as defined in §§ 60.2245 and 60.2850) at any commercial or industrial facility. A commercial or industrial solid waste incineration unit is considered an enclosed device using controlled flame combustion that burns solid waste, or an air curtain incinerator that burns solid waste, and that is a distinct operating unit of any commercial or industrial facility. Note that the definition of solid waste includes solid, liquid, semisolid, or contained gaseous materials.

Incineration units that burn more than 90 percent by weight (on an instantaneous basis) pathological waste or agricultural waste (as defined in §§ 60.2245 and 60.2850) are not covered by the proposed standards and guidelines. Additionally, incineration units that are regulated under any of the following existing standards or guidelines are not covered by the proposed standards or guidelines:

- Subpart Cb of this part (Emission Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before December 19, 1995).
- Subpart Ce of this part (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).
- Subpart Ea of this part (Standards of Performance for Municipal Waste Combustors).
- Subpart Eb of this part (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994).
- Subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996).
- Subpart AAAA of this part (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units).
- Subpart BBBB of this part (Emission Guidelines: Small Municipal Waste Combustion Units).

Section 129(g)(1) of the CAA excludes the following incineration units from the definition of a solid waste incineration unit:

- Incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (*e.g.,* hazardous waste incinerators).
- Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals.
- Qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes.

Therefore, these units are not covered by the proposed standards and guidelines. The CAA also specifies that air curtain incinerators that burn 100 percent wood waste and clean lumber and that comply with opacity limitations established by the Administrator are excluded from the definition of solid waste incineration unit. Therefore, the requirements for air curtain incinerators that burn 100 percent wood waste and clean lumber are limited to opacity limits and associated recordkeeping and reporting requirements.

If you began the construction of your unit on or before November 30, 1999 it is considered an existing unit and is subject to the emission guidelines. If you began the construction of your unit after November 30, 1999 it is considered a new unit and is subject to the NSPS. If you began reconstruction or modification of your unit prior to 6 months after promulgation of the rule it is considered an existing unit and is subject to the emission guidelines. Likewise, if you began reconstruction or modification of your unit 6 months (or later) after promulgation of this subpart it is considered a new unit and is subject to the NSPS.

B. What Emission Limits Must I Meet?

As the owner or operator of a new or existing CISWI unit, you would be required to meet the emission limits specified in table 1. You must do a stack test to show compliance within 60 days after a new CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the unit's initial start-up. As the owner or operator of an existing CISWI unit, you would be required to meet the emission limits specified in table 1 within 3 years after the Administrator approves the State plan or promulgates a Federal plan. Each existing CISWI unit must be in compliance with these emission guidelines within 5 years of promulgation of the guidelines.

TABLE 1.—EMISSION LIMITS FOR NEW AND EXISTING CISWI UNITS

For these pollutants	You must meet these emission limits[a]	And determine compliance using these methods
Cadmium	0.03 mg/dscm	EPA Method 29.
Carbon Monoxide	157 ppm by dry volume	Not required.
Dioxins/Furans (total mass basis)	0.37 ng/dscm	EPA Method 23.
Hydrogen Chloride	62 ppm by dry volume	EPA Method 26.
Lead	2.1 mg/dscm	EPA Method 29.
Mercury	0.005 mg/dscm	EPA Method 29.
Opacity	10 percent	EPA Method 9.
Oxides of Nitrogen	388 ppm by dry volume	Not required.
Particulate Matter	70 mg/dscm	EPA Method 5 or 29.
Sulfur Dioxide	20 ppm by dry volume	EPA Method 6.

[a] All emission limits are measured at 7 percent oxygen, dry basis at standard conditions.

C. What Are the Other Requirements for New and Existing Units?

As the owner or operator of a new or existing CISWI unit, you would be required to meet the following additional requirements.

Waste Management Plan:

- Submit a written plan that identifies both the feasibility and the approach to separate certain components of solid waste from the waste stream to reduce toxic emissions from waste incineration.

Operator Training and Qualification Requirements:

- Qualify operators or their supervisors (at least one per facility) by ensuring that they complete the operator training course.
- Ensure that qualified operators or their supervisors complete an annual review or refresher course specified in the regulation.
- Maintain plant-specific information regarding operator training and update this information annually.

Compliance and Stack Testing Requirements:

- Conduct initial stack tests to determine compliance with the cadmium, dioxins/furans, hydrogen chloride, lead, mercury, opacity, particulate matter, and sulfur dioxide emission limits and establish operating parameters.
- Conduct annual stack tests to determine compliance with the particulate matter and hydrogen chloride emission limits and opacity limit. (An owner or operator may conduct less frequent testing if the facility demonstrates it is in compliance with the limits for 3 consecutive years.)
- Operate the unit and control equipment so that operating parameters do not exceed the established maximum values or fall below the established minimum values.

Monitoring Requirements:

- If using a wet scrubber to comply, install and maintain equipment to continuously monitor operating parameters including maximum charge rate, minimum pressure drop across the wet scrubber (or minimum horsepower or amperage), and scrubber liquid flow rate and pH.
- If something other than a wet scrubber is used to comply, establish and monitor other site-specific operating parameters, as approved by the Administrator.

Recordkeeping and Reporting Requirements:

- Maintain for 5 years records of the initial stack tests and all subsequent stack tests, operating parameters, any maintenance, the siting analysis (for new units only), and operator training and qualification.
- Submit the results of the initial stack tests and all subsequent stack tests and values for the operating parameters.

D. What Are the Requirements for Air Curtain Incinerators?

Air curtain incinerators operate by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. These units can be constructed above or below ground and with or without refractory walls and floors. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.) Under section 129(g)(1) of the CAA, new and existing air curtain incinerators that burn 100 percent wood wastes, yard wastes, and clean lumber are not required to comply with the proposed CISWI emission limits provided that such incinerators comply with opacity limitations to be established by the Administrator. Standards and guidelines for municipal waste combustion (MWC) units establish air curtain incinerator opacity limits for yard wastes. This proposed rule establishes opacity limits for wood wastes and clean lumber.

The proposed opacity limit for air curtain incinerators burning 100 percent wood wastes and clean lumber is 10 percent, except 35 percent opacity is allowed during start-up periods that are within the first 30 minutes of operation. These requirements apply at all times except during malfunction, which must not exceed 3 hours. The proposed opacity limits are based on levels achievable by incineration devices burning materials such as municipal and medical waste. Initial and annual performance tests for opacity as well as recordkeeping are required.

III. Rationale of the Standards and Guidelines

A. How Did EPA Determine Which Pollution Sources Would Be Regulated Under the Proposed Standards and Guidelines?

The source category for the CISWI standards in subparts CCCC and DDDD is new and existing ''solid waste incineration units combusting commercial or industrial waste,'' as required by section 129 of the CAA. The affected facility is each individual waste combustion unit.

The CISWI standards in subparts CCCC and DDDD apply to new and existing commercial and industrial waste incineration units that burns solid waste as defined in the subparts. (Also, see section VI of this preamble.) To avoid any potential for overlapping regulations, incineration units are not covered under the CISWI standards if they are covered by regulations in 40 CFR part 60 for MWC units (subparts Cb, Ea, Eb, AAAA, and BBBB); or hospital/medical/infectious waste incineration (HMIWI) units (subparts Ce and Ec).

The CISWI standards also do not apply to incineration units that burn greater than 90 percent by weight pathological materials, including human remains, animal tissues, and any associated containers or bedding materials. The EPA selected a cutoff of 90 percent to distinguish those units designed and used primarily for pathological material destruction, including human cremation. Units that burn less than 90 percent pathological materials are covered under the CISWI standards. Additionally, the CISWI standards do not apply to incineration units that burn greater than 90 percent

by weight agricultural wastes, including nut and grain hulls and chaff, bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations. The EPA selected a cutoff of 90 percent to distinguish those units designed and used primarily for agricultural material destruction.

The MACT floor and the proposed emission limits for each of the nine pollutants and opacity in the CISWI category differ somewhat from limits established for other categories of incineration units, such as HMIWI units, MWC units, and hazardous waste incinerators. Such differences are to be expected since each category contains incineration units that differ from units in the other categories with respect to waste type, incinerator size and design, and emission control requirements. Each of these incinerator characteristics can have a significant impact on the emissions from an incinerator and, consequently, on the data upon which EPA must base its emission standards. Because of such differences, EPA has developed individual standards for each category of incinerators.

To clarify which solid waste incineration units are covered by section 129 regulations such as these CISWI standards and guidelines, the EPA is proposing today a definition of solid waste. The proposed definition is discussed in detail in section VI of this preamble. The proposed definition applies only to section 129 regulations. The definition does not affect any other regulations that control the combustion or disposal of solid waste, such as regulations that control emissions from burning hazardous waste or other regulations developed under the Resource Conservation and Recovery Act.

Categories may be divided into subcategories when differences (such as design, fuel, or waste type, etc.) between given types of units lead to corresponding differences in the technical feasibility of applying emission control techniques. The design and operating information that EPA reviewed to date for CISWI units does not indicate the need for subcategorization of this category. For the CISWI category, no particular waste type appears to dominate a given design or size range, nor does waste type or size appear to determine the technical feasibility of control. While the CISWI database and the information collected suggest that we have considered all relevant CISWI units, we request comment on any classes or types of CISWI units, or CISWI unit size considerations, that we have not addressed in this proposed rule. Any comments regarding such units should include a discussion about how the units should be treated under this rulemaking.

B. How Did EPA Select the Format for the Proposed Standards and Guidelines?

The EPA selected emission limitations as the format for the proposed CISWI standards and guidelines. As required by section 129 of the CAA, the proposed standards and guidelines would establish numerical emission limitations for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, opacity, oxides of nitrogen, particulate matter, and sulfur dioxide. For regulating cadmium, lead, mercury, and total particulate matter, the EPA is proposing numerical concentration limits in milligrams per dry standard cubic meter (mg/dscm). The EPA is not proposing standards for fine particulate matter because monitoring and testing methods are not available.

Dioxins/furans emission limits are in units of total nanograms per dry standard cubic meter (ng/dscm), based on measuring emissions of each tetra- through octa-chlorinated dibenzo-p-dioxin and dibenzofuran and summing them. For carbon monoxide, hydrogen chloride, oxides of nitrogen, and sulfur dioxide, the proposed standards and guidelines are volume concentrations (parts per million (ppm) dry volume). Standards and guidelines for opacity are proposed on a percentage basis. All measurements are corrected to 7 percent oxygen to provide a common basis.

The EPA selected an outlet concentration format because outlet data are available for CISWI units using the control technologies that are the basis of the MACT emission limits. The individual limits reflect the achievable performance of CISWI units using these controls for each type of emission.

In addition to numerical emission limits, the CISWI standards include operator training and qualification provisions and siting requirements (for new sources only) as required by section 129. Owners or operators of a new CISWI unit must also prepare a waste management plan.

The EPA considered an alternative percent reduction format for some of the pollutants such as cadmium, dioxins/furans, hydrogen chloride, lead, mercury, and sulfur dioxide, but data were insufficient to determine the percent reductions the control devices achieve. Given the variability of waste materials combusted and the limited emission test data available on which to base the emission limits, it is possible that some CISWI units burning ''dirtier'' materials may have difficulty achieving the proposed emission limits, even when emission controls are applied. Consequently, EPA considered including with each of the emission limitations, alternative percent reduction requirements to ensure that the limits are technically achievable while still reducing emissions. However, data upon which to base percent reduction requirements were not available. Therefore, the EPA requests comments on the appropriateness of percent reduction requirements, any data upon which those requirements could be based, and any other emissions test data available for the MACT floor technologies applied to CISWI units. The EPA also requests comments on whether emission limits should be established for pollutants in addition to the nine pollutants plus opacity that are specified in section 129. Comments should include any emissions data or estimates.

C. How Did EPA Determine the Proposed Emission Limits for New Units?

All standards established pursuant to section 129 of the CAA must reflect MACT, the maximum degree of reduction in emissions of air pollutants that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for each category. The CAA also specifies that the degree of reduction in emissions that is deemed achievable for new CISWI units must be at least as stringent as the emissions control that is achieved in practice by the best-controlled similar unit. This requirement constitutes the MACT ''floor'' for new CISWI units. However, the EPA may not consider costs or other impacts in determining the MACT floor. The EPA may require a control option that is more stringent than the floor (beyond the floor) if the Administrator considers the cost, environmental, and energy impacts to be reasonable.

1. How Did EPA Determine the MACT Floor?

To determine the MACT floor for new CISWI units, the EPA examined the database of CISWI units recommended by the ICCR FACA Committee. Data for units not meeting the definition of a CISWI unit were removed from the database, and information on other CISWI units, obtained after expiration of

the ICCR FACA, was added to supplement the FACA recommendation. The EPA next identified the types of air pollution controls currently used by existing CISWI units and ranked those controls according to their effectiveness in removing the pollutants of concern. Emissions data were available for only a limited number of units, so the EPA ranked the technologies based upon emission reduction information in the literature and engineering judgement.

Based on the emission reduction potential of existing air pollution controls, the EPA listed all the CISWI units in the database in order of decreasing control device effectiveness. The EPA determined the MACT technology basis of the floor for each pollutant by identifying the best-controlled unit on a pollutant-by-pollutant basis. Thus, for each pollutant, the basis for the MACT floor for new units is the technology used by the best-performing unit.

After establishing the technology basis for the floor, the EPA examined the emissions data available for CISWI units controlled by that technology to determine appropriate emission limits. The resulting emission limits associated with the MACT floor technology for each pollutant represent the maximum concentration of emissions reported for the given pollutant/control technology combination. This approach is designed to ensure that units using the MACT floor technology could achieve the proposed emission limits under the worst reasonable, foreseeable circumstances (*i.e.,* a lower level could not be demonstrated to be consistently achievable).

The EPA's review of emissions data indicates that some CISWI units may be able to meet the floor emission levels without using the air pollution control technology representing the basis of the floor. This is to be expected, given the wide variety of waste materials combusted by CISWI units and the resulting variability in emissions. Thus, units combusting ''cleaner'' materials may be able to achieve the emission limits without the need for control devices. (Under the CAA, facilities are allowed to use any means to achieve emission limits and do not need to rely on the specific technology on which the limits are based.)

The most effective technologies identified for removing particulate matter are fabric filters and wet scrubbers (*i.e.,* units having these controls represent the best-controlled similar units for the purpose of determining the floor for new units.) Emissions test data for CISWI units showed no significant difference in the outlet concentrations of particulate matter between units using fabric filters and units using wet scrubbers. Therefore, the EPA considers either a fabric filter or wet scrubber to be the MACT floor for particulate matter control. Similarly, because non-volatile metals are captured in particulate form, the MACT floor for lead and cadmium also reflects a fabric filter or wet scrubber. The EPA determined that the MACT floor for dioxins/furans, hydrogen chloride, mercury, and sulfur dioxide reflects wet scrubbing. Fabric filters do not remove significant amounts of these pollutants, and no CISWI unit in the database reported using a fabric filter with carbon injection, which is a more effective technique for reducing dioxins/furans and possibly mercury emissions.

The EPA's experience is that for other combustion source categories, fabric filters and other control techniques such a electrostatic precipitators are capable of achieving particulate matter emission levels significantly lower than the proposed limit of 70 mg/dscm. Therefore, the EPA requests comments on whether fabric filters or other control techniques can achieve lower particulate matter emissions for CISWI units, and whether one of these techniques should represent the basis of the CISWI particulate matter emission limit. Comments should include any available information on emission rates, control efficiencies for particulate matter and other pollutants, and control costs for CISWI and similar units using control techniques capable of achieving particulate matter levels below 70 mg/dscm.

Data upon which to base emission limits for mercury and dioxins/furans are limited, and only two emission tests were available for each of these pollutants for CISWI units equipped with wet scrubbers. Therefore, the EPA requests comments on the proposed emission limits for mercury and dioxins/furans and requests additional emissions and control efficiency data applicable to CISWI units with wet scrubbers.

While the proposed mercury emission limit is based on data showing that units using wet scrubber control technology are able to meet the limit, this relatively low limit may be unachievable for incinerators burning wastes having relatively high amounts of water-insoluble mercury species (*e.g.,* elemental mercury and mercury oxides). This is because a wet scrubber generally does not remove significant amounts of mercury species that are not soluble in water. In addressing other types of incinerators, such as MWC and HMIWI units, EPA has estimated that most of the mercury emitted from these facilities comprises water soluble species, such as mercury chloride, and that a small amount of the mercury emitted is not soluble in water. While units in the CISWI category may differ in some respects from MWC and HMIWI units, there are likely to be some similarities among the wastes burned by all of these units and the resulting emissions. Nevertheless, depending on the nature of the waste combusted, the proposed mercury emission limits may not necessarily be achievable for all CISWI units using wet scrubbers.

The EPA believes that wet scrubbing can be an effective mercury removal technique for CISWI units, and that it is the appropriate control technology upon which to base the MACT floor. However, EPA requests comments on the emission limits for mercury and requests additional data (especially waste feed analyses and emission test data). Additionally, the EPA requests comments on whether CISWI units can meet the proposed mercury limit using wet scrubbers or pollution prevention techniques (*e.g.,* removing mercury from the waste stream) regardless of the type of commercial and industrial waste burned.

Although some CISWI units appear to use combustion modification techniques to reduce oxides of nitrogen emissions, the limited available emissions data do not demonstrate associated reductions in oxides of nitrogen emissions, and none of the CISWI units reported the use of add-on controls for oxides of nitrogen. Similarly, many CISWI units are equipped with afterburners that may help to reduce carbon monoxide emissions. The emissions data, however, show no significant difference in carbon monoxide emissions between those units reporting afterburners and those that do not. Because oxides of nitrogen and carbon monoxide controls have not been demonstrated on CISWI units, the MACT floor reflects no control of these pollutants. However, because the CAA requires EPA to set numerical emission limits for oxides of nitrogen and carbon monoxide, the limits corresponding to the MACT floor represent the highest uncontrolled emission rates for oxides of nitrogen and carbon monoxide in the emissions database. The EPA requests comments on these emission limits and whether these levels accurately reflect uncontrolled emissions of oxides of nitrogen and carbon monoxide from CISWI units.

2. How Did EPA Determine Whether Options More Stringent Than the Floor Were Appropriate?

The EPA considered one regulatory option more stringent than the MACT floor (*i.e.,* a technology basis that could result in lower emissions.) The system EPA evaluated comprised a fabric filter with carbon injection and a wet scrubber. Carbon injection would provide greater removal of dioxins/furans and possibly mercury, and the fabric filter would be required to collect the spent carbon. However, the incremental cost effectiveness of applying this dry/wet system for the pollutants of concern is considered excessive. (Incremental cost effectiveness is the difference in annual costs between this regulatory option and the MACT floor divided by the difference in annual emission reductions achieved. It is often used as a measure of the economic feasibility of applying control techniques.)

The fabric filter with carbon injection and wet scrubber system considered by EPA represents the next logical step in improved emission control beyond wet scrubbing, and EPA was not able to identify other beyond the floor control systems that achieve good emission control at a reasonable cost effectiveness. However, EPA requests comments on whether other control technologies should be considered as beyond the floor regulatory options. Comments should include any information on emissions, current applications, and costs.

Because regulatory options that are more stringent than the floor and economically feasible were not identified, the EPA selected emission limits associated with the floors as MACT for each regulated pollutant. These emission limits are shown in table 1 in section II of this preamble.

D. How Did EPA Determine the Proposed Emission Limits for Existing Units?

The CAA specifies in section 129 that MACT for existing CISWI units must be at least as stringent as the average emission limitation achieved by the best-performing 12 percent of units in the source category. This requirement constitutes the MACT floor for existing CISWI units. The EPA may not consider costs or other impacts in determining the MACT floor. A control option more stringent than the floor can be required if the Administrator considers the cost, environmental, and energy impacts to be reasonable.

The process used to establish emission standards for existing CISWI units is virtually identical to the process used to establish standards for new CISWI units. Moreover, for each pollutant, the best-performing similar unit (used to establish the floor for new units) employs the same technology as the average of the best-performing 12 percent of units (used to establish the floor for existing units) in the CISWI category. Therefore, because the MACT floor emission limits for each pollutant for both new and existing CISWI units are based on the same pollution control efficiency of the same type of pollution control technology, the MACT floors (and resulting emission limits) for new and existing CISWI units are the same.

1. How Did EPA Determine the MACT Floor?

To determine the MACT floor for existing CISWI units, the EPA first examined the database of CISWI units recommended by the ICCR FACA Committee. Data for units not meeting the definition of a CISWI unit were removed from the database, and information on other CISWI units, obtained after expiration of the ICCR FACA, was added to supplement the FACA recommendation. Next, the EPA identified the types of air pollution controls currently used by existing CISWI units and ranked those controls according to their effectiveness in removing the pollutants of concern. Emissions data were available for only a limited number of units, so the EPA ranked the technologies based upon information about emission reduction in the literature and engineering judgement.

Based upon the emission reduction potential of available air pollution controls, the EPA listed all the CISWI units in the database in order of decreasing control device effectiveness. The EPA determined the technology basis of the MACT floor for each pollutant by identifying the best-performing 12 percent of the units on a pollutant-by-pollutant basis. The EPA then selected the median of the top 12 percent as the MACT floor.

After establishing the technology basis for the floor, the EPA examined the emissions data available for CISWI units controlled by that technology to determine achievable emission limits. The resulting emission limits associated with the MACT floors for each pollutant represent the maximum concentration of emissions reported for the given pollutant/control technology combination. This approach is designed to ensure that any units using the MACT floor technology could achieve the proposed emission limits under the worst reasonably foreseeable circumstances (*i.e.,* a lower level could not be demonstrated to be consistently achievable).

The EPA's review of emissions data indicates that some CISWI units may be able to meet the floor emission levels without using the air pollution control technology representing the basis of the floor. This is to be expected, given the wide variety of waste materials combusted by CISWI units and the resulting variability in emissions. Thus, units combusting ''cleaner'' materials may be able to achieve the emission limits without the need for control devices. (Under the CAA, facilities are allowed to use any means to achieve emission limits and do not need to rely on the specific technology on which the limits are based.)

The most effective technologies identified for removing particulate matter are fabric filters and wet scrubbers. These techniques are used by over 20 percent of the units in EPA's CISWI database. Emissions test data for CISWI units showed no significant difference in the outlet concentrations of particulate matter between units using fabric filters and units using wet scrubbers. Therefore, the EPA considers either a fabric filter or wet scrubber to be the MACT floor for particulate matter control. Similarly, because non-volatile metals are captured in particulate form, the MACT floor for lead and cadmium also reflects a fabric filter or wet scrubber. Based on the median of the best-performing 12 percent of units, the EPA determined that the MACT floor for dioxins/furans, hydrogen chloride, mercury, and sulfur dioxide reflects wet scrubbing. Fabric filters do not remove significant amounts of these pollutants, and no CISWI unit in the database reported using a fabric filter with carbon injection, which is a more effective technique for reducing dioxins/furans and possibly mercury emissions.

The EPA's experience is that for other combustion source categories, fabric filters and other control techniques such as electrostatic precipitators are capable of achieving particulate matter emission levels significantly lower than the proposed limit of 70 mg/dscm. Therefore, the EPA requests comments on whether fabric filters or other control techniques can achieve lower particulate matter emissions for CISWI units, and whether one of these techniques should represent the basis of the CISWI particulate matter emission limit. Comments should include any available information on emission rates, control efficiencies for particulate matter and other pollutants, and control costs for CISWI and similar units using control techniques capable of achieving

particulate matter levels below 70 mg/dscm.

Data upon which to base emission limits for mercury and dioxins/furans are limited, and only two emission tests were available for each of these pollutants for CISWI units equipped with wet scrubbers. Therefore, the EPA requests comments on the proposed emission limits for mercury and dioxins/furans and requests additional emission and control efficiency data applicable to CISWI units with wet scrubbers.

While the proposed mercury emission limit is based on data showing that units using wet scrubber control technology are able to meet the limit, this relatively low limit may be unachievable for incinerators burning wastes having relatively high amounts of water-insoluble mercury species (*e.g.,* elemental mercury and mercury oxides). This is because a wet scrubber generally does not remove significant amounts of mercury species that are not soluble in water. In addressing other types of incinerators, such as MWC and HMIWI units, EPA has estimated that most of the mercury emitted from these facilities comprises water soluble species, such as mercury chloride, and that a small amount of the mercury emitted is not soluble in water. While units in the CISWI category may differ in some respects from MWC and HMIWI units, there are likely to be some similarities among the wastes burned by all of these units and the resulting emissions. Nevertheless, depending on the nature of the waste combusted, the proposed mercury emission limits may not necessarily be achievable for all CISWI units using wet scrubbers.

The EPA believes that wet scrubbing can be an effective mercury removal technique for CISWI units, and that it is the appropriate control technology upon which to base the MACT floor. However, EPA requests comments on the emission limits for mercury and requests additional data (especially waste feed analyses and emission test data). Additionally, the EPA requests comments on whether CISWI units can meet the proposed mercury limit using wet scrubbers or pollution prevention techniques (*e.g.,* removing mercury from the waste stream) regardless of the type of commercial and industrial waste burned.

Although some CISWI units appear to use combustion modification techniques to reduce oxides of nitrogen emissions, the limited available emissions data do not demonstrate associated reductions in oxides of nitrogen emissions, and none of the CISWI units reported the use of add-on controls for oxides of nitrogen. Similarly, many CISWI units are equipped with afterburners that may help to reduce carbon monoxide emissions. The emissions data, however, show no significant difference in carbon monoxide emissions between those units reporting afterburners and those that do not. Because oxides of nitrogen and carbon monoxide control has not been demonstrated on CISWI units, the MACT floor reflects no control of these pollutants. However, because the CAA requires EPA to set numerical emission limits for oxides of nitrogen and carbon monoxide, the limits corresponding to the MACT floor represent the highest uncontrolled emission rates of oxides of nitrogen and carbon monoxide in the emissions database. The EPA requests comments on these emission limits and whether these levels accurately reflect uncontrolled emissions of oxides of nitrogen and carbon monoxide from CISWI units.

2. How Did EPA Determine Whether Options More Stringent Than the Floor Were Appropriate?

The EPA considered one regulatory option more stringent than the MACT floor (*i.e.,* a technology basis that could result in lower emissions). The system that EPA evaluated comprised a fabric filter with carbon injection and a wet scrubber. Carbon injection would provide greater removal of dioxins/furans and possibly mercury, and the fabric filter would be required to collect the spent carbon. However, the incremental cost effectiveness of applying this dry/wet system for the pollutants of concern is considered excessive. (Incremental cost effectiveness is the difference in annual costs between this regulatory option and the MACT floor divided by the difference in annual emission reductions achieved. It is often used as a measure of the economic feasibility of applying control techniques.)

The fabric filter with carbon injection and wet scrubber system considered by EPA represents the next logical step in improved emission control beyond wet scrubbing, and EPA was not able to identify others beyond the floor control systems that achieve good emission control at a reasonable cost effectiveness. However, EPA requests comments on whether other control technologies should be considered as beyond the floor regulatory options. Comments should include any information on emissions, current applications, and costs.

E. How Did EPA Determine Testing and Monitoring Requirements for the Emission Standards and Guidelines?

The EPA determined testing and monitoring for the emission standards and guidelines that are consistent with the CAA. Section 129(c) of the CAA requires the EPA to develop regulations that include monitoring and testing requirements. The purpose of these requirements is to allow the EPA to determine whether a source is operating in compliance with the regulations. The proposed CISWI monitoring and testing requirements are discussed below.

1. Continuous Emission Monitoring Systems

The most direct means of ensuring compliance with emission limits is the use of continuous emission monitoring systems (CEMS). As a matter of policy, the first and foremost option considered by the EPA is to require the use of CEMS to demonstrate continuous compliance with specific emission limits. The EPA considers other options only when CEMS are not available or when the impacts of including such requirements are considered unreasonable. When monitoring options other than CEMS are considered, it is often necessary for the EPA to balance more reasonable costs against the quality or accuracy of the actual emissions monitoring data. Although monitoring of operating parameters cannot provide a direct measurement of emissions, it is often a suitable substitute for CEMS. The information provided can be used to ensure that the incinerator and associated air pollution control equipment are operating properly. This information reasonably assures the EPA and the public that the reductions envisioned by the regulations are being achieved.

The EPA evaluated the costs of applying CEMS to a CISWI unit. For a small (150 lbs/hr) batch-operated CISWI unit, the annual costs for operating CEMS for hydrogen chloride alone are approximately $36,000. The annual costs of operating a wet scrubber, which represents MACT for new and existing CISWI units, are estimated to be about $49,000. Thus, the costs of operating CEMS for just this one pollutant amount to over 70 percent of the costs of operating the wet scrubber. In addition, dioxins/furans and toxic metals are not directly measurable with CEMS, and CEMS for particulate matter and mercury have not been demonstrated in the United States for the purpose of determining compliance. Consequently, the EPA considers CEMS an

unreasonable monitoring option for CISWI units.

Because CEMS are not feasible, the proposed rules include requirements for annual stack testing using EPA methods, coupled with monitoring of operating parameters. The annual testing will ensure, on an ongoing basis, that the air pollution control device is operating properly and that its performance has not deteriorated. The owner or operator may skip two annual tests for a pollutant if all stack tests over the 3 previous years show compliance with the emission limit for that pollutant.

The majority of emission tests upon which the proposed emission limits are based were conducted using approved EPA test methods. Therefore, the EPA proposes that EPA test methods be followed when performing any emission testing required to determine compliance with the emission limits. This requirement will ensure that compliance testing follows the same procedures used to generate the emissions data upon which the emission limits in the proposed regulations were based. An average of three test runs would be required to determine compliance with the proposed regulations.

Parameter monitoring is also proposed on a rolling 3-hour basis to correspond to the approximate length of the required emission tests. The EPA selected parameters to monitor that indicate the proper operation of a wet scrubber and that can be monitored continuously at a reasonable expense. Maximum and minimum values for the operating parameters must be established during emission testing. The maximum and minimum operating parameters are established by determining what range of operating parameter values represents good operation of the unit and control device and is necessary to achieve compliance with the proposed emission limits. The unit must then be operated within this range. An owner or operator of CISWI units that chooses to comply with the emission limits using controls other than wet scrubbers must propose for approval by the Administrator other operating parameters (such as temperature requirements for dry systems).

2. Stack Testing

The proposed rules require the owner or operator of each new and existing CISWI unit to perform an initial stack test for emissions of seven of the nine pollutants identified in section 129 of the CAA (cadmium, dioxins/furans, hydrogen chloride, lead, mercury, particulate matter, and sulfur dioxide), plus an initial opacity test. Two of the statutory pollutants (carbon monoxide and oxides of nitrogen) are excluded from the testing requirement because the control technology on which the floor is based does not significantly reduce emissions of these pollutants (see discussion in section III.C). The owner or operator of each CISWI unit would use the initial stack test to calibrate the monitoring parameters as explained above. Additionally, the proposed rules require annual stack tests for particulate matter, hydrogen chloride, and opacity. (Annual testing for the other pollutants is not required.)

The annual testing will ensure, on an ongoing basis, that the air pollution control device is operating properly and its performance has not deteriorated without requiring the added expense of testing for every pollutant. Annual testing for the three pollutants is sufficient to demonstrate that the control device is operating properly and that compliance with the proposed emission limits is being achieved. The owner or operator may skip two annual tests for a pollutant if all stack tests over the previous 3 years show compliance with the emission limit for that pollutant. The EPA believes that testing every 3 years will provide sufficient certainty about control device performance while reducing the overall costs of testing to the regulated source.

The majority of emission tests upon which the proposed emission limits are based were conducted using approved EPA test methods. No applicable voluntary consensus standards were identified during the ICCR or during the subsequent development of this rulemaking. Therefore, the EPA proposes that the identified EPA test methods be followed when performing any emission testing required to determine compliance with the emission limits. This requirement will ensure that compliance testing follows the same procedures used to generate the emission data upon which the emission limits in the proposed regulations are based.

F. How Did EPA Determine Compliance Times for the Emission Standards and Guidelines?

Section 129(f) of the CAA specifies the dates by which affected or designated facilities must comply with the standards or guidelines, respectively. New units must be in compliance with the standards within 6 months after the date of promulgation or 6 months after start-up, whichever is later. Existing units must be in compliance with the guidelines as expeditiously as practicable after approval of a State plan, but no later than 3 years after the State plan is approved or 5 years after promulgation of the guidelines, whichever is earlier.

G. How Did EPA Determine the Required Records and Reports for the Emission Standards and Guidelines?

Section 129 of the CAA requires the EPA to develop regulations that include requirements for reporting the results of testing and monitoring performed to determine compliance with the standards and guidelines. The requirements must specify the form and frequency of the reports demonstrating compliance. If there are no exceedances, compliance reports are submitted annually. However, if there is an exceedance, reports showing the exceedance of any standard or guideline must be submitted separately for review and potential enforcement action. This out-of-compliance report is due on August 1 if the exceedance occurs during the first 6 months of the year, and February 1 of the next year if the exceedance occurs during the second 6 months of the year. Copies of testing and monitoring results must be maintained on file at the affected facility. Other types of records are necessary to ensure that all provisions of the standards or guidelines are being met. Examples include siting analyses and operator training and qualification records.

H. How Did EPA Determine Operator Training and Qualification Requirements for the Emission Standards and Guidelines?

The proposed standards and guidelines include operator training and qualification requirements for CISWI unit operators. These requirements provide flexibility by allowing State-approved training and qualification programs. Where there are no State-approved programs, the proposed regulations include minimum requirements for training and qualification. The minimum requirements include completion of a training course covering specified topics.

In developing these requirements, the EPA considered recommendations by the ICCR FACA Committee on the content and format for operator training and qualification programs. Training and qualification programs currently proposed or promulgated for other types of solid waste incineration units were also reviewed and used to supplement the FACA Committee recommendations to develop requirements appropriate for the CISWI source category.

I. How Did EPA Determine the Waste Management Plan Requirements?

The proposed standards and guidelines require facilities operating new or existing units to submit a waste management plan. Each facility is unique, and site-specific strategies are needed to achieve the most efficient results. Through the development of individual waste management programs, owners or operators of CISWI units can reduce or eliminate certain wastes in their waste streams, thereby reducing the amount of air pollution emissions associated with those wastes.

The waste management plan would identify both the feasibility and the approach to separating certain components of solid waste from the waste stream to reduce the amount of toxic emissions from incinerated waste. The waste management plan may include the reduction or separation of waste stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The waste management plan may include different goals or approaches for different areas or departments of the facility and need not include waste management goals for every waste stream. It should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other associated environmental or energy impacts.

J. How Did EPA Determine the Siting Requirements for New Units?

Section 129 of the CAA states that performance standards for new solid waste incineration units must incorporate siting requirements that minimize, on a site-specific basis and to the maximum extent practicable, potential risks to public health or the environment. In accordance with section 129, the EPA is proposing site selection criteria for CISWI units that commence construction after the date of proposal of this rule (i.e., ''new'' units). The siting requirements would not apply to existing CISWI units.

The siting requirements proposed today would require the owner or operator of a new unit to prepare an analysis of the impacts of the new unit. The owner or operator must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment. In considering such alternatives, the owner or operator may consider costs, energy impacts, non-air environmental impacts, or any other factors related to the practicability of the alternatives. To avoid duplication, analyses of facility impacts prepared to comply with State, local, or other Federal regulatory requirements may be used to satisfy this requirement, provided they include the consideration of air pollution control alternatives specified above. Such State, local, or Federal requirements may include, but are not limited to, State-specific criteria or national criteria established by the National Environmental Policy Act or new source permitting requirements. The owner or operator must submit the siting information to EPA prior to commencing construction of the facility.

K. How Does This Regulation Affect Permits?

Section 129 of the CAA requires CISWI units subject to the standards and guidelines to be operated pursuant to a permit issued under the EPA-approved State operating permit program. In accordance with section 129, the EPA is proposing to require a permit by the date 36 months after the date of promulgation, or on the effective date of an EPA-approved operating permit program in the State in which the facility is located, whichever date is later. The operating permit programs are developed under title V of the CAA and the implementing regulations under 40 CFR parts 70 and 71.

IV. Impacts of the Proposed Standards for New Units

Information provided to the EPA by the ICCR FACA Committee indicates that no significant growth is expected in the population of CISWI units. With no net change in the number of CISWI units, impacts could be estimated by assuming that retiring uncontrolled units will be replaced with units controlled by wet scrubbers to meet the proposed NSPS. In this case, air emissions would decrease, and water and energy usage and wastewater generation would increase. However, the proposed emission guidelines for existing CISWI units include requirements identical to those in the proposed NSPS. Once these guidelines are in force, the emission performance of new units would be essentially the same as the units being replaced. Therefore, the proposed NSPS would reduce air emissions (and create secondary impacts) only until the emission guidelines are in place, and after that would simply maintain the emission reductions already achieved by the emission guidelines for existing units.

To illustrate the potential impact of the proposed NSPS with respect to new CISWI units under conditions where growth in the population of CISWI units does occur, the EPA modeled hypothetical CISWI units with capacities of 100 and 1500 pounds per hour (lb/hr) (45 and 680 kilograms per hour (kg/hr)) and estimated the impacts associated with application of wet scrubbers. The resulting impact estimates are discussed below.

A. What Are the Air Impacts?

Table 2 below illustrates, on a model unit basis, the emission reduction achieved by the proposed NSPS (i.e., the difference in emissions between a CISWI unit with a wet scrubber and an uncontrolled CISWI unit).

TABLE 2. Emission Reductions on a Model Unit Basis

Pollutant	Emission Reduction, tons/yr (Mg/yr)	
	100 lb/hr (45 kg/hr) capacity	1500 lb/hr (680 kg/hr) capacity
Cadmium	$5.6x10^{-4}$ ($5.1x10^{-4}$)	0.01 (0.01).
Dioxins/furans	7.1×10^{-9} ($6.5x10^{-9}$)	1.5×10^{-7} ($1.4x10^{-7}$)
Hydrogen chloride	1.5 (1.4)	32.3 (29.3)
Lead	0.04 (0.04)	0.84 (0.76)
Mercury	5.2×10^{-5} ($4.7x10^{-5}$)	$1.1x10^{-3}$ ($1.0x10^{-3}$)
Particulate matter	0.51 (0.46)	10.8 (9.8)
Sulfur dioxide	0.37 (0.34)	7.9 (7.2)

B. What Are the Water and Solid Waste Impacts?

The EPA estimated, on a model unit basis, the additional water usage that would result from the use of a wet scrubber. The water requirements vary from 340,000 to 7,250,000 gallons (1.3 to 27.4 million liters) per year per CISWI unit, depending on the size of the unit. In addition to the increased water usage, an additional 50,000 to 1,056,000 gallons (189,000 to 4,000,000 liters) per year of wastewater would be produced per unit. No additional solid waste production is expected as a result of these standards.

C. What Are the Energy Impacts?

The EPA estimated, on a model unit basis, the additional energy required to operate a wet scrubber. The additional electricity requirements range from 28,000 to 424,000 kWh/yr per CISWI unit, depending on the capacity of the unit.

D. What Are the Control Costs and Economic Impacts?

The EPA estimated, on a model unit basis, the costs associated with applying wet scrubbers on new CISWI units to meet the proposed standards. The total annual costs, including costs for the wet scrubber testing, monitoring, and operator training and qualification, range from $69,000 for a unit rated at 100 lbs/hr (45 kg/hr) to $186,000 for a unit rated at 1500 lbs/hr (680 kg/hr). No economic impacts have been estimated as a result of the regulation of new sources because no new sources in the CISWI population are projected.

V. Impacts of the Proposed Guidelines for Existing Units

The emission guidelines for existing CISWI units are based on emission levels achievable using wet scrubbers. Therefore, the EPA estimated the air, water and solid waste, energy, control cost, and economic impacts associated with applying wet scrubbers to those units in the existing CISWI database not currently using wet scrubbers.

A. What Are the Air Impacts?

Table 3 summarizes the national air emission impacts of the proposed emission guidelines. These impacts are expressed in two ways. First, the impacts are expressed as annual nationwide mass reductions; and second as percent reductions compared to current estimated national emissions for existing CISWI units.

Table 3. Emission Reductions for Existing CISWI Units

Pollutant	National emission reduction tons/yr (Mg/yr)	Percent reduction from current (baseline) emissions
Cadmium	0.45 (0.41)	87
Dioxins/furans	6.5×10^{-6} (5.9×10^{-6})	88
Hydrogen chloride	1315 (1193)	89
Lead	31.4 (28.5)	87
Mercury	0.045 (0.041)	79
Particulate matter	409 (371)	71
Sulfur dioxide	322 (292)	72

B. What are the water and solid waste impacts?

Assuming that no CISWI unit will shutdown as a result of the proposed guidelines, there would be no solid waste impacts associated with this proposed rule. If alternative disposal methods, such as landfills, become more cost effective for some CISWI units as a result of the proposed guidelines, solid waste by such units would increase in proportion to the reduction in feedstream to the CISWI unit. National annual water consumption would increase by 295 million gallons (1,117 million liters), and an additional 43 million gallons (163 million liters) per year of wastewater would be released.

C. What are the energy impacts?

The EPA expects an increase of approximately 16.7 million kilowatt hours (kWh) in national annual energy usage as a result of these emission guidelines. The increase results from the electricity required to operate wet scrubbers installed to meet the guidelines.

D. What are the control costs and economic impacts?

To estimate the national cost impacts of the proposed guidelines, the EPA assigned model CISWI units to each existing unit in the database. The analysis considered all air pollution control equipment currently in operation at existing CISWI units. Model costs for wet scrubbers were then assigned to all existing units that could not otherwise meet the proposed emission limits. The resulting total national cost impact of the proposed guidelines is $31.5 million in capital expenditures and $11.6 million per year in total annual costs.

This proposal would affect a small number of facilities in many different industries and government entities. Of the 112 affected facilities analyzed, 92 are spread among 25 different industries, 15 are spread among State, Federal and city governments, and 5 are located at universities.

Because of the competitive nature of the markets and the relatively small number of affected facilities in each market, producers will be unable to pass along the cost of the regulation to consumers in the short run. Hence, these costs will be borne primarily by the affected domestic producers. This conclusion also implies that the impact of the regulation on imports and exports will be negligible. The economic analysis further indicates that the impact of the proposed regulation on total employment in the industries affected will be negligible. The ratio of control costs to company sales is low; only 9 of the 79 companies owning affected facilities in the 25 different industries had cost-to-sales ratios of 3 percent or more, and 15 had ratios exceeding 1 percent. It is anticipated that no plants will close as a result of the regulation. However, the use of alternative waste management decisions, such as the use of landfills or selling materials as fuels or intermediate products, should lower the total social cost of the regulation below the annual cost estimate of $11.6 million, assuming add-on control technology is used for all affected units.

VI. Definition Of Solid Waste

Section 129 of the CAA directs EPA to develop regulations limiting emissions from solid waste incineration units. Section 129 also states, however,

that the term ''solid waste incineration unit'' does not include units required to have a permit under section 3005 of the Solid Waste Disposal Act (SWDA). This reference to section 3005 of the SWDA refers to the hazardous waste regulatory program authorized under the SWDA. As a result, the focus of the regulatory program authorized by section 129 is the burning of nonhazardous solid waste.

Section 129 does not define nonhazardous solid waste, but directs EPA to use the meaning of solid waste established by the Administrator pursuant to the SWDA. As a point of reference, the SWDA defines solid waste as follows:

> * * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended.

To develop and implement the hazardous waste regulatory program authorized by the SWDA, the Administrator adopted a definition of hazardous waste pursuant to the SWDA. This definition is found in part 261 of title 40 of the CFR. In defining hazardous waste, part 261 also defines solid waste.

However, in doing so, part 261 states explicitly in 40 CFR 261.1(b)(1) that this definition of solid waste is only for the purpose of materials that are hazardous wastes. This regulatory definition of the term solid waste found in part 261, therefore, does not apply to nonhazardous solid wastes.

The Administrator has also adopted several other definitions of solid waste pursuant to the SWDA. These definitions are found throughout parts 240 to 259 of 40 CFR. However, these definitions are little more than a restatement, with occasional small variation, of the statutory definition of the term solid waste contained in the SWDA. Consequently, they do little to clarify the meaning of nonhazardous solid waste for the purpose of developing and implementing the regulatory program authorized under section 129 of the CAA.

The Administrator, therefore, proposes to adopt a definition of solid waste (*i.e.*, nonhazardous solid waste) jointly under the authority of the CAA and the SWDA. The purpose of this definition would be solely to identify nonhazardous solid waste for the regulatory program authorized by section 129. Also, since section 129 only authorizes development of regulations to control emissions from the burning of nonhazardous solid waste, this definition would apply only to materials that are burned; it would not apply to materials managed by any other means (*e.g.*, treatment, storage, transportation and handling, *etc.*).

As mentioned, section 129 authorizes development of regulations to limit emissions from the burning of nonhazardous solid waste. In contrast, section 112 of the CAA authorizes development of regulations to limit emissions from stationary sources of toxic air pollutants, including sources burning hazardous waste and fuels. The EPA has adopted regulations under section 112 to limit emissions from hazardous waste combustion in incinerators and kilns and is developing regulations to limit emissions from hazardous waste combustion in boilers and industrial furnaces. In addition, EPA is also developing regulations under section 112 to limit emissions from burning fuels in stationary sources, such as boilers. Consequently, the main purpose of this definition of nonhazardous solid waste is merely to identify which materials (when burned) are subject to regulations developed under section 129 and which materials (when burned) are subject to regulations developed under section 112.

One option, in terms of adopting a definition of nonhazardous solid waste for regulations developed under section 129, is to adopt the definition of solid waste found in part 261 of 40 CFR. Although considered, this option is rejected. That definition was adopted for the sole purpose of identifying hazardous waste in order to develop regulations for the proper management of these materials. Management of hazardous waste covers an extremely broad area and ranges from handling and transportation, to reuse and recycling, to storage, treatment, and/or disposal of these materials.

Regulations developed under section 129 apply only to the burning of nonhazardous solid waste—they do not apply to any other form of waste management. As a result, a definition of solid waste for the purpose of section 129 can be much simpler and less complex; it need only focus on burning and need not consider any of the complexities associated with other forms of waste management. Another factor also greatly simplifies the development of a definition of nonhazardous waste—a definition of hazardous solid waste already exists.

Therefore, the EPA believes that materials that are burned fall into three categories: hazardous waste, nonhazardous solid waste, or fuel. If the materials meet the definition of hazardous waste, they cannot be nonhazardous solid waste or fuel. Only if the materials do not meet the definition of hazardous waste can they be nonhazardous solid waste or fuel. This makes the task of developing a definition of nonhazardous solid waste relatively straightforward. The definition must first answer the question: ''Are the materials being burned nonhazardous solid waste or fuel?''

It is basically the composition or the level of hazardous constituents present in wastes that determines whether they are hazardous in nature (*i.e.*, in the RCRA program under 40 CFR 261.3, hazardous wastes are specifically defined as wastes that meet a particular listing description or that exhibit a characteristic of hazardous waste). However, it is basically the heat value of materials and whether or not they are burned with energy recovery that determines whether they are nonhazardous solid waste or fuel. Only materials with a high heat value contain sufficient energy to be used as fuel. Materials with little heat value contain little energy and if they are burned, it is not as a fuel but rather for destruction or disposal. In addition, although materials with high heat value may contain sufficient energy to be used as fuel, they are not used as fuel when they are burned without energy recovery.

In considering how to structure a definition for nonhazardous solid waste that answers the question ''Are the materials being burned nonhazardous solid waste or fuel?'', it is useful to consider the definition of hazardous waste under part 261, in terms of how this definition distinguishes between hazardous waste and fuel, when materials are burned. While this definition applies only to hazardous waste, it provides several insights into a basic outline for a definition of nonhazardous solid waste for the purpose of regulations under section 129 of the CAA. This definition, as it applies to waste combustion, can be summarized as follows:

- Materials are solid waste if they are discarded; discarded materials are abandoned materials, and materials are considered abandoned when burned or incinerated.
- Discarded materials also include certain recycled materials. Recycled materials are

considered discarded when the materials are burned to recover energy, except for various commercial chemical products that are fuels.

Furthermore, part 261 includes the following specific exemptions from the definition of solid waste that are related to burning: pulping liquors when burned and reclaimed in a pulping liquor recovery furnace, spent sulfuric acid when burned to produce virgin sulfuric acid, and comparable fuels when burned to recover energy.

This can be restated simply as: the act of burning materials, with some exceptions, serves to identify those materials as solid waste. One exception is commercial chemical products that are fuels as well as other materials that are ''comparable fuels'' when these materials are burned to recover energy. Thus, fuels and comparable fuels are not solid wastes when they are burned to recover energy. Other exceptions are certain materials, such as pulping liquors and spent sulfuric acid, which are burned to recover their chemical constituents.

Consequently, the basic structure of a definition of nonhazardous solid waste that emerges follows this premise: materials that are burned are not nonhazardous solid waste if they are hazardous solid waste, if they are fuels burned to recover energy, or if they are certain identified materials burned to recover their chemical constituents. All other materials, when burned, are nonhazardous solid waste.

With a definition of hazardous waste available, a definition of those materials that are fuels (when burned to recover energy) is the next piece necessary to develop this definition of nonhazardous waste, for the purpose of regulations developed under section 129.

Some materials, when burned to recover energy (*e.g.*, for the production of hot water or steam), have a long history of being considered fuels. These materials are coal, oil, gas, and biomass (e.g., wood and other vegetative agricultural and silvicultural materials). Burning coal, oil, gas, and biomass produces the majority of the energy consumed in the United States. In addition to these materials, other materials are often burned as fuel to recover energy and meet the needs of consumers, as well as industrial, manufacturing, and commercial operations.

As mentioned earlier, the prime indicator of whether materials could be used as fuel (*i.e.*, can be burned to recover energy) is their heat value—the British thermal units (Btu) of energy released from burning a pound (lb) of these materials. With continuing advances in combustion technology, materials with lower and lower heat value can be burned to recover energy; however, those materials with a ''high'' heat value are the best fuels, and it is these types of materials that are commonly and widely viewed as fuels. Thus, for the purpose of regulations developed under section 129 of the CAA, the Administrator proposes that materials with high heat value, when burned to recover energy, are fuels. (When materials are burned without heat recovery, regardless of their heat value, they are considered wastes.)

A delineator of high heat value emerges when considering the heat values of those materials mentioned above, which are clearly fuels when burned to recover energy (*i.e.*, gas, oil, coal, and biomass). Heat values for gas are the highest and frequently above 20,000 Btu/lb; those for oil can range from about 17,000–20,000 Btu/lb; those for coal can range from about 6,000–15,000 Btu/lb; and those for biomass can range from about 5,000–10,000 Btu/lb. Thus, a heat value of 5,000 Btu/lb serves to delineate between materials with high heat value and materials with low heat value. The Administrator proposes that materials with a heat value of 5,000 Btu/lb or more, when burned to recover energy, are fuel (subject to regulation under section 112) and not nonhazardous solid waste subject to regulation under section 129.

The final area of the definition outlined above that needs to be identified is that of any other materials that (when burned) are not considered nonhazardous solid waste for the purpose of regulations developed under section 129. The criteria for these materials seems simple, in concept. Burning—with some exceptions—is considered a form of discarding materials. However, EPA believes that certain other materials are not burned to discard them. The primary example where burning materials is not a form of discard is where materials are burned to recover their chemical constituents. An example is burning spent sulfuric acid to produce fresh sulfuric acid. Burning spent pulping liquors to produce fresh pulping liquors is yet another example. Burning wood or coal to produce charcoal or coke are other examples. There may be additional examples as well.

Consequently, the Administrator proposes that these materials, when burned in the manner identified in the examples above, are not nonhazardous solid waste and are not subject to regulation under section 129. On the other hand, the Administrator also concludes that these materials, when burned in the manner identified in the examples above, are subject to regulation under section 112 of the CAA.

Since there may be other examples where materials are burned to recover chemical constituents, the Administrator solicits public comment on additional materials that should be added to those mentioned above. In submitting comments, commenters should: (1) Describe the ''source'' of these materials; (2) identify the composition of these materials, highlighting the chemical constituents in these materials which are recovered; (3) describe the ''process'' in which these materials are burned, highlighting the type, design, and operation of the equipment used in this process; (4) describe the chemical constituent recovery ''process,'' highlighting the type, design, and operation of the equipment used in this process; (5) identify the markets and/or use for the recovered chemical constituents; and (6) identify the composition of the recovered chemical constituents and compare their composition to that of comparable commercially available products.

Most of the above discussion focuses on materials that are not nonhazardous solid waste, for the purpose of regulations developed under section 129. There are materials, however, that are always solid waste (e.g., hazardous waste). In addition, there are also materials that (when burned) are always nonhazardous solid waste for the purpose of regulations developed under section 129: municipal solid waste, as defined in subparts Ea, Eb, AAAA, and BBBB in 40 CFR part 60; and hospital waste and medical/infectious waste, as defined in subpart Ec in 40 CFR part 60. Because the proposed definition of nonhazardous solid waste applies only to section 129, previous and future determinations under subpart E, Standards of Performance for Incinerators, in 40 CFR part 60 would not be affected.

In summary, the definition we propose today of (nonhazardous) solid waste is consistent with the requirements of section 129 of the CAA because it incorporates the definition of solid waste in the SWDA and builds upon the definition established by the Administrator pursuant to the SWDA to comprehensively identify those wastes which are, when burned, nonhazardous solid wastes.

VII. Public Participation and Request for Comments

The ICCR Federal Advisory Committee (i.e., the Coordinating Committee), which is discussed in

section I.C., was designed and created to foster active participation from stakeholders, including environmental groups, regulated industries, local governments, Federal agencies, and State and local regulatory agencies. The stakeholders were able to participate in the development of FACA Committee recommendations on many regulatory issues.

The ICCR Coordinating Committee also encouraged the public to provide input on its decisions and recommendations throughout the 2-year charter. To enhance the public's ability to participate, the EPA maintained a bulletin board on the TTN Web internet site to disseminate information on Coordinating Committee and Work Group meeting schedules and minutes, works in progress, and final recommendations. The public could submit comments on any information posted on the bulletin board to members of the Coordinating Committee or Work Group. Individuals could also attend Coordinating Committee and Work Group meetings and comment on the information being presented and discussed. After the FACA charter expired, individual stakeholders and members of the public were encouraged to submit individual comments and information to EPA staff.

To continue the participation of stakeholders in the rulemaking process, the EPA is requesting comments and data to support this proposed regulation. The EPA requests comments on any classes or types of CISWI units, or CISWI unit size considerations, that have not been addressed in this proposed rule, including a discussion about how the units should be treated under this rulemaking (section III.A). The EPA requests comments on whether it would be appropriate to include alternative percent reduction requirements for CISWI units, any data upon which those requirements could be based, and whether emission limits should be established for pollutants in addition to the nine pollutants plus opacity (section III.B). The EPA requests comments on whether fabric filters or other control techniques can achieve lower particulate matter emissions for CISWI units, and whether one of these techniques should represent the basis of the CISWI particulate matter emission limit (section III.C). The EPA also requests any other emissions test data available for the MACT floor technologies applied to CISWI units (section III.C). The EPA requests comments on whether other control technologies should be considered as beyond the floor regulatory options (section III.C). Finally, the EPA requests comments on the mercury, dioxins/furans, oxides of nitrogen, and carbon monoxide emission limits (section III.D), materials burned to recover chemical constituents (section VI), and the recordkeeping and reporting burden (section VIII.E).

VIII. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the CAA, EPA will hold a public hearing if individuals request to speak. If a public hearing is held, EPA may ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may submit written comments (see the DATES and ADDRESSES sections). The EPA will consider written comments and supporting information with equivalent weight as any oral statement and supporting information presented at a public hearing.

B. Docket

The docket is an organized and complete file of all the information considered by the EPA in developing this proposal. Material is added to the docket throughout the rulemaking process. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)) except for interagency review material. The docket number for the CISWI source category is A–94–63. (See the **ADDRESSES** section for the availability of docket material.)

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(3) Materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposed regulation will affect 112 existing facilities owned by 90 parent companies. Based on Small Business Administration guidelines, 26 of the companies are small businesses. The lumber and wood products industry includes the largest number (7) of the small businesses, followed by fabricated metals, veterinary hospitals, and wholesale trade sectors with three companies each. Also, four cities are classified as small governments because they have fewer than 50,000 residents. The remaining six small businesses are distributed across six different industries. Only nine small businesses had cost-to-sales ratios greater than 3 percent (ranging from 3.4 to 27.7 with a median of 4.0 percent), and fifteen small businesses had cost-to-sales ratios greater than 1 percent, assuming add-on control is employed to meet the standard rather than alternative disposal methods. For the nine entities that had cost-to-sales ratios greater than 3 percent, the median amount of material incinerated was about 50 tons per year. Because of the relatively small number of tons per year being incinerated, the alternative net cost for sending waste to a landfill for many of these facilities is likely to be less than the control costs, based on an estimated total alternative disposal cost (i.e., transportation cost plus tipping fee) of about $58/ton. Thus, it may be economically feasible for some

of these small entities to switch to an alternative disposal method, such as off-site landfills, and lower their net compliance costs.

For the four identified small governments, cost-to-revenue ratios were low, ranging from 0.11 to 1.7 percent. The annualized cost per capita ranged from $1.68 to $19.81.

Based on the low number of affected small entities and the relatively low control cost, this analysis suggests that the proposed regulation should not generate a significant small business impact on a substantial number of small entities in the commercial, industrial, and government sectors. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The information collection requirements in these proposed rules have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The ICR documents have been prepared by EPA (ICR No. 1926.01 for subpart CCCC and 1927.01 for subpart DDDD), and copies may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. Copies may also be downloaded from the internet at http://www.epa.gov/icr.

These proposed rules contain monitoring, reporting, and recordkeeping requirements. The information would be used by the EPA to identify new, modified, or reconstructed incineration units subject to the NSPS and to ensure that new incineration units undergo a siting analysis and that the analysis is reviewed by the public. Records and reports would be necessary to enable EPA to identify waste incineration units that may not be in compliance with the requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the NSPS for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	11,209	$685,269	$13,440	$1,266	$699,975
Implementing agency	794	32,608	0	0	32,608

The EPA expects the NSPS to affect 18 CISWI units over the first 3 years, based on the assumption that 6 existing units will be replaced by 6 new units each year. The EPA estimates the total annualized capital and start-up costs for these new units to be $13,440. Continuous parameter monitoring equipment would be required for new units. When a wet scrubber is used to meet the emission limits, monitoring equipment must be installed to monitor maximum charge rate, minimum pressure drop across the wet scrubber or minimum horsepower or amperage to the wet scrubber, minimum scrubber liquor flow rate, and minimum scrubber liquor pH. The estimated total operation, maintenance, and purchase costs for the monitoring equipment averaged over the first 3 years are expected to be $1,266. The implementing agency would not incur any capital or start-up costs.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	9,145	$407,067	0	0	$407,067
Implementing agency	1,817	48,386	0	0	48,386

EPA expects the emission guidelines to affect a maximum of 116 units over the first 3 years. The EPA assumes that 6 existing units will be replaced by 6 new units each year. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years. The implementing agency would not incur any capital or start-up costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR

between 30 and 60 days after November 30, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by December 30, 1999. In the final rule, the EPA will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, 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 proposal does not significantly or uniquely affect the communities of Indian tribal governments. The EPA does not know of any CISWI units owned by Indian tribal governments. However, if there are any, the effect of these rules on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The purpose of the NTTAA is to reduce the costs to the private and public sectors by requiring Federal agencies to use existing technical standards used in commerce or industry. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

The EPA evaluated these subparts to determine if any of the requirements of the NTTAA are applicable. The EPA has concluded that this proposal does not establish or modify technical standards, therefore, the requirements of the NTTAA do not apply. Several test methods are required to demonstrate compliance with the guidelines and standards; however, all of these test methods are established EPA methods and have been commonly used to test emission levels at incineration units in the past. The EPA requests public comments on the existence of voluntary consensus standards that should be considered for this proposal.

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that EPA determines: (1) Is ''economically significant'' as defined under Executive Order 12866, (2) is based on health or safety risks, and (3) for which the EPA has reason to believe may disproportionately affect children. If the regulatory action meets these criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this proposal is not economically significant as defined by Executive Order 12866.

J. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement. The federalism summary impact statement must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

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. This rule establishes national performance standards and other requirements for certain solid waste incineration units. The EPA is required by section 129 of the CAA, 42 U.S.C. § 7429, to establish the standards and guidelines embodied in this proposed rule. This proposed regulation primarily affects private industry, and does not impose significant economic costs on State or local governments. The standards established by this rule apply to new facilities that operate commercial or industrial incineration units (and the owners or operators of such facilities), and require States to submit State plans that include standards applicable to existing incineration units that are at least as protective as the standards specified in the proposed rule. If a State does not submit an approvable plan, any covered incineration units in that State will become subject to a Federal plan to implement this proposed rule. The proposed regulation does not include an express provision preempting State or local regulations. However, once a State or Federal plan is in effect, covered facilities would be subject to the standards established by this proposed rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this proposed rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule, and EPA has complied with the requirements of section 4(e), to the extent that they may be applicable to the proposed regulations, by providing notice to potentially affected State and local officials through publication of this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this proposed rule, EPA consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of this rule. This consultation took place during the ICCR FACA committee meetings, where members representing State and local governments participated in developing recommendations for EPA's combustion-related rulemakings, including this proposed rule (see section I.C. of this preamble). Additionally, the EPA sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about this proposed rule and to solicit their comments. The concerns raised by representative of State and local governments were considered during the development of this proposed rule.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particular matter, Sulfur oxides, Waste treatment and disposal.

Dated: November 15, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, Part 6, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Part 60 is amended by adding subpart CCCC to read as follows:

Subpart CCCC—Standards of Performance for New Stationary Sources: Commercial and Industrial Solid Waste Incineration Units

Sec.

Introduction

Applicability

Preconstruction Siting Analysis

Waste Management Plan

Operator Training and Qualification

Introduction

§ 60.2000 What does this subpart do?

This subpart establishes new source performance standards for commercial and industrial solid waste incineration (CISWI) units.

§ 60.2005 When does this subpart become effective?

This subpart takes effect 6 months after promulgation of the final rule in the **Federal Register**. Some of the requirements in this subpart apply to planning the CISWI unit and must be completed even before construction is initiated on the CISWI unit (*i.e.,* the preconstruction requirements in §§ 60.2040 and 60.2045). Other requirements such as the emission limits apply after the CISWI unit begins operation.

Applicability

§ 60.2010 Does this subpart apply to my incineration unit?

Yes, if your incineration unit meets all of the following criteria:

(a) Your incineration unit is a new incineration unit as defined in § 60.2015—''What is a new incineration unit?';

(b) Your CISWI unit burns solid waste as defined in § 60.2245—''What definitions must I know?'.

(c) Your incineration unit burns less than 90 percent by weight (instantaneous basis) pathological waste as defined in § 60.2245.

(d) Your incineration unit burns less than 90 percent by weight (instantaneous basis) agricultural wastes as defined in § 60.2245.

(e) Your incineration unit is not regulated under subpart Ea of this part (Standards of Performance for Municipal Waste Combustors), subpart Eb of this part (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994), or subpart AAAA of this part (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units).

(f) Your incineration unit is not regulated under subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996).

§ 60.2015 What is a new incineration unit?

(a) A new incineration unit is an incineration unit that meets either of the following two criteria:

(1) Commenced construction after November 30, 1999.

(2) Commenced reconstruction or modification 6 months (or later) after promulgation of this subpart.

(b) This subpart does not affect your incineration unit if you make physical or operational changes to your incineration unit primarily to comply with the emission guidelines in subpart DDDD of this part (Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units). Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.2020 Does this subpart allow any exemptions?

Yes. This subpart allows the following statutory exemptions:

(a) *Small power production facilities.* You are exempt from this subpart if you meet all of the following four requirements:

(1) Your unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You provide the Administrator with documentation that the unit qualifies for this exemption.

(b) *Cogeneration facilities.* You are exempt from this subpart if you meet all of the following four requirements:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You provide the Administrator with documentation that the unit qualifies for this exemption.

(c) *Hazardous waste combustion units.* You are exempt from this subpart if you get a permit for your unit under section 3005 of the Solid Waste Disposal Act.

(d) *Materials recovery units.* You are exempt from this subpart if your unit combusts waste for the primary purpose of recovering metals. This includes primary and secondary smelters.

(e) *Air curtain incinerators.* If your air curtain incinerator (see § 60.2245 for definition) burns 100 percent wood waste and clean lumber, you must only meet the requirements under ''Air Curtain Incinerators That Burn 100 Percent Wood Wastes and Clean Lumber'' (§§ 60.2225 through 60.2240).

§ 60.2025 Can the Administrator delegate authority to enforce these Federal standards to a State agency?

Yes. The Administrator may delegate all authorities in all sections of this subpart to the State for direct State enforcement.

§ 60.2030 How are the standards structured?

The standards contain seven major components, as follows:

(a) Preconstruction siting analysis.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limits.

(e) Stack testing and compliance.

(f) Monitoring.

(g) Recordkeeping and reporting.

§ 60.2035 Do all seven components of the standards apply at the same time?

No. You must meet the preconstruction siting analysis and waste management plan requirements before you commence construction of the CISWI unit. The operator training and qualification, emission limits, stack testing and compliance, monitoring, and most recordkeeping and reporting requirements are met after the CISWI unit begins operation.

Preconstruction Siting Analysis

§ 60.2040 Who must prepare a siting analysis?

(a) You must prepare a siting analysis if you plan to commence construction of a CISWI unit after promulgation of this subpart in the **Federal Register**.

(b) You must prepare a siting analysis if you are required to submit an initial application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, as applicable, for the reconstruction or modification of your CISWI unit.

§ 60.2045 What is a siting analysis?

(a) The siting analysis must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment. In considering such alternatives, the analysis may consider costs, energy impacts, non-air environmental impacts, or any other factors related to the practicability of the alternatives.

(b) Analyses of your CISWI unit's impacts that are prepared to comply with the State, local, or other Federal regulatory requirements may be used to satisfy the requirements of this section, provided they include the consideration of air pollution control alternatives specified in paragraph (a) of this section.

(c) You must complete and submit the siting requirements of this section as required under § 60.2170(c) prior to commencing construction.

Waste Management Plan

§ 60.2050 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the approach to separate certain components of solid waste from the waste stream in order to reduce the amount of toxic emissions from incinerated waste.

§ 60.2055 When must I submit my waste management plan?

You must submit a waste management plan prior to commencing construction.

§ 60.2060 What should I include in my waste management plan?

A waste management plan may include, but is not limited to, the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. It should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 60.2065 What are the operator training and qualification requirements?

(a) No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within 1 hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily unavailable, you must follow the procedures in § 60.2095.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the following elements:

(1) Training on the following subjects:

(i) Environmental concerns, including types of emissions;

(ii) Basic combustion principles, including products of combustion;

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(iv) Combustion controls and monitoring;

(v) Operation of air pollution control equipment and factors affecting performance (if applicable);

(vi) Inspection and maintenance of the incinerator and air pollution control devices;

(vii) Actions to correct malfunctions or conditions that may lead to malfunction;

(viii) Bottom and fly ash characteristics and handling procedures;

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards;

(x) Pollution prevention; and

(xi) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that serve as reference material following completion of the course.

§ 60.2070 When must the operator training course be completed?

The operator training course must be completed by the later of three dates:

(a) Six months after your CISWI unit starts up.

(b) One year after promulgation of this subpart.

(c) The date before an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

§ 60.2075 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2065(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.2065(c)(2).

§ 60.2080 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the following:

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.2085 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the following methods:

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2080.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2075(a).

§ 60.2090 What site-specific documentation is required?

(a) You must maintain documentation at the facility that addresses the following:

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Procedures for monitoring incinerator operating parameters.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 60.2050 through 60.2060.

(9) Procedures for handling ash.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted within 6 months after the effective date of this subpart or prior to an employee's assumption of responsibilities for operation of the CISWI unit, whichever date is later.

(2) Subsequent reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) The information listed in paragraph (a) of this section must be kept in a readily accessible location for all CISWI unit operators. This information, along with records of training must be available for inspection by the EPA or its delegated enforcement agent upon request.

§ 60.2095 What if all the qualified operators are temporarily unavailable?

If all qualified operators are temporarily unavailable, you must meet one of two criteria, depending on the length of time that a qualified operator is away:

(a) When all qualified operators are unavailable for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit. However, you must record the period when all qualified operators were unavailable and include this information in the annual report as specified under § 60.2190.

(b) When all qualified operators are unavailable for 2 weeks or more, you must take two actions:

(1) Notify the Administrator in writing within 10 days. In the notice, state what caused the absence and what you are doing to ensure that a qualified operator is available.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks. If the Administrator notifies you that the status report and corrective action summary are disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. If corrective actions are taken within the 90-day period and the Administrator withdraws the disapproval, the CISWI unit may continue operation.

Emission Limits

§ 60.2100 What pollutants are regulated by this subpart?

Ten pollutants are regulated:

(a) Cadmium.

(b) Carbon monoxide.

(c) Dioxins/furans.

(d) Hydrogen chloride.

(e) Lead.

(f) Mercury.

(g) Opacity.

(h) Oxides of nitrogen.

(i) Particulate matter.

(j) Sulfur dioxide.

§ 60.2105 What emission limits must I meet, and by when?

You must meet the emission limits specified in table 1 of this subpart. You must meet these limits 60 days after your CISWI unit reaches the charge rate at which it will operate but no later than 180 days after its initial startup.

§ 60.2110 What happens during periods of startup, shutdown, and malfunction?

(a) The standards of this subpart apply at all times except during CISWI unit startups, shutdowns, or malfunctions.

(b) Each startup, shutdown, or malfunction must last no longer than 3 hours.

Stack Testing and Compliance

§ 60.2115 What types of stack tests must I conduct?

(a) You must conduct an initial stack test to measure the emission levels of the pollutants listed in table 1 of this subpart (except for carbon monoxide and oxides of nitrogen) within 60 days after your CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(b) You must conduct annual stack tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial stack test. Conduct subsequent annual stack tests within 12 months following the previous one.

§ 60.2120 How are the stack test data used?

You use results of stack tests to demonstrate compliance with the emission limits in table 1 of this subpart.

§ 60.2125 May I conduct stack testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all stack tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limit. In this case, you do not have to conduct a stack test for that pollutant for the next 2 years. You must do a stack test during the third year and no more than 36 months following the previous stack test.

(b) If your CISWI unit continues to meet the emission limit for particulate matter, hydrogen chloride, or opacity, you may choose to conduct stack tests for these pollutants every third year, but each such test must be within 36 months of the previous stack test.

(c) If a stack test shows noncompliance with an emission limit for particulate matter, hydrogen chloride, or opacity, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

§ 60.2130 How do I conduct the initial stack test?

You must conduct an initial stack test for each CISWI unit as required under § 60.2115 to determine compliance with the emission limits using the test methods listed in table 1 of this subpart and the procedures listed in paragraphs (a) through (e) of this section. The use of the bypass stack during a stack test invalidates the stack test.

(a) All stack tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All stack tests must be conducted using the minimum run duration specified in the test method.

(c) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(d) Method 3 or 3A of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3 or 3A of appendix A of this part must be used simultaneously with each method.

(e) The pollutant concentrations must be adjusted to 7 percent oxygen using the following equation:

C_{adj}=Cmeas (20.9 − 7)/(20.9 − $\%O_2$)

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

(20.9 − 7) = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent

§ 60.2135 What are my operating parameter requirements?

(a) If you are using a wet scrubber to comply, you must:

(1) Establish the appropriate maximum and minimum site specific operating parameters indicated in table 2 of this subpart during the initial stack test; and

(2) Following the date on which the initial stack test is completed, you must not operate the CISWI unit above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in table 2 of this subpart. Parameters must be measured and calculated as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times except during periods of startup, shutdown, and malfunction. Operating parameter limits do not apply during stack tests.

(b) If you are using an air pollution control device other than a wet scrubber to comply with the emission limits under § 60.2105, you must petition the Administrator for other site-specific operating parameters to be established during the initial stack test and continuously monitored thereafter. You must not conduct the initial stack test until after the petition has been approved by the Administrator.

§ 60.2140 How do I determine compliance?

(a) Compliance with the emission limits is determined by the initial and the annual stack tests.

(b) Operation above the established maximum or below the established minimum operating parameter(s) constitutes a violation of established operating parameter requirements. Three-hour rolling average values are used to determine compliance unless a different averaging period is established under § 60.2135(b).

§ 60.2145 May I conduct a repeat stack test to establish new operating parameters?

Yes. You may conduct a repeat stack test at any time to establish new values for the operating parameters. The Administrator may request a repeat stack test at any time.

Monitoring

§ 60.2150 What monitoring equipment must I install and what parameters must I monitor?

(a) You must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in table 2 of this subpart. These devices (or methods) must measure and record values for these operating parameters at the frequencies indicated in table 2 of this subpart at all times except during periods of startup, shutdown, and malfunction.

(b) You must also install, calibrate (to manufacturers' specifications), maintain, and operate a device or establish a procedure for measuring the use of the bypass stack including date, time, and duration.

(c) If you are using something other than a wet scrubber to comply with the emission limits under § 60.2105 you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters established using the procedures in § 60.2135(b).

§ 60.2155 Is there a minimum amount of monitoring data I must obtain?

Yes. You must obtain monitoring data at all times during CISWI unit operation except as required in § 60.2135 or during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data must be obtained for 75 percent of the CISWI unit operating hours, per calendar day, for 90 percent of the CISWI unit operating days, per calendar quarter, that the CISWI unit is burning solid waste.

Recordkeeping and Reporting

§ 60.2160 What records must I keep?

You must maintain the following information (as applicable) for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the following data:

(1) CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable.

(3) Horsepower or amperage to the wet scrubber during each minute of operation, as applicable.

(4) Pressure drop across the wet scrubber system during each minute of operation, as applicable.

(5) Liquor pH as introduced to the wet scrubber during each minute of operation, as applicable.

(6) Records indicating use of the bypass stack, including dates, times, durations, reasons, and corrective actions taken.

(7) For affected CISWI units that establish operating parameters for controls other than wet scrubbers under § 60.2135(b), you must maintain all operating parameter data collected.

(c) Identification of calendar dates for which the minimum amount of data on operating parameters specified under paragraph (b) of this section have not been obtained. The minimum amount of data is specified in § 60.2155. Identify the operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates for which data on operating parameters specified under paragraph (b) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken. Three-hour rolling average values must be used to determine operating parameter exceedances, unless a

different averaging period is established under § 60.2135(b).

(f) The results of the initial, annual, and any subsequent stack tests conducted to determine compliance with the emission limits and/or to establish operating parameters, as applicable. Retain a copy of the complete test report including calculations.

(g) All documentation produced as a result of the siting requirements of § 60.2045.

(h) Records showing the names of CISWI unit operators who have completed review of the information in § 60.2090(a) as required by § 60.2090(b), including the date of the initial review and all subsequent annual reviews.

(i) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2065, including documentation of training and the dates of the training.

(j) Records showing the names of the CISWI operators who have met the criteria for qualification under § 60.2075, and the dates of their qualification, and all subsequent renewals of such qualifications.

(k) Records of calibration of any monitoring devices as required under § 60.2150.

(l) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

§ 60.2165 Where must I keep my records?

All records must be maintained onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2170 What must I submit prior to commencing construction?

You must submit a notification prior to commencing construction that includes the following information:

(a) A statement of intent to construct.

(b) The anticipated date of commencement of construction.

(c) All documentation produced as a result of the siting requirements of § 60.2045.

(d) The waste management plan as specified in §§ 60.2050 through 60.2060.

§ 60.2175 What information must I submit prior to initial startup?

You must submit the information specified in paragraphs (a) through (d) of this section prior to initial startup.

(a) The type(s) of waste to be burned.

(b) The maximum design waste burning capacity.

(c) The anticipated maximum charge rate.

(d) If applicable, the petition for site-specific operating parameters under § 60.2135.

(e) The anticipated date of initial start-up.

§ 60.2180 What information must I submit following my initial stack test?

You must submit the information specified in paragraphs (a) and (b) of this section no later than 60 days following the initial stack test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial stack test results obtained under § 60.2130, as applicable.

(b) The values for the site-specific operating parameters established in § 60.2135.

§ 60.2185 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2180. You must submit subsequent reports no more than 12 months following the previous report. (Once the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports semiannually.)

§ 60.2190 What information must I include in my annual report?

The annual report required under § 60.2185 must include the information specified in paragraphs (a) through (f) of this section. All reports must be signed by the facility manager.

(a) The values for the site-specific operating parameters established pursuant to § 60.2135.

(b) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported.

(c) Information recorded under § 60.2160 (c) through (e) for the calendar year being reported. If no exceedances or malfunctions were reported, a statement that no exceedances occurred during the reporting period.

(d) If a stack test was conducted during the reporting period, the results of that test.

(e) Any use of the bypass stack, the duration, reason for bypass, and corrective action taken.

(f) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours.

§ 60.2195 What else must I report if I am out-of-compliance with these standards?

You must submit a report if any recorded 3-hour average parameter level is above the maximum value or below the minimum value established under this subpart, or if a stack test was conducted that exceeded any emission limit.

§ 60.2200 If an out-of-compliance report is required, when must I submit it?

If you are required to submit a report under § 60.2195:

(a) For data collected during the first half of a calendar year (January 1 to June 30), submit your report by August 1 of that year.

(b) For data you collected during the second half of the calendar year (July 1 to December 31), submit the report by February 1 of the following year.

§ 60.2205 What must I include in the out-of-compliance reports?

In each report required under § 60.2195, for any pollutant or parameter that exceeded the limits specified in this subpart, include the following information:

(a) The calendar date your unit exceeded the limits.

(b) The averaged and recorded data for that date.

(c) The reasons for exceeding the limits and your corrective actions.

(d) A copy of the operating parameter monitoring data and any test report that documents the emission levels.

§ 60.2210 Are there any other notifications or reports that I must submit?

(a) You must submit notifications as provided by § 60.7.

(b) If all qualified operators are unavailable for more than 2 weeks, you must submit a notification within 10 days. In addition, you must submit a status report and corrective action summary to the Administrator every 4 weeks.

§ 60.2215 In what form can I submit my reports?

Submit initial, annual, and semiannual electronic or paper reports, postmarked on or before the submittal due dates.

§ 60.2220 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators That Burn 100 Percent Wood Wastes and Clean Lumber

§ 60.2225 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

§ 60.2230 What are the emission limits for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Within 60 days after your air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average).

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 60.2235 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2240 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Prior to commencing construction on your air curtain incinerator, submit three items:

(1) Notification of your intent to construct the air curtain incinerators.

(2) Your planned initial startup date.

(3) Types of materials you plan to burn in your air curtain incinerator.

(b) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(c) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(d) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(f) Keep a copy of the initial and annual reports onsite for a period of 5 years.

Definitions

§ 60.2245 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subpart A (General Provisions) of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency, if delegated by EPA.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.,* almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Biomass fuel means untreated wood and wood products (*e.g.,* trees, tree stumps, tree limbs, bark, lumber, sawdust, sanderdust, chips, scraps, slabs, millings, and shavings); vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (*e.g.,* almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds; and alcohol fuels derived from these materials. Biomass does not include: painted, pigment-stained, or pressure-treated materials (*e.g.,* telephone poles and railroad ties); sewage sludge, paper mill sludge, fermentation tank bottoms, or other sludges; or construction, renovation, and demolition wastes. Pressure treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1, and ending on December 31.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Clean wood means untreated wood or untreated wood products including clean lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) Yard waste, which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, Standard Specification for Classification of Coals by Rank (see § 60.17), coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.

Commercial and industrial solid waste incineration (CISWI) unit means an enclosed device using controlled flame combustion that burns solid waste or an air curtain incinerator that burns solid waste, and that is a distinct operating unit of any commercial or industrial facility. This definition includes field-erected, modular, and custom built incineration units (starved- or excess-air), and air curtain incinerators. The boundaries of a CISWI unit are defined as follows. The CISWI unit includes, but is not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and

industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than 6 months after promulgation of this subpart and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane.

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials in ASTM D1835–82, Standard Specification for Liquid Petroleum Gases (IBR-see § 60.17).

Oil means crude oil or petroleum or a liquid or gaseous fuel derived from crude oil or petroleum, including distillate oil (Nos. 1–4) and residual oil (Nos. 5 and 6).

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins 6 months or more after promulgation of this subpart.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means, for the purpose of this subpart only, any solid, liquid, semisolid, or contained gaseous material, which is combusted, including but not limited to materials listed in paragraph (1) of this definition. Solid waste excludes fuels defined in paragraph (2) of this definition and materials specifically listed in paragraph (3) of this definition.

(1) The following materials are solid wastes, regardless of the provisions in paragraph (2) of this definition:

(i) Any material which is combusted without energy recovery (*i.e.,* where the material displaces other fuels to produce useful heat), except as provided in paragraph (3) of this definition.

(ii) Municipal solid waste, as defined in 40 CFR part 60, subpart Ea, subpart Eb, subpart AAAA and subpart BBBB.

(iii) Hospital waste, as defined in 40 CFR part 60, subpart Ec.

(iv) Medical/infectious waste, as defined in 40 CFR part 60, subpart Ec.

(v) Resource Conservation and Recovery Act hazardous wastes, as defined in 40 CFR part 261.

(2) The following materials are fuels when combusted in a device that incorporates energy recovery as part of its integral design (*e.g.,* for the production of hot water or steam). The combustion chamber and the energy recovery system must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the energy recovery system are joined only by ducts or connections carrying flue gas is not integrally designed.

(i) Biomass fuel, coal, natural gas, and oil, as defined elsewhere in this section;

(ii) Materials that have a heat content of 5,000 Btu/lb or more as fired. This criterion applies to each individual feed stream to a combustion unit.

(3) The following materials are not solid waste when combusted for the primary purpose of recovering chemical constituents: pulping liquors (*i.e.,* black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process; spent sulfuric acid used to produce virgin sulfuric acid; and wood and coal feedstock for the production of charcoal.

Standard conditions, when referring to units of measure, means a temperature of 68° F (20° C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using Method 23 of appendix A of this part.

Wet scrubber means an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. It comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(1) Construction, renovation, and demolition wastes.

(2) Clean wood, which is defined elsewhere in this section.

TABLE 1 OF SUBPART CCCC—EMISSION LIMITS FOR NEW SOURCES.

	You must meet these emission limits[a]	Using these averaging times	And determining compliance using these methods
Cadmium	0.03 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 29 of appendix A of this part).
Carbon monoxide	157 parts per million by dry volume.	Not applicable	Not required.
Dioxins/furans (total mass basis)	0.37 nanograms per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 23 of appendix A of this part).
Hydrogen chloride	62 parts per million by dry volume	3-run average (run duration specified in test method).	Stack test (Method 26 of appendix A of this part).
Lead	2.1 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 29 of appendix A of this part).
Mercury	0.005 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 29 of appendix A of this part).
Opacity	10 percent	6-minute averages	Stack test (Method 9 of appendix A of this part).
Oxides of nitrogen	388 parts per million by dry volume.	Not applicable	Not required.
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 5 or 29 of appendix A of this part).
Sulfur dioxide	20 parts per million by dry volume	3-run average (run duration specified in test method).	Stack test (Method 6 of appendix A of this part).

[a] All emission limits are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 OF SUBPART CCCC.—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM RECORDING FREQUENCIES FOR WET SCRUBBERS

You must monitor these operating parameters	Using these minimum frequencies		
	Data measurement	Data recording	Averaging time
Maximum operating parameters: Maximum charge rate.	Continuous	Every hour	3-hour rolling.
Minimum operating parameters:			
Minimum pressure drop across the wet scrubber, or minimum horsepower or amperage to wet scrubber.	Continuous	Every minute	3-hour rolling.
Minimum scrubber liquor flow rate	Continuous	Every minute	3-hour rolling.
Minimum scrubber liquor pH	Continuous	Every minute	3-hour rolling.

3. Part 60 is amended by adding subpart DDDD to read as follows:

Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

Sec.

Introduction

Applicability of State Plans

Use of Model Rule

Model Rule—Increments of Progress

Model Rule—Waste Management Plan

Introduction

§ 60.2500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units. The pollutants addressed by these emission guidelines are listed in table 2 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

§ 60.2505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing CISWI units that commenced construction on or before November 30, 1999, you must submit a State plan to EPA that implements the emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA within 1 year after the promulgation of this subpart.

§ 60.2510 Is a State plan required for all States?

No. You are not required to submit a State plan if there are no existing CISWI units in your State and you submit a negative declaration letter in place of the State plan.

§ 60.2515 What must I include in my State plan?

(a) You must include nine items in your State plan:

(1) Inventory of affected CISWI units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected CISWI units in your State.

(3) Compliance schedules for each affected CISWI unit.

(4) Emission limits, operator training and qualification requirements, a waste management plan, and operating parameter requirements for affected CISWI units that are at least as protective as the emission guidelines contained in this subpart.

(5) Stack testing, recordkeeping, and reporting requirements.

(6) Transcript of the public hearing on the State plan.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the sections 111(d) and 129 State plan.

(b) Your State plan may deviate from the format and content of the emission guidelines contained in this subpart. However, if your State plan does deviate, you must demonstrate that your State plan is at least as protective as the emission guidelines contained in this subpart. Your State plan must address regulatory applicability, increments of progress for retrofit, operator training and qualification, a waste management plan, emission limits, stack testing, operating parameter requirements, monitoring, recordkeeping and reporting, and air curtain incinerator requirements.

(c) You must follow the requirements of subpart B of this part (Adoption and Submittal of State Plans for Designated Facilities) in your State plan.

§ 60.2520 Is there an approval process for my State plan?

Yes. The EPA will review your State plan according to § 60.27.

§ 60.2525 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter) within 2 years after promulgation

of this subpart, EPA will develop a Federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of CISWI units not covered by an approved State plan must comply with the Federal plan. The Federal plan is an interim action and will be automatically withdrawn when your State plan is approved.

§ 60.2530 Is there an approval process for a negative declaration letter?

No. The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing CISWI unit is found in your State, the Federal plan implementing the emission guidelines contained in this subpart would automatically apply to that CISWI unit until your State plan is approved.

§ 60.2535 What compliance schedule must I include in my State plan?

(a) Your State plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the State plan but not later than the earlier of two dates:

(1) Five years after [*the date of promulgation of the final rule*].

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules more than 1 year following the effective date of State plan approval, State plans must include dates for enforceable increments of progress as specified in § 60.2580.

§ 60.2540 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B?

Yes. Subpart B established general requirements for developing and processing section 111(d) plans. This subpart applies instead of the requirements in subpart B of this part for the following:

(a) State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all CISWI units to comply within 5 years after promulgation of this subpart or 3 years after the effective date of State plan approval, whichever is sooner. This applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

(b) State plans developed to implement this subpart are required to include two increments of progress for the affected CISWI units. These two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5). This applies instead of the requirement of § 60.24(e)(1) that would require a State plan to include all five increments of progress for all CISWI units.

§ 60.2545 Does this subpart directly affect CISWI unit owners and operators in my State?

(a) No. This subpart does not directly affect CISWI unit owners and operators in your State. However, CISWI unit owners and operators must comply with the State plan you develop to implement the emission guidelines contained in this subpart. Some States may choose to incorporate the emission guidelines contained in this subpart into their State plans by direct incorporation by reference. Others may want to include the model rule text directly in their State plan.

(b) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart within 2 years after promulgation of this subpart, the EPA will implement and enforce a Federal plan, as provided in § 60.2525, to ensure that each unit within your State reaches compliance with all the provisions of this subpart within 5 years after promulgation of this subpart.

Applicability of State Plans

§ 60.2550 What CISWI units must I address in my State plan?

(a) Your State plan must address all existing CISWI units in your State that commenced construction on or before November 30, 1999.

(b) If the owner of operator of a CISWI unit makes changes that meet the definition of modification or reconstruction 6 months (or later) after promulgation of subpart CCCC of this part (New Source Performance Standards for Commercial and Industrial Solid Waste Incineration Units), the CISWI unit becomes subject to subpart CCCC of this part and the State plan no longer applies to that unit.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with your State plan, subpart CCCC of this part does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart CCCC of this part.

(d) Your State plan must address all incineration units that meet all of the following criteria:

(1) The incineration unit burns solid waste as defined in § 60.2850—''What definitions must I know?''.

(2) The incineration unit burns less than 90 percent by weight (instantaneous basis) pathological waste as defined in § 60.2850.

(3) The incineration unit burns less than 90 percent by weight (instantaneous basis) agricultural wastes as defined in § 60.2850.

(4) The incineration unit is not regulated under subpart Ea of this part (Standards of Performance for Municipal Waste Combustors), subpart Eb of this part (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994), subpart Cb of this part (Emission Guidelines and Compliance Times for Municipal Waste Combustors That are Constructed on or Before December 19, 1995), subpart AAAA of this part (Standards of Performance of New Stationary Sources: Small Municipal Waste Combustion Units), or subpart BBBB of this part (Emission Guidelines: Small Municipal Waste Combustion Units).

(5) The incineration unit is not regulated under subpart Ec of this part (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or subpart Ce of this part (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).

§ 60.2555 Are any CISWI units exempt from my State plan?

Yes. This subpart allows the following statutory exemptions:

(a) *Small power production facilities.* A unit is exempt from your State plan if four requirements are met:

(1) The unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit combusts homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You are notified by the owner or operator that the unit qualifies for this exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(b) *Cogeneration facilities.* A unit is exempt from your State plan if four requirements are met:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit combusts homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You are notified by the owner or operator that the unit qualifies for this exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(c) *Hazardous waste combustion units.* A unit is exempt from your State plan if the unit has received a permit under section 3005 of the Solid Waste Disposal Act.

(d) *Materials recovery units.* A unit is exempt from your State plan if the unit combusts waste for the primary purpose of recovering metals. This includes primary and secondary smelters.

(e) *Air curtain incinerators.* If an air curtain incinerator (see § 60.2850 for definition) combusts 100 percent wood waste and clean lumber, then the unit must meet only the requirements under ''Model Rule—Air Curtain Incinerators That Burn 100 Percent Wood Wastes and Clean Lumber'' (§§ 60.2785 through 60.2845).

Use of Model Rule

§ 60.2560 What is the purpose of the ''model rule'' in this subpart?

(a) The model rule provides the emission guidelines requirements in a standard regulation format. You must develop a State plan that is at least as protective as the model rule. You may use the model rule language as part of your State plan. Alternative language may be used in your State plan if you demonstrate that the alternative language is at least as protective as the model rule contained in this subpart.

(b) In the ''model rule'' of §§ 60.2575 to 60.2850, ''you'' means the owner or operator of a CISWI unit.

§ 60.2565 How does the model rule relate to the required elements of my State plan?

Use the model rule to satisfy the State plan requirements specified in § 60.2515(a)(4) and (5).

§ 60.2570 What are the principal components of the model rule?

The model rule contains seven major components, as follows:

(a) Increments of progress toward compliance.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limits.

(e) Stack testing and compliance.

(f) Monitoring.

(g) Recordkeeping and reporting.

Model Rule—Increments of Progress

§ 60.2575 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of State plan approval, you must meet two increments of progress:

(a) Submit a final control plan.

(b) Achieve final compliance.

§ 60.2580 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress.

§ 60.2585 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress (see § 60.2600).

(c) Signature of the owner or operator of the CISWI unit.

§ 60.2590 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.2595 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in table 1 of this subpart. You must inform the Administrator that you did not meet the increment and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.2600 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy two requirements:

(a) Submit the final control plan that includes the following:

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating parameters under § 60.2705(b).

(b) Maintain an onsite copy of the final control plan.

§ 60.2605 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.2610 What must I do if I close my CISWI unit and then restart it?

(a) If you close your CISWI unit but will restart it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.2575.

(b) If you close your CISWI unit but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limits on the date your unit restarts operation.

§ 60.2615 What must I do if I plan to permanently close my CISWI unit and not restart it?

If you plan to close your CISWI unit rather than comply with the State plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

Model Rule—Waste Management Plan

§ 60.2620 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the approach to separate certain components of solid waste from the waste stream in order to reduce the amount of toxic emissions from incinerated waste.

§ 60.2625 When must I submit my waste management plan?

You must submit a waste management plan no later than the date specified in table 1 for submittal of the final control plan.

§ 60.2630 What should I include in my waste management plan?

A waste management plan may include, but is not limited to, the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. It should identify, where possible, reasonably available additional

waste management measures, taking into account the efffectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other environmental or energy impacts they might have.

Model Rule—Operator Training and Qualification

§ 60.2635 What are the operator training and qualification requirements?

(a) No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within 1 hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily unavailable, you must follow the procedures in § 60.2665.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the following elements:

(1) Training on the following subjects:

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§ 60.2640 When must the operator training course be completed?

The operator training course must be completed by the later of three dates:

(a) The final compliance date (Increment 2).

(b) Six months after CISWI unit start up.

(c) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

§ 60.2645 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2635(b).

(b) Qualification is valid from the date on which the training course is completed, and the operator successfully passes the examination required under § 60.2635(c)(2).

§ 60.2650 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the following:

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.2655 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the following methods:

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2650.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2645(a).

§ 60.2660 What site-specific documentation is required?

(a) You must maintain documentation at the facility that addresses the following:

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Procedures for monitoring incinerator operating parameters.

(7) Reporting and recordkeeping procedures.

(8) Procedures for handling ash.

(9) The waste management plan required under §§ 60.2620 through 60.2630.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each CISWI unit operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of:

(i) The final compliance date (Increment 2).

(ii) Six months after CISWI unit start up.

(iii) Six months after being assigned to operate CISWI unit.

(2) Subsequent reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) The information listed in paragraph (a) of this section must be kept in a readily accessible location for all CISWI unit operators. This information, along with records of training, must be available for inspection by the EPA or its delegated enforcement agent upon request.

§ 60.2665 What if all the qualified operators are temporarily unavailable?

If all qualified operators are temporarily unavailable, you must meet one of two criteria, depending on the length of time that a qualified operator is away:

(a) When all qualified operators are unavailable for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit. However, you must record the period when all qualified operators were unavailable and include this information in the annual report as specified under § 60.2750(g).

(b) When all qualified operators are unavailable for 2 weeks or more, you must take two actions:

(1) Notify the Administrator in writing within 10 days. In the notice, state what caused the absence and what you are doing to ensure that a qualified operator is available.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks. If the Administrator notifies you that the status report and corrective action summary are disapproved, the CISWI

unit may continue operation for 90 days, then must cease operation. If corrective actions are taken within the 90-day period and the Administrator withdraws the disapproval, the CISWI unit may continue operation.

Model Rule—Emission Limits

§ 60.2670 What pollutants are regulated by this subpart?

Ten pollutants are regulated:

(a) Cadmium.

(b) Carbon monoxide.

(c) Dioxins/furans.

(d) Hydrogen chloride.

(e) Lead.

(f) Mercury.

(g) Opacity.

(h) Oxides of nitrogen.

(i) Particulate matter.

(j) Sulfur dioxide.

§ 60.2675 What emission limits must I meet, and by when?

After the date the initial stack test is required or completed (whichever is earlier), you must meet the emission limits specified in table 2 of this subpart.

§ 60.2680 What happens during periods of startup, shutdown, and malfunction?

(a) The standards of this subpart apply at all times except during CISWI unit startups, shutdowns, or malfunctions.

(b) Each startup, shutdown, or malfunction must last no longer than 3 hours.

Model Rule—Stack Testing and Compliance

§ 60.2685 What types of stack tests must I conduct?

(a) You must conduct an initial stack test to measure the emission levels of the pollutants listed in table 2 of this subpart (except for carbon monoxide and oxides of nitrogen) no later than 180 days after your final compliance date. Your final compliance date is specified in table 1 of this subpart.

(b) You must conduct annual stack tests for particulate matter, hydrogen chloride, and opacity beginning within 12 months following the initial stack test. Conduct subsequent annual stack tests within 12 months following the previous one.

§ 60.2690 How are the stack test data used?

You use results of stack tests to demonstrate compliance with the emission limits in table 2 of this subpart.

§ 60.2695 May I conduct stack testing less often?

(a) You may test less often for a given pollutant if you have test data for at least 3 years, and all stack tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limit. In this case, you do not have to conduct a stack test for that pollutant for the next 2 years. You must do a stack test during the third year and no more than 36 months following the previous stack test.

(b) If your CISWI unit continues to meet the emission limit for particulate matter, hydrogen chloride, or opacity, you may choose to conduct stack tests for these pollutants every third year, but each such test must be within 36 months of the previous stack test.

(c) If a stack test shows noncompliance with an emission limit for particulate matter, hydrogen chloride, or opacity, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

§ 60.2700 How do I conduct the initial stack test?

You must conduct an initial stack test for each CISWI unit as required under § 60.2685(a) to determine compliance with the emission limits using the test methods listed in table 2 of this subpart and the procedures listed in paragraphs (a) through (e) of this section. The use of the bypass stack during a stack test invalidates the stack test.

(a) All stack tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All stack tests must be conducted using the minimum run duration specified in the test method.

(c) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(d) Method 3 or 3A of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3 or 3A of appendix A of this part must be used simultaneously with each method.

(e) The pollutant concentrations must be adjusted to 7 percent oxygen using the following equation:

$$C_{adj} = C_{meas} (20.9 - 7)/(20.9 - \%O_2)$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

$(20.9 - 7)$ = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

§ 60.2705 What are my operating parameter requirements?

(a) If you are using a wet scrubber to comply, you must:

(1) Establish the appropriate maximum and minimum site specific operating parameters indicated in table 3 of this subpart during the initial stack test; and

(2) Following the date on which the initial stack test is completed you must not operate the CISWI unit above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in table 3 of this subpart. Parameters must be measured and calculated as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during stack tests.

(b) If you are using an air pollution control device other than a wet scrubber to comply with the emission limits under § 60.2675, you must petition the Administrator for other site-specific operating parameters to be established during the initial stack test and continuously monitored thereafter. You must not conduct the initial stack test until after the petition has been approved by the Administrator.

§ 60.2710 How do I determine compliance?

(a) Compliance with the emission limits is determined by the initial and the annual stack tests.

(b) Operation above the established maximum or below the established minimum operating parameter(s) constitutes a violation of established operating parameter requirements. Three-hour rolling average values are used to determine compliance unless a different averaging period is established under § 60.2705(b).

§ 60.2715 May I conduct a repeat stack test to establish new operating parameters?

Yes. You may conduct a repeat stack test at any time to establish new values for the operating parameters. The Administrator may request a repeat stack test at any time.

Model Rule—Monitoring

§ 60.2720 What monitoring equipment must I install and what parameters must I monitor?

(a) You must install, calibrate (to manufacturers' specifications),

maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in table 3 of this subpart. These devices (or methods) must measure and record values for these operating parameters at the frequencies indicated in table 3 of this subpart at all times except during periods of startup, shutdown, and malfunction.

(b) You must also install, calibrate (to manufacturers' specifications), maintain, and operate a device or establish a procedure for measuring the use of the bypass stack including date, time, and duration.

(c) If you are using something other than a wet scrubber to comply with the emission limits under § 60.2675, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters established using the procedures in § 60.2705(b).

§ 60.2725 Is there a minimum amount of monitoring data I must obtain?

Yes. You must obtain monitoring data at all times during CISWI unit operation except as required in § 60.2720 or during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data must be obtained for 75 percent of the CISWI unit operating hours, per calendar day, for 90 percent of the CISWI unit operating days, per calendar quarter, that the CISWI unit is burning solid waste.

Model Rule—Recordkeeping and Reporting

§ 60.2730 What records must I keep?

You must maintain the following information (as applicable) for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the following data:

(1) CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable.

(3) Horsepower or amperage to the wet scrubber during each minute of operation, as applicable.

(4) Pressure drop across the wet scrubber system during each minute of operation, as applicable.

(5) Liquor pH as introduced to the wet scrubber during each minute of operation, as applicable.

(6) Records indicating use of the bypass stack, including dates, times, durations, reasons, and corrective actions taken.

(7) For affected CISWI units that establish operating parameters for controls other than wet scrubbers under § 60.2705(b), you must maintain all operating parameter data collected.

(c) Identification of calendar dates for which the minimum amount of data on operating parameters specified under paragraph (b) of this section have not been obtained. The minimum amount of data is specified in § 60.2725. Identify the operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates for which data on operating parameters specified under paragraph (b) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken. Three-hour rolling average values must be used to determine operating parameter exceedances, unless a different averaging period is established under § 60.2705(b).

(f) The results of the initial, annual, and any subsequent stack tests conducted to determine compliance with the emission limits and/or to establish operating parameters, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 60.2660(a) as required by § 60.2660(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 60.2635, including documentation of training and the dates of the training.

(i) Records showing the names of the CISWI operators who have met the criteria for qualification under § 60.2645 and the dates of their qualification, and all subsequent renewals of such qualifications.

(j) Records of calibration of any monitoring devices as required under § 60.2720.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

§ 60.2735 Where must I keep my records?

All records must be maintained onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2737 When must I submit my waste management plan?

You must submit the waste management plan no later than the date specified in table 1 for submittal of the final control plan.

§ 60.2740 What information must I submit following my initial stack test?

You must submit the information specified in paragraphs (a) and (b) of this section no later than 60 days following the initial stack test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial stack test results obtained under § 60.2700, as applicable.

(b) The values for the site-specific operating parameters established in § 60.2705.

§ 60.2745 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2740. You must submit subsequent reports no more than 12 months following the previous report. (Once the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports semiannually.)

§ 60.2750 What information must I include in my annual report?

The annual report required under § 60.2745 must include the information specified in paragraphs (a) through (f) of this section. All reports must be signed by the facility manager.

(a) The values for the site-specific operating parameters established pursuant to § 60.2705.

(b) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported.

(c) Information recorded under § 60.2730 (c) through (e) for the calendar year being reported. If no exceedances or malfunctions were reported, a statement that no exceedances occurred during the reporting period.

(d) If a stack test was conducted during the reporting period, the results of that test.

(e) Any use of the bypass stack, the duration, reason for bypass, and corrective action taken.

(f) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours.

§ 60.2755 What else must I report if I am out-of-compliance with these standards?

You must submit a report if any recorded 3-hour average parameter level is above the maximum value or below the minimum value established under this subpart, or if a stack test was conducted that exceeded the emission limit.

§ 60.2760 If an out-of-compliance report is required, when must I submit it?

If you are required to submit a report under § 60.2195:

(a) For data collected during the first half of a calendar year (January 1 to June 30), submit your report by August 1 of that year.

(b) For data you collected during the second half of the calendar year (July 1 to December 31), submit the report by February 1 of the following year.

§ 60.2765 What must I include in the out-of-compliance reports?

In each report required under § 60.2755, for any pollutant or parameter that exceeded the limits specified in this subpart, include the following information:

(a) The calendar date your unit exceeded the limits.

(b) The averaged and recorded data for that date.

(c) The reasons for exceeding the limits and your corrective actions.

(d) A copy of the operating parameter monitoring data and any test report that documents the emission levels.

§ 60.2770 Are there any other notifications or reports that I must submit?

(a) You must submit notifications as provided by § 60.7.

(b) If all qualified operators are unavailable for more than 2 weeks, you must submit a notification within 10 days. In addition, you must submit a status report and corrective action summary to the Administrator every 4 weeks.

(c) You must submit notifications of increments of progress, as described in §§ 60.2585 through 60.2605.

§ 60.2775 In what form can I submit my reports?

Submit initial, annual and semiannual electronic or paper reports, postmarked on or before the submittal dates.

§ 60.2780 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Model Rule—Air Curtain Incinerators That Burn 100 Percent Wood Wastes and Clean Lumber

§ 60.2785 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

§ 60.2790 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of State plan approval, you must meet two increments of progress:

(a) Submit a final control plan.

(b) Achieve final compliance.

§ 60.2795 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress.

§ 60.2800 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress (see § 60.2815).

(c) Signature of the owner or operator of the incinerator.

§ 60.2805 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.2810 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in table 1 of this subpart. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.2815 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy two requirements:

(a) Submit the final control plan, including a description of any devices for air pollution control and any process changes that you will use to comply with the emission limits and other requirements of this subpart.

(b) Maintain an onsite copy of the final control plan.

§ 60.2820 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.2825 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.2790.

(b) If you close your incinerator but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limits on the date your incinerator restarts operation.

§ 60.2830 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to close your incinerator rather than comply with the State plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

§ 60.2835 What are the emission limits for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) After the date the initial stack test is required or completed (whichever is earlier), you must meet the following limits.

(1) The opacity limit is 10 percent (6-minute average).

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 60.2840 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Use Method 9 of Appendix A of this part to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than 180 days after your final compliance date.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2845 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes:

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

Definitions

§ 60.2850 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency, if delegated by EPA.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Biomass fuel means untreated wood and wood products (*e.g.*, trees, tree stumps, tree limbs, bark, lumber, sawdust, sanderdust, chips, scraps, slabs, millings, and shavings); vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds; and alcohol fuels derived from these materials. Biomass does not include: painted, pigment-stained, or pressure-treated materials (*e.g.*, telephone poles and railroad ties); sewage sludge, paper mill sludge, fermentation tank bottoms, or other sludges; or construction, renovation, and demolition wastes. Pressure treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Clean wood means untreated wood or untreated wood products including clean lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) Yard waste, which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, Standard Specification for Classification of Coals by Rank (see § 60.17), coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.

Commercial and industrial solid waste incineration (CISWI) unit means an enclosed device using controlled flame combustion that burns solid waste or an air curtain incinerator that burns solid waste, and that is a distinct operating unit of any commercial or industrial facility. This definition includes field-erected, modular, and custom built incineration units (starved- or excess-air), and air curtain incinerators. The boundaries of a CISWI unit are defined as follows. The CISWI unit includes, but is not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Dioxins/furans means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than 6 months after promulgation of this subpart and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which

section 129 or section 111 of the Clean Air Act has established standards.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane.

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials in ASTM D1835–82, Standard Specification for Liquid Petroleum Gases (see § 60.17).

Oil means crude oil or petroleum or a liquid or gaseous fuel derived from crude oil or petroleum, including distillate oil (Nos. 1–4) and residual oil (Nos. 5 and 6).

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of Appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins 6 months or more after promulgation of this subpart.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means, for the purpose of this subpart only, any solid, liquid, semisolid, or contained gaseous material, which is combusted, including but not limited to materials listed in paragraph (1) of this definition. Solid waste excludes fuels defined in paragraph (2) of this definition and materials specifically listed in paragraph (3) of this definition.

(1) The following materials are solid wastes, regardless of the provisions in paragraph (2) of this definition:

(i) Any material that is combusted without energy recovery (*i.e.,* where the material displaces other fuels to produce useful heat), except as provided in paragraph (3) of this definition.

(ii) Municipal solid waste, as defined in 40 CFR part 60, subpart Ea, subpart Eb, subpart AAAA and subpart BBBB.

(iii) Hospital waste, as defined in 40 CFR part 60, subpart Ec.

(iv) Medical/infectious waste, as defined in 40 CFR part 60, subpart Ec.

(v) Resource Conservation and Recovery Act hazardous wastes, as defined in 40 CFR part 261.

(2) The following materials are fuels when combusted in a device that incorporates energy recovery as part of its integral design (*e.g.,* for the production of hot water or steam). The combustion chamber and the energy recovery system must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the energy recovery system are joined only by ducts or connections carrying flue gas is not integrally designed.

(i) Biomass fuel, coal, natural gas, and oil, as defined elsewhere in this section.

(ii) Materials that have a heat content of 5,000 Btu/lb or more as fired. This criterion applies to each individual feed stream into the furnace.

(3) The following materials are not solid waste when combusted for the primary purpose of recovering chemical constituents: Pulping liquors (*i.e.,* black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process; spent sulfuric acid used to produce virgin sulfuric acid; and wood and coal feedstock for the production of charcoal.

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Total mass dioxins/furans or *total mass* means the total mass of tetra—through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using Method 23.

Wet scrubber means an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. It comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(1) Construction, renovation, and demolition wastes.

(2) Clean wood, which is defined elsewhere in this section.

TABLE 1 OF SUBPART DDDD.—MODEL RULE—INCREMENTS OF PROGRESS AND COMPLIANCE SCHEDULES

Comply with these increments of progress	By these dates [a]
Increment 1—Submit final control plan	(Dates to be specified in State plan).
Increment 2—Final compliance	(Dates to be specified in State plan) [b]

[a] Site-specific schedules can be used at the discretion of the State.

[b] The date can be no later than 3 years after the effective date of State plan approval or 5 years after promulgation of this subpart, whichever is sooner.

TABLE 2 OF SUBPART DDDD.—EMISSION LIMITS FOR NEW SOURCES

	You must meet these emission limits [a]	Using these averaging times	And determining compliance using these methods
Cadmium	0.03 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 29 of appendix A of this part).
Carbon monoxide	157 parts per million by dry volume.	Not applicable	Not required.

TABLE 2 OF SUBPART DDDD.—EMISSION LIMITS FOR NEW SOURCES—Continued

	You must meet these emission limits [a]	Using these averaging times	And determining compliance using these methods
Dioxins/furans (total mass basis) ...	0.37 nanograms per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 23 of appendix A of this part).
Hydrogen chloride	62 parts per million by dry volume	3-run average (run duration specified in test method).	Stack test (Method 26 of appendix A of this part).
Lead	2.1 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 29 of appendix A of this part).
Mercury	0.005 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 29 of appendix A of this part).
Opacity	10 percent	6-minute averages	Stack test (Method 9 of appendix A of this part).
Oxides of Nitrogen	388 parts per million by dry volume.	Not applicable	Not required.
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (run duration specified in test method).	Stack test (Method 5 or 29 of appendix A of this part).
Sulfur dioxide	20 parts per million by dry volume	3-run average (run duration specified in test method).	Stack test (Method 6 of appendix A of this part).

[a] All emission limits are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 3 OF SUBPART DDDD.—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM RECORDING FREQUENCIES FOR WET SCRUBBERS

You must monitor these operating parameters	Using these minimum frequencies		
	Data measurement	Data recording	Averaging time
Maximum operating parameters: Maximum charge rate.	Continuous	Every hour	3-hour rolling.
Minimum operating parameters:			
Minimum pressure drop across the wet scrubber, or minimum horsepower or amperage to wet scrubber.	Continuous	Every minute	3-hour rolling
Minimum scrubber liquor flow rate ..	Continuous	Every minute	3-hour rolling
Minimum scrubber liquor pH	Continuous	Every minute	3-hour rolling.

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Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 570 and 579

Child Labor Regulations, Orders and Statements of Interpretation Child Labor Violations—Civil Money Penalties; Proposed Rules

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 570 and 579

RIN 1215–AA09

Child Labor Regulations, Orders and Statements of Interpretation Child Labor Violations—Civil Money Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Department of Labor (Department or DOL) is proposing to revise the child labor regulations in order to implement two amendments of the Fair Labor Standards Act's child labor standards—the Compactors and Balers Safety Standards Modernization Act, Public Law 104–174 (August 6, 1996) (The Compactor and Baler Act); and the Drive for Teen Employment Act, Public Law 105–334 (October 31, 1998). The Compactor and Baler Act sets conditions which permit 16- and 17-year-old workers to load, but not operate or unload, certain scrap paper balers and paper box compactors. The Act also specifies that civil money penalties may be assessed for violations of these conditions. The Drive for Teen Employment Act prohibits minors under 17 years of age from driving automobiles and trucks on public roadways on the job, and establishes the conditions and criteria under which 17-year-olds may drive automobiles and trucks on public roadways on the job.

The Department is also proposing to revise regulation concerning government-issued Certificates of Age. Presently, the regulation requires that the employer return the certificate to the issuing agency, except that a certificate issued for employment in agriculture may be given to the named minor and a certificate issued to an 18- or 19-year-old shall be given to the named worker. The Department proposes to modify the regulation so as to allow all workers to retrieve the certificates from their employers when their employment ends.

Further, the Department is proposing revisions regarding the types of cooking that 14- and 15-year-olds may perform. The Department proposes to update the regulation and modify a long-standing DOL interpretation of this child labor standard.

Finally, the Department is proposing revisions to certain provisions which prescribe certain hazardous employment for 16- and 17-year-olds. Currently, the regulation prohibits these minors from working in roofing operations. The Department is proposing to revise the regulation to prohibit all work on roofs. In addition, the Department is proposing to revise the regulation to update the definition of the terms explosives and articles containing explosive components in the prohibition on employment of minors in establishments which manufacture or store explosives.

DATES: Comments are due on or before January 31, 2000.

ADDRESSES: Submit written comments to John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Attention: Child Labor and Special Employment Team, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit comments by certified mail, return receipt requested. As a convenience, commenters may transmit comments by facsimile (''FAX'') machine to (202) 693–1432. This is not a toll free number. If comments are transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0072. This is not a toll free number. Copies of this proposed rulemaking may be obtained in alternative formats by calling (202) 693–0072 or (202) 693–1461 (TTY). The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Title: Form WH–14, Application for Federal Certificate of Age.

Summary: Section 3(l) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(l), provides, in part, that an employer may protect against unwitting employment of ''oppressive child labor'' (as defined in section 3(l)) by having on file a certificate issued pursuant to DOL regulations, certifying that the named person meets the FLSA minimum age requirements for employment.

Section 11(c) of the FLSA, 29 U.S.C. 211(c), requires that all employers covered by the Act make, keep and preserve records of wages, hours and other conditions and practices of employment with respect to their employees. The employer is to maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor.

Regulations, at 29 CFR Part 570, subpart B, set forth the requirements for obtaining certificates of age from the Department. The regulations provide that State-issued age, employment or working certificates, which substantially meet the Federal regulatory requirements for certificates of age, are an acceptable alternative to obtaining a Federal certificate of age. The regulations contain a list of States that may issue such acceptable certificates. Since age certificates are issued by most States, these are widely used as proof of age for FLSA child labor purposes.

Federal certificates of age are issued by the Department upon request by the youth and the prospective employer. Form WH–14 is the DOL application form. As a practical matter, it is used in those States where no State certificates are issued or State certificates do not meet the Federal regulatory requirements. The Wage and Hour Division reviews each WH–14 application and the accompanying proof of age, which is identified in the regulation as sufficient to establish the young applicant's age and thus to achieve the intended purpose of the statutory provision (*i.e.*, to assure that the employer is protected against unwitting violations of the child labor restrictions). As appropriate, a Federal certificate of age is issued and forwarded to the employer (if the youth is under 18 years of age) or to the youth (if he/she is 18 or 19 years of age). The supporting evidence of age is returned to the applicant(s). The 18- or 19-year-old presents the certificate to his/her employer upon entering employment.

The employer is required to keep the certificate on file for the duration of the youth's employment, in order to achieve the intended purpose of the FLSA provision (*i.e.*, to protect the employer in situations where compliance with the child labor standards is questioned). The estimated average employment period is 6 months. When a youth under 18 years of age leaves employment, the employer is directed by the current regulation to return the certificate to the office that issued it, except that a

certificate for employment in agriculture may be given to the youth; any subsequent certificate of age requested for that youth may be issued without additional proof of age. A certificate of age issued for a youth 18 or 19 years of age is to be given by the employer to the youth upon his/her leaving employment.

Need: In August 1998, the Office of Management and Budget (OMB), in its review and approval of the Form WH–14 under the Paperwork Reduction Act, approved this information collection (OMB No. 1215–0083). OMB's approval was contingent upon DOL's agreement to eliminate the requirement for an employer to return the certificate to the issuing official in certain circumstances. The Department is proposing, as agreed with OMB, to revise the regulation at § 570.6(b)(1), to direct employers to give to each employee, upon termination of employment, any Federal age certificate issued in his/her name. This would occur regardless of the age of the employee and regardless of the type of employment (*i.e.*, agriculture or nonagriculture). This proposed regulatory revision will enable young workers to provide future employer(s) with a properly issued age certificate without having to make another application to a government official. The Department is also proposing to revise the statement at the end of § 570.6(b)(2) to reflect the new OMB control number.

Respondents and proposed frequency of response: It is estimated that 45 such WH–14 applications will be submitted annually.

Estimated total annual burden: It is estimated that each such application will take approximately ten minutes to complete for a total annual burden of seven and one-half hours (45 reports×10 minutes).

Employees and employers of any of a wide variety of businesses, from small farms or retail stores to large manufacturing plants, may request Federal certificates of age. Absent specific wage data regarding applicants, respondent costs are estimated utilizing the average hourly rate of nonsupervisory workers on nonfarm payrolls of $12.26 for 1997 (Monthly Labor Review, U.S. Department of Labor, Bureau of Labor Statistics, June 1998). Total annual respondent hour costs are estimated at $91.95 ($12.26×7.5 hours).

Total estimated annual postage and envelope costs for transmitting these applications are $16.20 (45 reports×$.33 postage+$.03 per envelope).

Total annual respondent costs for form WH–14, application for federal certificate of age—$108.15 ($91.95+$16.20).

Request for comments: The public is invited to provide comments on this information collection requirement so that the Department may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, DC 20503.

II. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. These FLSA provisions permit 16- and 17-year-olds to work in the nonagricultural sector, without hours or time limitations, except in certain occupations found and declared by the Secretary to be particularly hazardous, or detrimental to the health or well-being of persons under age 18.

The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of part 570 (29 CFR 570.31–.38). Reg. 3 limits the hours and times of day that such minors may work, and identifies occupations that are either permitted or prohibited for such minors. Under Reg. 3, 14- and 15-year-olds may work in certain occupations in retail, food service, and gasoline service establishments, but are not to work in certain other occupations (including all occupations found by the Secretary to be particularly hazardous for 16- and 17-year-olds). Reg. 3, originally promulgated in 1939, was revised to reflect the 1961 amendments to the FLSA which extended the Act's coverage to include enterprises engaged in commerce or the production of goods for commerce. These amendments opened up new areas of employment for young workers in retail, food service, and gasoline service establishments.

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50–.68). These Hazardous Occupations Orders (HOs) apply either on an industry basis, specifying the occupations in the industry that are prohibited, or on an occupational basis, irrespective of the industry in which performed. The seventeen HOs were adopted individually during the period of 1939 through 1963.

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses where young workers may find employment opportunities, the existence of differing Federal and State standards, and divergent views on how best to correlate school and work experiences, the Department has long been reviewing the criteria for permissible child labor employment. In this review, the Department published a Proposed Rule in 1982, a Final Rule in 1991, both an Advance Notice of Proposed Rulemaking and a Proposed Rule in 1994, and a Final Rule in 1995.

On July 16, 1982, a Proposed Rule was published in the **Federal Register** (47 FR 31254) which proposed to revise several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations those minors would be permitted to perform. The Proposed Rule generated considerable public interest and controversy, most having to do with the expansion of the hours and times of work for this age group. The Department subsequently suspended the proposal from further consideration and no final rule was implemented (50 FR 17434, April 29, 1985; DOL's Semiannual Regulatory Agenda).

The Department continued to receive communications from the public suggesting that certain changes should be made to the child labor regulations on a number of issues. In 1987, the Department established a Child Labor Advisory Committee (CLAC) composed

of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, State officials and safety groups. The mission of the CLAC was to give advice and guidance in developing possible proposals to change existing standards. After reviewing a number of issues, the CLAC proposed making certain changes to the child labor regulations. In December 1991, the Department promulgated a Final Rule which revised three HOs (56 FR 58626).

The Department continued to review the child labor regulations and, in an effort to accumulate data concerning all aspects of the provisions, published both a Notice of Proposed Rulemaking (NPRM) (59 FR 25164) and an Advance Notice of Proposed Rulemaking (ANPRM) (59 FR 25167) on May 13, 1994.

The NPRM proposed to exempt 14- and 15-year-olds from Reg. 3 hours standards when employed under certain restrictions as sports attendants for professional sports teams, to standardize the Reg. 3 process for issuing occupational variances for Work Experience and Career Exploration Program (WECEP) participants, to remove an outdated exemption for enrollees in certain work training programs, and to revise the process by which HOs are promulgated. A Final Rule on these issues was published April 17, 1995 (60 FR 19336).

The 1994 ANPRM requested public comment on several specific topics as well as all aspects of the child labor provisions. Several individuals and organizations submitted comments. The National Institute for Occupational Safety and Health (NIOSH) provided the Department with epidemiological data on a number of issues related to both Reg. 3 and the HOs. NIOSH also provided the Department with statistics regarding occupational injuries and made several recommendations. A number of child guidance professionals, educators, unions and child labor advocates also commented and made various recommendations. Among these were the Child Labor Coalition (CLC); the National Consumers League (NCL); the Defense for Children International USA (DCI); the National PTA (PTA); the United Food & Commercial Workers International Union, AFL–CIO (UFCW); the Food & Allied Service Trades Department, AFL–CIO (FAST); Letitia K. Davis, Sc.D, Ed.M, of the Massachusetts State Department of Health, Occupational Health Surveillance Program; the American Academy of Pediatrics (AAP); Professor Laurence Steinberg of Temple University; and Susan H. Pollack, M.D., Assistant Professor, Department of Pediatrics and Preventive Medicine, University of Kentucky. Comments to the ANPRM are discussed below in the pertinent sections of this preamble.

Twice in the last three years, Congress has amended the child labor provisions of the FLSA. The Compactors and Balers Safety Standards Modernization Act, Public Law 104–174 (Compactor and Baler Act), was signed by the President on August 6, 1996. This legislation adds a section 13(c)(5) to the FLSA, permitting minors 16 and 17 years of age to load, but not operate or unload, certain scrap paper balers and paper box compactors if certain requirements are met. The Drive for Teen Employment Act, Public Law 105–334, was signed by the President on October 31, 1998. This legislation adds a section 13(c)(6) to the FLSA, prohibiting minors under 17 years of age from driving automobiles and trucks on public roadways on the job and establishing the conditions and criteria for 17-year-olds to drive automobiles and trucks on public roadways on the job.

In the present Notice of Proposed Rulemaking, the Department proposes revisions of regulations to implement the recent legislation and to update certain regulatory standards. The Compactor and Baler Act affects the HO 12 standards (Occupations involved in the operation of paper-products machines) (29 CFR 570.63) and certain other related regulations; amendments of those regulations are proposed. The Drive for Teen Employment Act affects the HO 2 standards (Occupations of motor-vehicle driver and outside helper) (29 CFR 570.52); an amendment of that regulation is proposed. As a result of its ongoing review of the child labor provisions, the Department is also proposing changes to HO 1 (Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components) (29 CFR 570.51), HO 16 (Occupations in roofing operations) (29 CFR 570.67), the Reg. 3 limitations on cooking (29 CFR 570.34), and 29 CFR 570.6(b)(1) which deals with the disposition of a Certificate of Age when the named individual's employment ends. The proposals are discussed below.

III. Proposed Regulatory Revisions

A. Certificates of Age (29 CFR 570.5–.27)

Section 3(l) of the FLSA provides an affirmative defense against the citation of child labor violations for employers who ''have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such [employee] is above the oppressive child labor age'' (29 U.S.C. 203(l)). The use of such certificates is not mandatory under the FLSA. As described above (Item I), the Department's regulations, at 29 CFR 570.5–.27, set out the procedures for application, issuance, retention and disposition of certificates of age. The regulations authorize the issuance of certificates by most of the States as well as by the Wage and Hour Division. Most certificates are, in fact, requested from and issued by the States.

Section 570.6(b) currently directs the employer to return the certificate to the issuing authority when the named worker's employment terminates, except that a certificate issued for employment in agriculture may be given to the worker and a certificate issued to an 18- or 19-year-old shall be given to the worker. The Department proposes to revise § 570.6(b) to specify that the worker's certificate issued by DOL be given to him/her when employment ends, regardless of the worker's age or type of employment. The youth may then provide the certificate to any future employer(s). This regulatory amendment, suggested by the Office of Management and Budget, would preclude unneeded repetition of the certification process and reduce paperwork burdens on employers.

B. Reg. 3 Occupations: Cooking (29 CFR 570.34)

Reg. 3 established restrictions on the type of cooking and cooking-related work which 14- and 15-year-olds may perform as employees of retail, food service, and gasoline service establishments. At § 570.34(b)(5), the regulation prohibits these minors from ''cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking.'' Under § 570.34(a)(7), however, 14- and 15-year-olds are permitted to perform ''kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to, dish-washers, toasters, dumbwaiters, popcorn poppers, milkshake blenders, and coffee grinders.''

These regulatory standards were added to Reg. 3 after the 1961 FLSA amendments which extended the child labor provisions to certain enterprises engaged in commerce or in the production of goods for commerce. New areas of employment in retail, food service, and gasoline service establishments were opened to minors.

The regulations were the Department's response to the challenge of identifying those food preparation activities which 14- and 15-year-olds could safely perform without interfering with their schooling, health or well-being.

In establishing these standards, the Department recognized that some forms of cooking were not appropriate for persons under 16 years of age. Lifting large containers of hot materials, working over a hot stove for long periods of time, cooking over an open flame, and operating pressure cookers were all considered too dangerous for young workers. On the other hand, preparing an occasional hamburger or grilled cheese sandwich or performing simple cooking functions like those which minors might do in their own homes did not seem to place young workers at risk. The Department determined that the type of cooking performed at a snack bar or soda fountain, where the worker would not only take the customer's order but also prepare and serve the light fare, did not pose serious risks to the minor's health or well-being. The work was not strenuous, did not require continuous cooking at a grille or stove, and did not require the minor to use complicated or dangerous equipment.

The Department's promulgation and interpretation of the Reg. 3 standards were based, to some extent, upon a factor common to snack bars and soda fountains—namely, that the cooking performed in such food service operations was performed ''in plain view'' of the customer. This factor, in and of itself, did not make the activity safer, but it did tend to limit the scope of the cooking to activities that were relatively free of risk. By limiting cooking work to soda fountains and snack bars, Reg. 3 barred the ''heavy duty'' and more strenuous types of cooking performed in full-service restaurants, while permitting other, less strenuous types of ''light'' cooking. Over a period of time in the l960's, the Department developed an ''in plain view'' interpretation of the regulation, making the Reg. 3 standard dependent upon whether the 14- and 15-year-olds are performing their cooking duties within the customers' sight. Under this interpretation, cooking performed ''in plain view'' would be permissible even if the minor was not working at a traditional soda fountain or snack bar, and cooking performed out of plain view (*i.e.*, in the kitchen or behind a partition) would not be permissible.

The snack bars and soda fountains upon which the Reg. 3 standards were established have been largely, if not entirely, replaced by different kinds of fast food establishments during the decades of the 1970's, 1980's and 1990's. In recognition of the changing nature of the retail food service industry, the Wage and Hour Division examined fast food restaurants in 1977 and conducted a survey of fast food establishments in 1979 to determine what, if any, changes were needed in the cooking prohibitions. Interested parties, including major fast food chains, organized labor, and child labor advocates, were consulted.

In 1982, the Department published a Proposed Rule (47 FR 31254) which would have revised several elements of Reg. 3, including the permissible hours and times of employment for 14- and 15-year-olds and the types of cooking operations they would be allowed to perform. Under the proposal, all cooking would have been permitted except: cooking with hot oils at temperatures over 140 °F; cooking over an open flame; and cooking involving the use of pressure cookers without proper safety valves. The ''in plain view'' interpretation would no longer have been applied. The Proposed Rule generated considerable public interest and controversy, most having to do with the expansion of the hours and times of employment standards. The Department subsequently suspended the proposal from further consideration and no final rule was implemented (50 FR 17434, April 29, 1985; DOL's Semiannual Regulatory Agenda).

The Department continues to receive communications from the public suggesting that certain changes should be made to the regulations concerning cooking. A general consensus seems to have developed that the ''in plain view'' interpretation no longer serves as an important safety standard as it did in the 1960's, because the activities involved are no longer limited to ''light'' cooking. Nor does the interpretation provide sufficient guidance to employers, parents, and working teens. The proscription of tasks mainly on the basis of place of performance complicates the regulation and leads to confusion. For example, in one fast food establishment, 14- and 15-year-olds may perform most cooking jobs because all cooking is performed in the plain view of the customers; but at another food service establishment, those minors would not be able to perform the identical functions because all cooking is done in a closed kitchen away from the customer's view. Complications may also exist within a single establishment when some cooking equipment is placed so customers may view the cooking operation and additional pieces of the same equipment are placed outside of the customer's line of sight.

The Department recognizes the need to review and update the Reg. 3 standards. New generations of cooking devices have been introduced since the cooking regulation was published in the 1960s, including microwaves, automatic cooking machines and systems, and computerized equipment and systems. Any proposed changes to the cooking prohibitions—to take into account all of these changes in the food service industry—must carefully consider the safety risks to young workers.

In an effort to accumulate data concerning all aspects of the child labor provisions, the Department in 1994 published an Advance Notice of Proposed Rulemaking (ANPRM) (59 FR 25167). The ANPRM requested public comment on many aspects of the child labor provisions, specifically including the Reg. 3 cooking standards. The Department received numerous comments on this matter.

The National Institute for Occupational Safety and Health (NIOSH) submitted epidemiological data supporting its recommendation of a general prohibition against 14- and 15-year-old minors cooking and working in close proximity of cooking appliances. NIOSH provided statistics regarding numbers and risks of burns. NIOSH cited as especially dangerous the contact burns associated with the cooking process, servicing the cooking equipment and working in the general area of cooking appliances. NIOSH also cited the hazard of slipping into or against equipment, particularly when floors near deep fryers and grilles become slippery from the oil. NIOSH cited the specific types of accidents that occur and noted that occupational burns to adolescents are frequently severe. NIOSH estimated that 5,200 adolescents sought emergency room treatment for work-related burns associated with cooking or working in a place where food was being prepared during the eighteen-month period of July 1992 through December 1993, and noted that the rate of burns in eating and drinking places—2.1 per 100 fulltime workers—was over 10 times greater than the rate for all other industries (0.2 per 100 fulltime workers). Citing that teenagers comprise nearly one-quarter of total employment in eating and drinking places, and stating that the ''in plain view'' policy provides no additional safety factors for teens, NIOSH recommended that cooking be prohibited regardless of where performed.

The Child Labor Coalition opposed 14- and 15-year-olds performing any

cooking, grilling, or frying, citing some of the same studies as NIOSH showing that burns are a leading cause of injuries among young workers. The Defense for Children International USA (DCI) stated that no cooking by 14- and 15-year-olds should be permitted in retail and food establishments, citing accident and injury data reporting that such work is dangerous. The DCI also endorsed the information provided by NIOSH as to the physical dangers of cooking.

The Food and Allied Service Trades Department, AFL–CIO (FAST) opposed any change that would relax or remove the restrictions against workers under the age of 18 cooking in retail and food establishments. The FAST based its comments on the incorrect premise that cooking is prohibited for those under 18 (*i.e.,* in fact, all cooking and baking are permitted for 16- and 17-year-olds unless included in the HO 10 and 11 prohibitions (food slicers and bakery machines)). The FAST cited the accident data regarding fast food workers, and noted that teenage cooks suffer more burns than adult cooks and that the most common sources of burns are cooking oils, grilles, and other cooking equipment.

An official of the Massachusetts Department of Health, Occupational Health Surveillance Program, recommended prohibiting cooking by all 14- and 15-year-olds irrespective of where the cooking takes place. The recommendation was based on a study of injury data from emergency departments in fourteen Massachusetts communities during 1979–1982. The estimated occupational injury rate for all employed teens was 16 per 100 fulltime equivalent employees. Burns accounted for 6 percent of occupational injuries to teens (but the study source data did not contain information about the industries in which injured teens were working). In an ongoing analysis of worker's compensation claims for teens in Massachusetts, the official reported that burns accounted for 6 percent of all occupational injuries to teens and that burns also accounted for 6 percent of cases of lost workdays of five or more days leading to Worker's Compensation claims. The official also reported that occupational burn injuries to teens are often severe, finding that 12 percent of occupational burns to teens covered multiple parts of the body.

The National Consumers League opposed 14- and 15-year-olds performing any cooking and cited several studies regarding the risks of cooking. The Washington State Child Labor Committee and the Washington State Department of Labor and Industries recommended that the Department use the Washington State law as a model for Federal regulations; those State child labor regulations contain a provision banning cooking and baking by workers under 16 years of age.

The Ohio State Department of Education opposed any changes to the cooking provisions and was the only commenter to recommend retaining the ''in plain view'' interpretation. The agency also recommended continuing the current policy of issuing variances to allow students in Work Experience and Career Exploration Programs (WECEP) to cook under certain conditions, as those students receive safety instruction and are closely supervised throughout their WECEP participation.

The National Restaurant Association (NRA) supported allowing 14- and 15-year-old minors to perform cooking, including immersing foods in grease or tending cooking foods. The NRA suggested prohibiting minors from handling hot grease (140 °F or higher) before or after cooking, working over an open flame which is not contained in such a way as to prevent the flame from igniting clothing, and cooking with containers under pressure which have no safety valve. The NRA cited the current regulations as ''a product of a bygone era'' and stated that cooking and baking should be permitted regardless of where they are performed. The NRA's proposal was similar to the Department's 1982 Proposed Rule.

The National Council of Chain Restaurants (NCCR) also supported allowing 14- and 15-year-old minors to cook and bake. It labeled the current regulations as outdated and stated that the ''in plain view'' interpretation does not lend itself to practical and consistent application in the restaurant industry. The NCCR commented that modern technology and equipment make cooking and baking safer than at any time in the past. Six other comments, those from a State restaurant association, a city government, and four restaurants or chains, urged that cooking be permitted under conditions which make it safer (such as under adult supervision or after safety training).

With respect to the types of cooking equipment that may be used and temperatures of such equipment, one restaurant recommended allowing the use of all cooking equipment but added that stricter reporting of occupational injuries would be necessary. The Child Labor Coalition (CLC) recommended a complete review of all machines and injury data, in particular those which can cause burns from hot water and steam. The CLC cited its research which showed that burns often occur in connection with work involving deep fat fryers, dishwashers, and cooking liquids.

The North Carolina State Department of Labor proposed that a hazardous occupations order be adopted which would ban all minors under age 18 from using deep fat or oil fryers not equipped with automated food lowering devices, cleaning or removing of grease or oil filters from any deep fat or oil fryer, and lifting, moving or carrying receptacles or containers of hot grease or oil.

In addition to the comments summarized above, the Department also received—in response to the 1994 ANPRM—several articles, studies, and papers that discuss dangers associated with cooking.

The Department has carefully considered all the comments and materials received, and has reviewed the Reg. 3 standards. The Department recognizes the delicate balance between the value of jobs that provide positive, formative experiences and the negative effects that the wrong type of jobs can have on the health and well-being of young workers. Just as in 1962, there are still some types of cooking that are not appropriate for minors under 16 years of age because of safety considerations. But as mentioned by several organizations that commented on the ANPRM, the Department believes that there are certain cooking duties minors can safely perform in modern food service establishments. The Department has preliminarily concluded that the current regulations should be revised so that 14- and 15-year-olds may perform a limited number of cooking activities—*i.e.,* only those that are safe and appropriate for their age group. The Department believes that this regulatory revision can be done without negatively impacting employment opportunities for young workers.

The Department is proposing to establish standards for cooking duties which the Department believes are safe and appropriate for these minors regardless of where the cooking is performed within the food service establishment. Thus, the current ''in plain view'' interpretation would be eliminated.

The proposal would permit 14- and 15-year-olds to: (1) Cook with electric or gas grilles which do not involve cooking over an open flame; (2) use deep fat fryers which are equipped with devices which automatically raise and lower the ''baskets,'' but not pressurized fryers; (3) clean, maintain (including the changing, cleaning, and disposing of oil or grease and oil or grease filters) and repair cooking devices (other than power-

driven equipment) when the surfaces of the equipment or liquids do not exceed a temperature of 140 °F.

The maximum temperature of 140 °F was originally proposed in 1982 because it had been established as the minimum temperature at which a first-degree burn can occur. Recent consultations between the Wage and Hour Division and the Occupational Safety and Health Administration (OSHA) have led the Department to believe that this maximum temperature will protect minors who clean, maintain and repair non-power-driven equipment and handle cooking oils and grease.

The proposal would prohibit 14- and 15-year-olds from cleaning equipment such as grilles, deep fat fryers, and steam tables; removing grease filters; and lifting, moving or carrying receptacles or containers of hot grease or oil when the minor would be exposed to or working with liquid or equipment surfaces which exceed a temperature of 140 °F. This ban on carrying hot oil would apply regardless of the type of oil.

The ban on all baking activities by those under 16 years of age would continue. These minors would still be prohibited from performing all jobs that are part of the baking process, such as weighing and mixing ingredients; operating ovens, including convection ovens, microwave ovens (except those used for warming food as described below), pizza ovens, and automatic feeding ovens; removing items from ovens to cooling trays; and finishing baked products. This ban on baking tasks exists because of the dangers to young workers in activities such as lifting heavy bags of ingredients, filling hot pans, moving hot pans and trays into and out of ovens, emptying hot pans and trays, having clothing or fingers entangled in conveyors or other mechanisms of ovens, and operating power-driven equipment. However, the Department is reviewing this position and is seeking evidence regarding whether certain activities would be safe for 14- and 15-year-olds to perform in the baking process in retail establishments, and if so, whether we should therefore consider modifying the ban on the baking process performed in retail establishments by 14- and 15-year-olds. Specifically, the Department seeks evidence and comments on whether such youths should be permitted to perform certain prescribed activities such as measuring and weighing ingredients and finishing baked goods, provided that operation of power-driven equipment is not performed. The weighing and measuring of ingredients could entail lifting and moving large containers of materials. NIOSH, in its October 24, 1994 comments on the 1994 ANPRM, recommended certain weight limits be adopted for jobs requiring lifting to reduce occupational musculoskeletal injuries (sprains and strains) to workers. Specifically, NIOSH recommended that the Department consider issuing a Hazardous Occupation Order imposing the following restrictions on manual handling jobs performed by minors under 18 years of age: ''(1) Frequent lifting/lowering rates (not to exceed 6 lifts per minute), maximum weight should not exceed 15 lbs per lift; (2) Infrequent lifting/lowering rates (not to exceed once per minute), maximum weight should not exceed 30 lbs per lift; (3) in all cases, maximum lifting work duration should not exceed two continuous hours of work.'' The Department therefore seeks evidence and comments as to whether, if the Department does amend the rules to allow certain backing activities to be performed, there should be a weight limit, such as 10 pounds, for jobs requiring lifting by 14- and 15-year-olds.

Additionally, the proposal would continue the current ban against minors under 16 using such equipment as rotisseries, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as ''Neico broilers.''

This proposal would incorporate the Department's long-standing policy of permitting 14- and 15-year-olds to operate microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 °F, and to use, dispense, and serve food from warmers, steam tables, and other warming devices (even if the temperatures exceed 140 °F). The proposal would also preserve the current Reg. 3 standard allowing 14- and 15-year-olds to perform kitchen work and other work to prepare and serve food and beverages.

Finally, the proposal would preserve the current Reg. 3 process whereby State agencies operating approved Work Experience and Career Exploration Programs (WECEP) (in which students are closely supervised and receive safety instruction) may seek variances from the Department to authorize students to cook and to perform certain jobs that would otherwise be banned.

C. Explosives and Articles Containing Explosive Materials (HO 1) (29 CFR 570.51)

Hazardous Occupations Order No. 1, originally issued in 1939, greatly restricts the employment of minors in any establishment which manufactures or stores explosives or articles containing explosive components (*e.g.,* plants that manufacture dynamite, fireworks, or gunpowder). HO 1 also prohibits minors from handling and transporting primers and blasting caps.

The regulation's definition of the crucial terms ''explosives and articles containing explosive components'' has become, in part, obsolete. The definition states that these terms ''mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers * * * issued pursuant to the (Interstate Commerce Act) * * *''. Congress abolished the Interstate Commerce Commission in 1995. The HO 1 incorporation of ICC regulatory standards is, therefore, no longer feasible and the Department proposes to revise the definition to eliminate this ICC reference.

The Department considers it to be essential that the HO 1 definition of ''explosives and explosive components'' be as complete, clear, and user-friendly as possible, so as to best serve the FLSA's purpose of protecting young workers from hazards. Therefore, while preparing to delete the incorporation of ICC standards, DOL has sought an alternate source of expertise in the identification of explosives and explosive components. After careful consideration, the Department is of the view that the appropriate source of expertise is the Bureau of the Alcohol, Tobacco and Firearms, Department of the Treasury (ATF). Under statutory and regulatory mandates (18 U.S.C. 841(d); 27 CFR 55.23), the Director of ATF must revise and publish at least annually in the **Federal Register** a list of explosives covered by the U.S. Code Title 18 provisions concerning importation, manufacture, distribution and storage of explosive materials. The ATF list, which covers explosives, blasting agents and detonators, is intended to include any and all mixtures containing any of the materials on the list. The most recent list was published in the **Federal Register** on May 1, 1998 (63 FR 24207). The Department proposes to revise the HO 1 definition of ''explosives and articles containing explosive components'' to include the materials identified in the 1998 ATF list, which will appear in an appendix to the HO 1 subsection. By comparing this alphabetical list to the product information for materials that are used or stored at the work site (*e.g,* the list

of contents found on the product package), employers and other parties can readily determine whether any product or material is an explosive or contains explosive components, so as to be within the HO 1 prohibition.

D. Driving on Public Roads or Highways (HO 2) (29 CFR 570.52).

Hazardous Occupations Order No. 2, originally issued in 1940, generally prohibits minors under 18 years of age from employment in the occupations of motor-vehicle driver and outside helper on any public road or highway; in or about any mine, logging or sawmilling operations; or in any excavation covered by HO 17 (which includes excavation in trenches, building construction, or tunnels; 29 CFR 570.68). The occupational dangers specifically identified by the original HO 2 included the high degree of accident risk for persons of any age in these occupations, the fact that 16- and 17-year-old drivers experience a proportionately larger number of fatal accidents than older drivers, and the restrictions that numerous States placed on employees who perform as drivers and driver helpers.

HO 2 contains two limited exemptions to the prohibition on minors driving on public roads and highways: ''Incidental and occasional'' driving under certain restrictions; and, school bus drivers for a limited period under certain restrictions. These two exemptions are addressed in this proposed rule, and are discussed separately below.

1. ''Incidental and Occasional Driving'' (§ 570.52(b)(1))

HO 2 provides a limited exemption (§ 570.52(b)(1)) permitting 16- and 17-year-olds to drive automobiles and trucks on public roads and highways on an ''incidental and occasional'' basis when all the following criteria are met:

- The automobile or truck being driven does not exceed 6,000 pounds gross vehicle weight;
- The driving is restricted to daylight hours;
- The minor holds a State driver's license valid for the type of driving involved in the job performed and has completed a State-approved driver education course; and
- The vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used.
- The limited exemption is not applicable to any occupation of motor-vehicle driver that involves towing a vehicle.

The term ''incidental and occasional''—while not defined in the regulations—was for many years interpreted by the Department to mean only driving that involves emergency-type situations or that happens at rare intervals. Thus, the Department enforced the exemption as not including driving which, even if only infrequent or sporadic, is an integral part of the job. The Department's interpretation excluded from the exemption any situations where a minor's employment requires routine and regular driving, such as to deliver auto parts, make pizza deliveries, or run errands.

The Department reviewed HO 2 in 1984 and concluded, based upon data involving vehicle-related injuries and fatalities, that HO 2 should be retained in its current form. The Department found that 16-year-olds were involved in a disproportionate share of accidents and tended to be responsible for fatal accidents more often than other drivers. Seventeen-year-old drivers were the next most likely to be involved in such accidents. Teenagers accounted for 8 percent of the population at the time but sustained 17 percent of fatal injuries in automobile accidents.

In 1987, concerned that some of the child labor regulations needed updating, the Department created the Child Labor Advisory Committee (CLAC), a committee whose mandate was to consider, among other things, the appropriate scope of ''incidental and occasional'' driving in the HO 2 exemption. In 1989, after careful consideration of HO 2, the CLAC recommended clarification of the term ''incidental and occasional'' driving. The committee's recommendation, discussed below, was later adopted with modifications and issued by the Department as interpretative guidance.

In 1994, in its continuing effort to review its child labor regulations, the Department published an Advance Notice of Proposed Rulemaking (59 FR 25167) seeking the views of the public on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 2 was not specifically mentioned in the ANPRM, the Department received comments from various groups with differing views of HO 2. For example, the National Automobile Dealers Association (NADA), individual automobile dealerships, and florists requested more flexibility in the Department's interpretation of ''incidental and occasional'' driving and urged a change to HO 2 to permit minors to spend more time driving on the job. Child advocacy groups, on the other hand, sought to further limit or abolish completely job-related teenage driving. The Child Labor Coalition, for example, supported a definition of ''incidental and occasional'' which permitted emergency-situation driving only. The Washington State Child Labor Advisory Committee recommended a complete ban on teenagers driving on-the-job.

As a result of comments received in response to the ANPRM, the Department decided to review HO 2. In 1995, in order to clarify the appropriate scope of ''incidental and occasional'' driving until further rulemaking could be completed, the Wage and Hour Division adapted the Child Labor Advisory Committee's 1989 recommended interpretation. Under this Departmental interpretation of the regulatory language, driving was deemed ''incidental'' if it was limited to no more than 20% of the minor's work in any workday and did not exceed 5% of the minor's work time in any workweek when performed. Driving was deemed ''occasional'' if the minor drove on average no more than once in a workweek and no more than four times in a calendar month. A ''single episode'' of driving meant an occurrence when the employee was working and operated a motor vehicle on behalf of the employer. Although the Child Labor Advisory Committee also recommended that the HO 2 exception should be permitted only for 17-year-olds, the Department did not address this point because it was considered too substantive to be adopted without rulemaking.

The Drive for Teen Employment Act (Pub. L. 105–334) was signed by the President on October 31, 1998. The Act amended the FLSA by adding a new subsection 13(c)(6). This provision prohibits employees under 17 years of age from performing any on-the-job driving of automobiles and trucks on public roadways. It permits 17-year-old minors to drive automobiles and trucks on public roadways only if such driving meets all of the following conditions:

''(A) such driving is restricted to daylight hours;

''(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

''(C) the employee has successfully completed a State approved driver education course;

''(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee

that the seat belts must be used when driving the automobile or truck;

''(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

''(F) such driving does not include—

''(i) the towing of vehicles;

''(ii) route deliveries or route sales;

''(iii) the transportation for hire of property, goods, or passengers;

''(iv) urgent, time-sensitive deliveries;

''(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer or to a customer (other than urgent, time-sensitive deliveries);

''(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

''(vii) transporting more than three passengers (including employees of the employer); or

''(viii) driving beyond a 30 mile radius from the employee's place of employment; and

''(G) such driving is only occasional and incidental to the employee's employment.

''For purposes of subparagraph (G), the term 'occasional and incidental' is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.''

While the Drive for Teen Employment Act affects the current HO 2 exemption for ''occasional and incidental'' driving, the Act does not affect any other parts of HO 2. The HO applies to driving on public roadways and has no effect on driving of motor vehicles by 16- and 17-year-old employees when performed exclusively on private property (except in or about any mine, logging or sawmilling operations, or any excavation covered by HO 17). The HO 2 prohibition regarding the employment of 16- and 17-year-olds to drive motor vehicles other than cars and truck—such as truck-tractors, trailers, semitrailers, and motorcycles—on public roads remains the same. The HO 2 prohibition concerning the employment of 16- and 17-year-olds as ''outside helpers'' on motor vehicles is unchanged. The Act also leaves unchanged the applicability of HO 2 regardless of the registration or ownership of the vehicle being driven by the minor. Further, the Act has no effect on the relationship between the FLSA, HO 2, and State laws. Many States have laws setting standards for child labor and teen drivers. When both Federal and State laws apply, the law setting the more stringent standard must be observed.

The Department proposes to revise HO 2 to incorporate the provisions of the Drive for Teen Employment Act and to provide guidance regarding what constitutes ''urgent, time-sensitive deliveries.'' The Department is of the view that such deliveries—prohibited by the Act—would include trips which, because of such factors as customer satisfaction, the rapid deterioration of the quality or change in temperature of the product, and/or economic incentives, are subject to time-lines, schedules, and/or turn-around times which might impel the driver to hurry in the completion of the delivery. Such trips would include, but are not limited to, the delivery of pizzas and prepared foods to the customer; the delivery of materials under a deadline (such as deposits to a bank at closing); and the shuttling of passengers to and from transportation depots to meet transport schedules. ''Urgent, time-sensitive deliveries'' would not depend on the delivery's points of origin and termination, and would include the delivery of people and things to the employer's place of business as well as from that business to some other location.

The Department notes that the employer bears the burden of proving compliance with several conditions contained in the Drive for Teen Employment Act that must be met before a 17-year-old employee may drive automobiles and trucks on public roadways in his/her job performance. These conditions include—the employee must have a State license valid for the type of driving being performed; the employee must have successfully completed a State approved driver education course; and the employee must have no records of any moving violations at the time of hire. The Department does not propose to require that employers create or maintain any records with regard to compliance with the Drive for Teen Employment Act.

In order to better protect themselves against unwitting violations of HO 2, employers may wish to obtain, at the time of hire, sufficient documentation from 17-year-old employees who will be expected to drive on-the-job. This documentation could include such things as an age certificate issued in accordance with the child labor regulations (29 CFR 570.5–.27), photocopies of the minor's driver license and his/her certificate of completion or diploma issued by the State approved driver education course, and correspondence from State or local authorities and/or the minor's insurance company verifying that the minor has no records of moving violations. The Department also notes that the Drive for Teen Employment Act limits the type and extent of driving a 17-year-old may perform on-the-job. In order to better protect themselves against unwitting violations of these HO 2 restrictions, employers may wish to maintain logs to keep track of on-the-job driving performed by 17-year-old employees. These logs could identify the driver and show such things as the starting and stopping times of each trip, the destination of each trip, the purpose of each trip, the number of miles driven, the vehicle driven, and the number of passengers riding in the vehicle.

2. School Bus Drivers (§ 570.52(b)(2))

Hazardous Occupations Order No. 2 provides a limited exemption for driving on public roads and highways by certain youths employed as school bus drivers (§ 570.52(b)(2)). This exemption has been included in HO 2 for decades, but was revised to its present form in 1991. The Department conducted a review of the school bus driver exemption in 1990, and gave particular attention to the views of the Child Labor Advisory Committee (discussed above). A Proposed Rule was published in 1990, addressing this exemption along with some other issues concerning other HOs (55 FR 42812). A Final Rule was issued in 1991 (56 FR 58626), revising the school bus drivers exemption to permit employment of young workers as school bus drivers only through the 1995–1996 school year, for certain schools that were already employing young drivers under authorizations previously issued by the Department.

The Department proposes to delete from HO 2 the now-expired school bus driver exemption. The exemption was available only to certain ''grandfathered'' school districts and, by the explicit language of the regulation, expired with the 1995–1996 school year. The Department sees no justification for a revival of the exemption, since our records reflect that this exemption was last used by a school district in the 1994–1995 school year, one year before the exemption's last available school term under the regulation.

E. Scrap Paper Balers and Paper Box Compactors (HO 12) (29 CFR 570.63)

Hazardous Occupations Order No. 12 generally prohibits minors under 18 years of age from working in occupations involving the operation of paper-products machines. The HO prohibits the loading, operation and

unloading of scrap paper balers, including paper box balers and compacting machines, and other power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. When HO 12 was promulgated in 1954, the dangers specifically associated with the operation of scrap paper balers involved being caught in the plungers during the compression process and suffering strains and other injuries while moving the compressed bales.

The Department has consistently interpreted HO 12 to apply to any establishment that used such paper-products machines, including retail stores. The Department has long interpreted the regulation as applying to paper box compactors (which generally perform the same function, utilize the same processes of compacting, and present the same dangers as scrap paper balers) although paper box compactors are not specifically named in the HO. The Department has also interpreted the prohibitions of HO 12 as applying to equipment used exclusively to process paper products, even though machines used to process other solid materials, in addition to paper products, share the identical machine designs, operation methods, and potential risks.

As a result of reports the Department received in the 1980s of injuries to minors employed in retail stores involving paper balers, in 1990–91 the Wage and Hour Division conducted a review of HO 12 as it applied to grocery stores and other retail operations. Through a Proposed Rule (55 FR 42812), followed by a Final Rule (56 FR 58626), HO 12 was amended in December 1991. The regulation was clarified as applying where the baled paper products were recycled, as well as where they were disposed of as trash. Further, the regulation's prohibition on ''operation'' was clarified as not including the stacking of materials in areas adjacent to the machine. Finally, the regulation was revised to explicitly state that HO 12 applied to all establishments that used such machines, consistent with long-established Departmental interpretation.

The Department published an Advance Notice of Proposed Rulemaking in 1994 (59 FR 25167), seeking the public's views on possible changes in the child labor regulations, including the Hazardous Occupations Orders. Although HO 12 was not specifically mentioned in the ANPRM, the Department received comments from representatives of the grocery industry asserting that recent technological changes have rendered certain new balers and compactors safe for minors to load. The Food and Allied Service Trades Department, AFL-CIO, opposed any relaxation of the prohibitions contained in HO 12. The Child Labor Coalition also opposed any relaxation of HO 12 and suggested that it should be expanded to include all compactors.

The Compactor and Baler Act was signed by the President on August 6, 1996 (Pub. L. 104–174). This legislation amends the FLSA by adding a new subsection 13(c)(5) to permit 16- and 17-year-olds to load, but not operate or unload, scrap paper balers and paper box compactors only if all of the following conditions are met:

''(A) (the loading involves) * * * scrap paper balers and paper box compactors—

''(i) that are safe for 16- and 17-year-old employees loading the [machines]; and

''(ii) that cannot be operated while being loaded.

''(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- and 17-year-old employees to load only if :

''(i)(I) the scrap paper balers and paper box compactors meet the American National Standard Institute's Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or

''(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after the date of enactment of this paragraph and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

''(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

''(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

''(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that:

''(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

''(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

''(III) any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.''

The Department notes that the employer bears the burden of proving compliance with the conditions established by the Compactor and Bailer Act which allow 16- and 17-year-olds to load certain scrap paper balers and paper box compactors.

The amendment also required that all employers subject to the FLSA submit a report to the Secretary of Labor when an employee under 18 years of age died or suffered an injury requiring medical treatment (other than first aid) as a result of contact with a scrap paper baler or a paper box compactor during the loading, operation, or unloading of the equipment. (§ 13(c)(5)(C)). This reporting obligation, which expired on August 6, 1998, required that the report be submitted within ten days of the occurrence of the injury or death. Only one report, involving the serious injury of a minor in Cass County, Texas, was received by the Department during the mandatory reporting period.

The Compactor and Baler Act also modified section 16(e) of the FLSA—concerning civil money penalties—to specify that such penalties may be assessed for violations of the new subsection 13(c)(5) as well as other child labor provisions. The Act did not modify the amount of the penalty under section 16(e), which sets a maximum of $10,000 per violation for each minor who was the subject of the violation.

The Department proposes to amend HO 12 to incorporate the provisions of the Compactor and Baler Act. The regulation's prohibition on 16- and 17-year-olds operating and unloading compactors and balers would not be changed, and the regulation would specify that these minors may load machines only in accordance with the following standards set by the Act. The Department notes that employers bear the burden of proving compliance with these standards.

(1) *The equipment must meet the ANSI standards imposed by the Act.* The Department recognizes that Congress explicitly applied certain industry standards for the determination of which balers and/or compactors are safe for minors to load: American National Standards Institute's (ANSI) Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. ANSI is a national organization that coordinates the development of voluntary, consensus standards in a wide range of areas, including product and worker safety. Congress has used ANSI standards in other contexts as expressions of the best available

technology in the safety area. For example, the Occupational Safety and Health Act of 1970 directed the Department of Labor to adopt the then-existing ANSI standards, rather than delay any activity until the agency promulgated particular occupational safety and health standards (see section 6(a) of the Occupational Safety and Health Act, 29 U.S.C. 655(a)). The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training. Because these ANSI standards are copyright-protected, the Department cannot include them in the regulations or reproduce them for distribution to the public. Copies of the applicable ANSI standards are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, 20408, at the Occupational Safety and Health Administration Docket Office at Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, and at any of the OSHA regional offices. Copies of these standards are available for purchase at the American National Standards Institute, 11 West 42nd Street, New York, New York 10036.

The Department proposes that the employer will be required to make an initial determination of whether its machine(s) meet the ANSI standards, and that the Wage and Hour Division may make a final determination in any investigation concerning minors' work with the machines.

The Compactor and Baler Act applies specific ANSI standards, issued by the organization in 1990 and 1992. However, the Act also provides that any new standard(s) adopted by ANSI would be sufficient for the determination of safety of the balers and compactors if the Secretary of Labor certifies the new standards to be at least as protective of the safety of minors as Standard ANSI Z245.5–1990 for scrap paper balers or Standard ANSI Z245.2–1992 for paper box compactors. The Department is at this time proposing a regulation which incorporates only the two ANSI standards specified by Congress.

The Department is aware that ANSI has adopted newer standards for scrap paper balers (Standard ANSI Z245.5–1997) and for paper box compactors (Standard ANSI Z245.2–1997). The Department is reviewing these standards to determine if they are at least as protective of the safety of minors as those standards cited in the Compactor and Baler Act. A preliminary review indicates the new standards are as protective as those cited in the Compactor and Baler Act and we are considering whether to include them along with the older standards when the final rule is promulgated. The public is invited to provide comment on whether Standard ANSI Z245.5–1997 is as protective of the safety of minors as Standard ANSI S245.5–1990 and whether Standard ANSI Z245.2–1997 is as protective of the safety of minors as Standard ANSI Z245.2–1992.

(2) *Notice is provided and posted on each piece of equipment.* The Compactor and Baler Act requires that, before any 16- or 17-year-olds may load materials into scrap paper balers and paper box compactors, the employer must provide notice and post a notice on each piece of equipment stating that 16- and 17-year-olds may only load the equipment, and any employee under age 18 may not operate or unload such equipment. The Department is proposing that the employer meets this statutory requirement by posting a permanent notice—containing the necessary information—in a place on the machine that is prominent and easily visible to any persons loading, operating, or unloading it. The Department proposes no specific form of notice but proposes specific language taken from the statutory requirements to be included in the notice.

(3) *The equipment must have certain controls and locks.* The Compactor and Baler Act requires that the equipment must include an on-off switch incorporating a key-lock or other system, that the control of the system must be maintained in the custody of employees who are 18 years of age or older, and that the on-off switch must be maintained in an off position when the equipment is not in operation. The Department proposes to include these explicit requirements in the regulation.

The Department also proposes to include in the regulation a specific identification of paper box compactors among the types of equipment subject to HO 12. This addition is required by the legislation, which explicitly includes paper box compactors. In addition, this regulatory change will communicate the Department's long held position that HO 12 also applies to paper box compactors which perform the same function, operate in a similar manner, and present the same risks as scrap paper balers, which are explicitly listed in the current regulation.

In addition to the regulatory changes necessitated by the Compactor and Baler Act, the Department proposes to modify HO 12 to include scrap paper balers and paper box compactors that are used to process other materials in addition to paper products. In the past, HO 12 has prohibited minors from loading, operating, and unloading only those scrap paper balers and paper box compactors that are used exclusively to process paper products. This narrow application ignored the fact that these machines are used to compress materials other than paper without any changes in design or procedures for loading, operating and unloading, and that the risks to minors associated with the loading, operating, and unloading of the machines remain the same regardless of the materials. Such other materials which may be processed by scrap paper balers and paper box compactors include, but are not limited to, plastics, rubber, foam rubber and aluminum cans. This modification of HO 12 is needed to prevent injuries to minors and, in addition, is supported by the definitions of both balers and compactors contained in the ANSI Standards which Congress adopted in the Compactor and Baler Act. We have preliminarily concluded that occupations involving the loading, operating and unloading of scrap paper bailers and paper box compactors that process other materials in addition to paper are particularly hazardous for minors between 16 and 18 years of age. The proposal would also revise the title of the HO to reflect its expanded coverage.

The proposed rule also amends the regulations in part 579 concerning civil money penalties, to implement the Compactor and Baler Act's explicit authorization for penalties not to exceed $10,000 for each employee who was the subject of a violation of new subsection 13(c)(5) of the FLSA.

F. Work in Roofing Occupations (HO 16) (29 CFR 570.67)

Hazardous Occupations Order No. 16 covers ''occupations in roofing operations.'' It bans all occupations in roofing, but not all work on roofs. Roofing operations, as defined by the regulation, include most roofing activities and related occupations whether performed at elevations or at ground level. Not included are other tasks performed on or near roofs such as the installation, repair and maintenance of roofing sheathing, television and microwave antennas, air conditioning equipment, and gutters and downspouts.

The Department has received inquiries questioning why employees under 18 years of age may perform any work on a roof. Available data, such as that provided by the National Institute for Occupational Safety and Health and

the Massachusetts State Department of Health, indicates that working at heights is a major contributor to injuries and deaths of young workers.

The Department's 1994 Advance Notice of Proposed Rulemaking (59 FR 25167) raised the issue of minors working at heights. The ANPRM requested comments regarding a ban on all work performed by minors on roofs. The ANPRM also requested information as to whether such a prohibition should be a generic restriction or one limited to a particular industry or industries. Finally, the ANPRM sought information regarding exemptions from HO 16 for apprentices and student learners.

The Department received a number of comments on this issue, the vast majority of which supported the prohibition of roofing work and all work on a roof. The comments came from a variety of sources, including industry organizations, child advocates, and State and Federal agencies.

The National Roofing Contractors Association and the United Union of Roofers, Waterproofers and Allied Workers, via a single letter signed by their Presidents, supported a continuation of the prohibition against minors working in roofing occupations. They also recommended expanding the ban to include ''any phase of roofing work, including the construction or repair of roof sheathing, installation of gutters and downspouts or any other related roofing work.'' They saw ''no value to exchanging the safety and health of 16- or 17-year-old minors for the opportunity to learn limited phases of roofing.'' They stated the risk was too great and the price was too high.

The Child Labor Coalition (CLC) and the National Consumers League (NCL) supported a generic restriction with cross-industry application involving all work at elevations; they recommended using the Occupational Safety and Health Administration (OSHA) height standard which lowered the fall protection standard from 16 feet to 6 feet and which became effective on February 6, 1995 (59 FR 40672). The CLC and the NCL supported a prohibition on all workplace activities by minors involving elevations above 6 feet, whether on roofs, hanging out windows, or working on ladders, scaffolds or other elevated surfaces. The NCL cited injury and fatality data from OSHA and the Roofer's Union that supported a ban on any work above 6 feet. The NCL also cited NIOSH data from 1980 to 1985 which identified falls as a major cause of injuries to construction workers.

An official of the Massachusetts State Department of Public Health, Occupational Health Surveillance Program, noted that falls are a leading cause of occupational fatalities in Massachusetts, as they are nationally. She cited 1993 statistics in which deaths involving falls exceeded motor vehicle related deaths and homicides, making them the leading cause of fatal occupational injuries. The majority of falls occurred in the construction industry (60 percent), but falls were a problem in a wide spectrum of industries. The official favored a generic approach to banning working at heights and would ban all work on ladders or at heights greater than 6 feet (the OSHA standard).

Similarly, the North Carolina State Department of Labor supported a ban on working at heights. It suggested banning ''any work which involves the risk of falling from any elevated place located 10 feet or more above the ground, including work involving the use of ladders and scaffolds in which work is performed higher than 10 feet from the ground surface.'' A member of the Washington State House of Representatives who also served as a member of the Washington State Child Labor Advisory Committee noted that the State of Washington's child labor regulations contain a limit on working more than 10 feet above ground or floor level and recommended that the Federal regulations adopt a similar provision.

The single commenter not in favor of prohibiting all work on a roof was the Associated Builders and Contractors, Inc. (ABC), which opposed a ban on 16- and 17-year-olds working at heights. ABC noted that most construction jobs require working at heights, and suggested that the Department should take into consideration the strides OSHA has made in protecting all construction workers. ABC commented that a ban would jeopardize valuable career-advancing opportunities and that proper supervision, safety instructions, and training are sufficient to reduce or alleviate any heightened risk of injury without sacrificing the benefit of work experience. ABC also stated that such a ban would bar the construction industry from participating in school-to-work programs. ABC stated that any blanket prohibition on occupations involving heights or working with electricity would chill potential career opportunities and prevent the brightest and best of non-college-bound adolescents from being recruited into careers in the construction industry.

The Department has carefully considered the comments and available data and has concluded that the dangers cited in the original report when HO 16 was first issued still persist for youths working on roofs. The main danger for such youths is from falls which, as noted by several commenters, may occur in any occupation performed on a roof. We have preliminarily concluded that occupations involving working on roofs, as well as all occupations in roofing operations, are particularly hazardous for minors between 16 and 18 years of age. The Department, therefore, is proposing to amend HO 16 to expand the ban from all roofing occupations to include all work performed on a roof. This ban would include, but not be limited to, occupations on or in close proximity to roofs such as the installation, repair, and maintenance of gutters and downspouts, sheathing or roof bases, television antennas, air conditioners, exhaust and ventilating equipment, heating equipment, and similar appliances attached to roofs. The exemption for apprentices and student-learners employed under the conditions prescribed in 29 CFR 570.50 (b) and (c) would continue to apply under HO 16. The Department believes that the additional supervision and training required by the exemption, coupled with the limited exposures provided by the exemption, will help to reduce safety risks to 16- and 17-year-olds working on roofs.

IV. Executive Order 12866

This proposed rule is being treated as a ''significant regulatory action'' within the meaning of Executive Order 12866, because of its importance to the public and the Administration's priorities. Therefore, the Office of Management and Budget has reviewed the proposed rule. However, because this proposed rule is not ''economically significant'' as defined in section 3(f)(1) of EO 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order.

This proposal would revise the child labor regulations in response to two statutory amendments enacted by the Congress that altered two of the child labor hazardous occupation orders: HO 12, affecting activities involving certain scrap paper balers and paper box compactors; and HO 2, affecting the operation of motor vehicles. The economic impact of these statutory provisions is expected to be minimal. The additional revisions that are being proposed are also expected to have little or no direct cost impact. The revisions affecting the types of cooking and related food preparation activities that 14- and 15-year-olds may perform in food service establishments (Reg. 3 Occupations) are primarily clarifications of existing provisions. An amendment to HO 16 to prohibit youth under age 18

from performing all work on roofs and an update of definitions for the term ''explosives'' in HO 1 that prohibits minors working where ''explosives'' are made or stored are expected to affect few minors. A change in the regulation on government-issued certificates of age intended to reduce paperwork when a minor's employment ends would reduce the cost impact of the existing regulation. The proposal thus overall relieves certain existing restrictions under two of the HOs and Reg. 3 occupations, expands restrictions under one HO, reduces paperwork burden involving age certificates, and makes other technical, clarifying changes. Although a small number of employers may be required to hire an older worker to perform the prohibited tasks, we believe that any resulting costs directly incurred would be minimal. Rules that limit permissible job activities for working youth to those that are safe do not, by themselves, impose significant added costs on employers, in our view. In fact, ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education, as required by the statute, produces many positive benefits and actually reduces health and productivity costs that employers may otherwise incur because of higher accident and injury rates to young and inexperienced workers. In any event, the direct, incremental costs imposed by this proposed rule are expected to be minimal. Collectively, they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or its individual sectors, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, this rule is not ''economically significant'' and no regulatory impact analysis has been prepared.

V. Small Business Regulatory Enforcement Fairness Act

The Department has similarly concluded that this proposed rule is not a ''major rule'' requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VI. Unfunded Mandates Reform Act of 1995; Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''* * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' For purposes of the Unfunded Mandates Reform Act, and as noted above, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector. Moreover, two of the changes constitute ''regulations [that] incorporate requirements specifically set forth in law'' (*i.e.,* amendments to HO 2 and HO 12).

For similar reasons, the proposed rule does not impose a significant ''unfunded mandate'' within the meaning of Executive Order 12875. This order requires agencies to consult with State, local, and tribal governments when developing regulatory proposals containing significant unfunded mandates. By its terms, section 1 of E.O. 12875 applies to ''any regulation that is not required by statute and that creates a mandate upon a State, local or tribal government.'' Two provisions (driving and paper balers) are specifically required by statutory amendments enacted by Congress. Furthermore, the Department believes that there are very few if any minors employed by State, local and tribal governments in the affected occupations. To the extent that any minors may be so employed, the Department believes that any costs that might result from using older employees to perform the prohibited tasks would be minimal, and would be more than offset by reduced health and productivity costs resulting from accidents and injuries to minors on the job. Thus, as described above, this proposed rule does not contain changes not otherwise required by statute that create significant unfunded mandates on affected units of government.

VII. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities. Two provisions (driving and paper balers) are specifically required by statutory amendments enacted by Congress. It is anticipated that the other provisions would have little or no cost impact on any small entities. The amendment to the provisions concerning the circumstances when 14- and 15-year-olds are permitted to cook is primarily a clarification of the existing provision. We believe that the prohibition against work on a roof and the revision to the paper balers provision would affect few minors, and therefore few small businesses. Although a small number of employers would be required to use an older employee to perform the prohibited tasks, we believe that any resulting costs directly incurred would be minimal. Indeed, we believe that the child labor regulations, by fostering safer work environments for working youth, would reduce health and productivity costs to employers, including covered small business, resulting from accidents and injuries to minors on the job. Thus, given the nature of the changes proposed by the rule, and for the reasons discussed above, we do not believe the rule will have a significant economic impact on a substantial number of small entities. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is required.

Document Preparation: This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Incorporation by reference, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

29 CFR Part 579

Child labor, Penalties.

Signed at Washington, D.C. on the 22nd day of November, 1999.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

For the reasons set forth above, title 29, parts 570 and 579, of the Code of Federal Regulations are proposed to be amended as follows:

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

1. The authority citation for part 570, subpart B, continues to read as follows:

Authority: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066 as amended, 1067 as amended; 29 U.S.C. 203, 211, 212.

2. In § 570.6, the section heading, paragraph (b)(1) and the parenthetical statement following paragraph (b)(2) are proposed to be revised to read as follows:

§ 570.6 What information is contained in Federal certificates of age and how does an employer use it?

* * * * *

(b) * * *

(1) We will send a certificate of age for a minor under 18 years of age to the prospective employer of the minor. That employer must keep the certificate on file at the minor's workplace. When the minor terminates employment, the employer must give the certificate to the minor. The minor may then present the previously issued certificate to future employers as proof of age as described in § 570.5.

(2) * * *

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215–0083.)

3. The authority citation for part 570, subpart C, is proposed to be revised to read as follows:

Authority: Sec. 3, 52 Stat. 1060, as amended; 29 U.S.C. 203, 212.

4. In § 570.34, the section heading, paragraphs (a)(7) and (b)(5) are proposed to be revised to read as follows:

§ 570.34 Which occupations are minors 14 and 15 years of age permitted to perform in retail, food service, and gasoline service establishments?

(a) * * *

(7) Kitchen work and other work involved in preparing and serving food and beverages, including operating machines and devices used in performing such work. Examples of permitted machines and devices include, but are not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee machines, and devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps). Minors are permitted to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers and liquids do not exceed a temperature of 140 °F;

* *

(b) * * *

(5) Baking and cooking except:

(i) Cooking with electric or gas grilles which does not involve cooking over an open flame; and

(ii) Cooking with deep fryers which are equipped with a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease;

* * * * *

5. The authority citation for part 570, subpart E, is proposed to be revised to read as follows:

Authority: Secs. 3, 12, 13(c), 18, 52 Stat. 1060, 1069; 29 U.S.C. 203, 212, 213(c), 218.

6. The heading of subpart E is proposed to be revised to read as follows:

Subpart E—What Occupations Are Particularly Hazardous for the Employment of 16- and 17-Year-Olds or Detrimental to Their Health or Well-Being?

7. In § 570.51, paragraph (b)(2) is proposed to be revised to read as follows:

§ 570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).

* * * * *

(b) * * *

(2) The terms *explosives* and *articles containing explosive components* mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods identified in appendix A to this section.

* * * * *

8. A new Appendix A to § 570.51 is proposed to be added to read as follows:

Appendix A to § 570.51—List of Explosive Materials

Acetylides of heavy metals; aluminum containing polymeric propellant; aluminum ophorite explosive; amatex; amatol; ammonal; ammonium nitrate explosive mixtures (cap sensitive); ammonium nitrate explosive mixtures (non cap sensitive)* ; aromatic nitro compound explosive mixtures; ammonium perchlorate explosive mixtures; ammonium perchlorate composite propellant; ammonium picrate (picrate of ammonia, Explosive D); ammonium salt lattice with isomorphously substituted inorganic salts; ANFO (ammonium nitrate-fuel oil); * baratol; baronol; BEAF (1,2-bis (2,2-diflouro-2-nitroacetoxyethane)); black powder; black powder based explosive mixtures; blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water gel explosives* ; blasting caps; blasting gelatin; blasting powder; BTNEC (bis (trinitroethyl) carbonate); bulk salutes; BTNEN (bis (trinitroethyl) nitramine); BTTN (1,2,4 butanetriol trinitrate); butyl tetryl; calcium nitrate explosive mixture; cellulose hexanitrate explosive mixture; chlorate explosive mixtures; composition A and variations; composition B and variations; composition C and variations; copper acetylide; cyanuric triazide; cyclotrimethylenetrinitramine (RDX); cyclotetramethylenetetranitramine (HMX); cyclonite (RDX); cyclotol; DATB (diaminotrinitrobenzene); DDNP (diazodinitrophenol); DEGDN (diethyleneglycol dinitrate); detonating cord; detonators; dimethylol dimethyl methane dinitrate composition; dinitroethyleneurea; dinitroglycerine (glycerol dinitrate); dinitrophenol; dinitrophenolates; dinitrophenyl hydrazine; dinitroresorcinol; dinitrotoluene-sodium nitrate explosive mixtures; DIPAM; dipicryl sulfone; dipicrylamine; display fireworks; DNPD (dinitropentano nitrile); DNPA (2,2-dinitroprophy acrylate); dynamite; EDDN (ethylene diamine dinitrate); EDNA; ednatol; EDNP (ethyl 4,4-dinitropentanoate), erythritol tetranitrate explosives; esters of nitro-substituted alcohols; EGDN (ethylene glycol dinitrate); ethyl-tetryl; explosive conitrates; explosive gelatine; explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons; explosive mixtures containing oxygen releasing inorganic salts and nitro bodies; explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels; explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels; explosive mixtures containing sensitized nitromethane; explosive mixtures containing tetranitromethane (nitroform); explosive nitro compounds of aromatic hydrocarbons; explosive organic nitrate mixtures; explosive liquids; explosive powders; flash powder; fulminate of mercury; fulminate of silver; fulminating gold; fulminating mercury; fulminating platinum fulminating silver; gelatinized nitrocellulose; gem-dinitro aliphatic explosive mixtures; guanyl nitrosamino guanyl tetrazene; guanyl nitrosamino guanylidene hydrazine; guncotton; heavy metal azides; hexanite; hexanitrodiphenylamine; hexanitrostilbene; hexogen (RDX); hexogene or octogene and a nitrated N-methylaniline; hexolites; HMX (cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; octogen); hydrazinium nitrate/hydrazine/aluminum explosive system; hydrazoic acid; igniter cord; igniters; initiating tube systems; KDNBF (potassium dinitrobenzofuroxane); lead azide; lead mannite; lead mononitroresorcinate; lead picrate; lead salts, explosive; lead styphnate (styphnate of lead, lead trinitroresorcinate); liquid nitrated polyol and trimethylolethane; liquid oxygen explosives; magnesium ophorite explosives; mannitol hexanitrate; MDNP (methyl 4,4-dinitropentanoate); MEAN (monoethanolamine nitrate); mercuric fulminate; mercury oxalate; mercury tartrate; metriol trinitrate; minol-2 (40% TNT, 40% ammonium nitrate, 20% aluminum); MMAN (monomethylamine nitrate), methylamine nitrate; mononitrotoluene-nitroglycerin mixture; monopropellants; NIBTN (nitroisobutametriol trinitrate); nitrate sensitezed with gelled nitroparaffin; nitrated

carbohydrate explosive; nitrated glucoside explosive; nitrated polyhydric alcohol explosives; nitrates of soda explosive mixtures; nitric acid and a nitro aromatic compound explosive; nitric acid and carboxylic fuel explosive; nitric acid explosive mixtures; nitro aromatic explosive mixtures; nitro compounds of furane explosive mixtures; nitrocellulose explosive; nitroderivative of urea explosive mixture; nitrogelatin explosive; nitrogen tricloride; nitrogen tri-iodide; nitroglycerine (NG, RNG, nitro, glycerlyl trinitrate, trinitroglycerine); nitroglycide; nitroglycol (ethylene glycol dinitrate, EGDN); nitroguanidine explosives; nitroparaffins explosive grade and ammonium nitrate mixtures; nitronium perchlorate propellant mixtures; nitrostarch; nitro-substituted carboxylic acids; nitrourea; octogen (HMX); octol (75 percent HMX, 25 percent TNT); organic amine nitrates; organic nitramines; PBX (RDX and plasticizer); pellet powder; penthrinite composition; pentolite; perchlorate exploxive mixtures; peroxide based explosive mixtures; PETN (nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate); picramic acid and its salts; picramide; picrate of potassium explosive mixtures; picratol; picric acid (manufactured as an explosive); picryl chloride; picryl fluoride; PLX (95% nitromethane, 5% ethylenediamine); polynitro aliphatic compounds; polyolpolynitratenitrocellulose explosive gels; potassium chlorate and lead sulfocyanate explosive; potassium nitrate explosive mixtures; potassium nitroaminotetrazole; pyrotechnic compositions; PYX (2,6-bis(picrylamino))=3,5-dinitropyridine; RDX (cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6, -trinitramine; hexahydro-1,3,5-trinitro-S-triazine); safety fuse; salutes, (bulk); salts of organic amino sulfonic acid explosive mixture; silver acetylide; silver azide; silver fulminate; silver oxalate explosive mixtures; silver styphnate; silver tartrate explosive mixtures; silver tetrazene; slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive); smokeless powder; sodatol; sodium amatol; sodium azide explosive mixture; sodium dinitro-ortho-cresolate; sodium nitrate-potassium nitrate explosive mixture; sodium picramate; special fireworks; squibs; styphnic acid explosives; tacot (tetranitro-2,3,5,6-dibenzo-1, 3a,4,6a tetrazapentalene); TATB (triaminotrinitrobenzene); TEGDN (triethylene glycol dinitrate); tetrazene (tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate); tetranitrocarbazole; tetryl (2,4,6 tetranitro-N-methylaniline); tetrytol; thickened inorganic oxidizer salt slurried explosive mixture; TMETN (trimethylolethane trinitrate); TNEF (trinitroethyl formal); TNEOC (trinitroethylorthocarbonate); TNEOF (trinitroethylorthoformate); TNT (trinitrotoluene, trotyl, trilite, triton); torpex, tridite; trimethylol ethyl methane trinitrate composition; trimethylolthane trinitrate-nitrocellulose; trimonite; trinitroanisole; trinitrobenzene; trinitrobenzoic acid; trinitrocresol; trinitro-meta-cresol; trinitronaphthalene; trinitrophenetol; trinitrophloroglucinol; trinitroresorcinol; tritonal; urea nitrate; water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive); water-in-oil emulsion explosive compositions; xanthamonas hydrophilic colloid explosive mixture.

This list was published in the **Federal Register** by the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, pursuant to 18 U.S.C. 841(d) and 27 CFR 55.23.

* The asterisks indicate materials that constitute blasting agents.

9. In § 570.52, paragraph (b) is proposed to be revised and new paragraphs (c)(5) and (c)(6) are proposed to be added to read as follows:

§ 570.52 Occupations of motor-vehicle driver and outside helper (Order 2).

* * * * *

(b) *Exemption—Incidental and occasional driving by 17-year-olds.* Minors who are at least 17 years of age may drive automobiles and trucks on public roadways when all the following criteria are met:

(1) The automobile or truck does not exceed 6,000 pounds gross vehicle weight, and the vehicle is equipped with a seat belt or similar restraining device for the driver and for any passengers and the employer has instructed the employee that such belts or other devices must be used;

(2) The driving is restricted to daylight hours;

(3) The minor holds a State license valid for the type of driving involved in the job performed and has no records of any moving violations at the time of hire;

(4) The minor has successfully completed a State-approved driver education course;

(5) The driving does not involve the towing of vehicles; route deliveries or route sales; the transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; or the transporting at any one time of more than three passengers, including the employees of the employer;

(6) The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the minor's employer to a customer (except urgent, time-sensitive deliveries which are completely banned in paragraph (b)(5) of this section);

(7) The driving performed by the minor does not involve more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than the employees of the employer);

(8) The driving takes place within a thirty (30) mile radius of the minor's place of employment; and,

(9) The driving is only occasional and incidental to the employee's employment.

(c) * * *

(5) The term *occasional and incidental* means no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's work time in any workweek.

(6) The term *urgent, time-sensitive deliveries* means trips which, because of such factors as customer satisfaction, the rapid deterioration of the quality or change in temperature of the product, and/or economic incentives, are subject to time-lines, schedules, and/or turn-around times which might impel the driver to hurry in the completion of the delivery. Prohibited trips would include, but are not limited to, the delivery of pizzas and prepared foods to the customer; the delivery of materials under a deadline (such as deposits to a bank at closing); and the shuttling of passengers to and from transportation depots to meet transport schedules. ''Urgent, time-sensitive deliveries'' would not depend on the delivery's points of origin and termination, and would include the delivery of people and things to the employer's place of business as well as from that business to some other location.

10. In § 570.63, the section heading and paragraphs (a)(1)(i), (b) and (c) are proposed to be revised to read as follows:

§ 570.63 Occupations involved in the operation of paper-products machines, scrap-paper balers, and paper box compactors (Order 12).

(a) * * *

(1) * * *

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combing machine, sheeting machine, scrap paper baler, paper box compactor, or vertical slotter.

* * * * *

(b) *Definitions.*

(1) The term *operating or assisting to operate* means all work which involves starting or stopping a machine covered by this section, placing materials into or removing materials from a machine, including clearing a machine of jammed paper or cardboard, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in

an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

(2) The term *paper products machine* means all power-driven machines used in:

(i) Remanufacturing or converting paper or pulp into a finished product, including preparing such materials for recycling; or

(ii) Preparing such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment. The term applies to those machines which, in addition to paper products, also process other material for disposal.

(3) The term *scrap-paper baler* means a powered machine used to compress paper and possibly other solid waste, with or without binding, to a density of form that will support handling and transportation as a material unit without requiring a disposable or reusable container.

(4) The term *paper box compactor* means a powered machine that remains stationary during operation, used to compact refuse, including paper boxes, into a detachable or integral container or into a transfer vehicle.

(5) The term *applicable ANSI Standard* means the American National Standard Institute's Standard ANSI Z245.5–1990 for scrap paper balers or the American National Standard Institute's Standard ANSI Z245.2–1992 for paper box compactors which are incorporated by reference as specified in this paragraph, or any replacement standard adopted by the American National Standard Institute which the Secretary of Labor has certified to be at least as protective of the safety of minors as Standard ANSI Z245.5–1990 for scrap paper balers or ANSI Z245.2–1992 for paper box compactors. The ANSI standards for scrap paper balers and paper box compactors govern the manufacture and modification of the equipment, the operation and maintenance of the equipment, and employee training.

(i) The standards which are incorporated by reference in this paragraph have the same force and effect as other standards in this part. Only the mandatory provisions (*i.e.,* provisions containing the word ''shall'' or other mandatory language) of these standards are adopted as standards under this part.

(ii) These standards are incorporated by reference as they exist on the date of the approval; if any changes are made in these standards which the Secretary of Labor finds to be as protective of the safety of minors as the current standards, the Secretary will publish a Notice of the change of standards. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(iii) Copies of these standards are available for purchase from the American National Standards Institute (ANSI), 11 West 42nd St., New York, NY, 10036. In addition, these standards are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, 20408, and through the Occupational Safety and Health Administration Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC, 20210, or any of its regional offices.

(c) *Exemptions.* (1)(i) Sixteen- and 17-year-old minors may load materials into, but not operate or unload, those scrap paper balers and paper box compactors that are safe for 16- and 17-year-old employees to load and cannot be operated while being loaded. For the purpose of this exemption, a scrap paper baler or a paper box compactor is considered to be safe for 16- and 17-year-old to load only if all of the following conditions are met:

(A) The scrap paper baler or paper box compactor meets the applicable ANSI standard (the employer must initially determine if the equipment meets the applicable ANSI standard, and the Administrator or his/her designee may make a final determination when conducting an investigation of the employer);

(B) The scrap paper baler or paper box compactor includes an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(C) The on-off switch of the scrap paper baler or paper box compactor is maintained in an off position when the machine is not in operation; and

(D) The employer posts a notice on the scrap paper baler or paper box compactor (in a prominent position and easily visible to any person loading, operating, or unloading the machine) stating that:

> The scrap paper baler or compactor meets the industry safety standard applicable to the machine (Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors).
>
> Sixteen- and 17-year-old employees may only load the scrap paper baler or paper box compactor.
>
> Any employee under the age of 18 may not operate or unload the scrap paper baler or paper box compactor.

(2) This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

11. In § 570.67 the heading and paragraphs (a) and (b) are proposed to be revised to read as follows:

§ 570.67 Occupations in roofing operations and on or about a roof (Order 16).

(a) *Finding and declaration of fact.* All occupations in roofing operations and all occupations on or about a roof are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) *Definitions.*

(1) The term *roofing operations* means all work performed in connection with the installation of roofs, including related metal work such as flashing, and applying weatherproofing materials and substances (such as waterproof membranes, tar, slag or pitch, asphalt prepared paper, tile, composite roofing materials, slate, metal, translucent materials, and shingles of asbestos, asphalt, wood or other materials) to roofs of buildings or other structures. The term also includes all jobs on the ground related to roofing operations such as roofing laborer, roofing helper, materials handler and tending a tar heater.

(2) The term *on or about a roof* includes all work performed upon a roof, including carpentry and metal work, alterations, additions, maintenance and repair, including painting and coating of existing roofs; the construction of the sheathing or base of roofs (wood or metal); gutter and downspout work; the installation and servicing of television and communication equipment such as cable and satellite dishes; the installation and servicing of heating, ventilation and air conditioning equipment or similar appliances attached to roofs; and any similar work that is required to be performed upon or about roofs.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

12. The authority citation for part 579 is proposed to be revised to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 213, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263. 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 1371, 36 FR 8755; sec. 3103, Pub. L. 101–508; sec. 2, Pub. L. 104–174.

13. In § 579.1, the section heading and paragraphs (a), (a)(1), (a)(6) and (b) are proposed to be revised to read as follows:

§ 579.1 What does this regulation cover?

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989, the Omnibus Budget Reconciliation Act of 1990, and the Compactors and Balers Safety Standards Modernization Act of 1996, provides that—

(1) Any person who violates the provisions of section 12 relating to child labor, section 13(c)(5), or any regulation issued under those sections shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation.

* * * * *

(6) Except for civil money penalties collected for violations of sections 12 and 13(c)(5), sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties in accordance with the provision of section 2 of an Act entitled ''An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes'' (29 U.S.C. 9a).

* * * * *

(b) This part explains our procedures for issuing a notice of civil penalty to an employer that has violated section 12 or section 13(c)(5) of the Act, or any regulation issued under those sections; describes the types of violations for which we may impose a penalty and the factors we will consider in assessing the amount of the penalty; outlines the procedure for a person charged with violations to file an exception to the determination that the violations occurred; and summarizes the methods we will follow for collecting and recovering the penalty.

14. In § 579.5, the section heading and paragraph (a) are proposed to be revised to read as follows:

§ 579.5 How is the amount of the penalty determined and how is the penalty assessed?

(a) The administrative determination of the amount of the civil penalty, not to exceed $10,000 for each employee who was the subject of a violation of section 12 or section 13(c)(5) of the Act, or of any regulation issued under those sections, shall be based on the available evidence of the violation or violations and shall take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section.

§ 579.9 [Removed]

15. Section 579.9 is proposed to be removed.

[FR Doc. 99–30776 Filed 11–29–99; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 441/P.L. 106–95

Nursing Relief for Disadvantaged Areas Act of 1999 (Nov. 12, 1999; 113 Stat. 1312)

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

District of Columbia College Access Act of 1999 (Nov. 12, 1999; 113 Stat. 1323)

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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