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

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

Amendment of Equal Access to Justice Act Attorney Fees Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) amends its regulations implementing the Equal Access to Justice Act (EAJA) by adopting a cost of living adjustment to the maximum rate for the calculation of attorney fees permitted under the EAJA. Specifically, the FLRA will use the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, All Items to create an inflation-based adjustment to the statutory cap on attorney fees. The FLRA also modifies its rules to allow an applicant to request an increase to the maximum fees rate based on special factors.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Washington, DC 20424–0001, or by telephone at (202) 482–6540.

SUPPLEMENTARY INFORMATION: The FLRA proposed revisions to Part 2430 of its EAJA regulations, which were published in the **Federal Register** on November 29, 1999 (64 FR 66589). Public comment was solicited on the proposed changes. However, no written comments were received in response to the notice of proposed rulemaking.

The EAJA, 5 U.S.C. 504(b)(1)(A) (1994 & Supp. III 1997), provides that an agency may not award attorney fees in excess of $125 per hour (or $75 for proceedings commenced prior to March 29, 1996), unless the agency determines by regulation that a higher fee is justified by (1) an increase in the cost of living or (2) some special factor. In a recent decision, 55 FLRA (No. 72) 444 (Apr. 30, 1999), responding to petitions requesting an adjustment to the EAJA fees cap, the FLRA announced its intention to engage in the instant rulemaking to consider appropriate criteria for increasing the maximum rate based on cost of living and other special factors. The FLRA also announced in that decision its intention to amend its regulations implementing the EAJA to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees not to exceed $125.00 per hour. This was accomplished through the promulgation of the final rule published at 64 FR 30861 (Jun. 9, 1999).

Cost of Living

The FLRA amends its rule to allow for an increase in the maximum EAJA attorney fees rate based on cost of living increases. The FLRA's inflation-based adjustment to the statutory cap utilizes the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI–U). This CPI–U is the generally understood ''cost of living'' index that is widely used as a price inflator in labor and contract matters.

To determine the appropriate attorney fees rate, adjusted for cost of living, the statutory cap ($125 or $75) is multiplied by an inflation factor. The inflation factor is the CPI–U for the year that legal services were rendered divided by the CPI–U for the base year. Phrased as a formula, the calculation is:

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75)/\text{hr} = \text{Adjusted Rate}$$

The base year for calculations premised on the $75 statutory cap is 1981. The base year for calculations premised on the $125 statutory cap is 1995.

Other Special Factors

The FLRA also amends its EAJA regulations to allow for an adjustment to the statutory fees cap based on ''special factors.'' The EAJA, 5 U.S.C. 504(b)(1)(A), lists as a special factor the ''limited availability of attorneys qualified to handle certain types of proceedings.'' This phrase refers to a narrow category of attorneys who have ''some distinctive knowledge or specialized skill'' such as those who practice patent law. *Pierce* v. *Underwood,* 487 U.S. 552, 572 (1988). Without specifying what other special factors may exist, the Supreme Court noted that they ''must be such as are not of broad and general application.'' *Id.* at 573.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities, because this rule applies to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulation contains no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2430

Administrative practice and procedure, Equal access to justice, Government employees, Labor-management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2430 as follows:

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

1. The authority citation for part 2430 is revised to read as follows:

Authority: 5 U.S.C. 504.

2. Revise § 2430.4(a) to read as follows:

§ 2430.4 Allowable fees and expenses.

(a)(1)(i) No award for the fee of an attorney or agent under this part may exceed $125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, $75.00 per hour, indexed to reflect cost of living increases as follows:

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75)/\text{hr} = \text{Adjusted Rate}$$

(ii) The cost of living index to be used is the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI–U). If legal services are provided during more than one year, each year shall be calculated separately. If an annual average CPI–U for a particular year is not yet available, the prior year's annual average CPI–U shall be used.

(2) No award to compensate an expert witness may exceed the highest rate that the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

* * * * *

3. Revise § 2430.5 to read as follows:

§ 2430.5 Rulemaking on maximum rates for attorney fees.

If warranted by special factors, attorney fees may be awarded at a rate higher than that established in § 2430.4. Any such increase in the rate for attorney fees shall be made only upon a petition submitted by the applicant, pursuant to § 2430.6. Determinations regarding fee adjustments are subject to Authority review as specified in § 2430.13.

Dated: February 23, 2000.

Solly Thomas,

Executive Director.

[FR Doc. 00–4569 Filed 2–25–00; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV00–979–1 FR]

Melons Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Melon Committee (Committee) for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.05 per carton of melons handled. The Committee is responsible for local administration of the marketing order which regulates the handling of melons (cantaloupes and honeydews) grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 29, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979, both as amended (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning on October 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection

with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.05 per carton of melons handled.

The South Texas melon marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–1998 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a mail vote, unanimously recommended 1999–2000 expenses of $219,148 for personnel, office, compliance, promotion, and research expenses. These expenses were approved in September 1999. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee met on November 4, 1999, and unanimously recommended 1999–2000 expenditures of $265,500 and an assessment rate of $0.05 per carton of melons. In comparison, last year's budgeted expenditures were $219,148. The assessment rate of $0.05 is $0.01 higher than the rate currently in effect. The Committee voted to increase its assessment rate because the current rate would not have generated the income needed to administer the marketing order and would have reduced the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with funds from the Committee's authorized reserve, should provide the Committee with adequate funds to meet its 1999–2000 fiscal period's expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $98,800 for personnel and administrative expenses, $31,200 for compliance activities, $110,500 for research projects, and $25,000 for promotional activities. Budgeted expenses for these items in 1998–1999 were $97,600, $32,400, $79,148, and $10,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, and the amount of funds in the Committee's operating reserve. Melon shipments for the year are estimated at 4,200,000 cartons, which should provide $210,000 in assessment income at the $0.05 per carton rate. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses for the 1999–2000 fiscal period. Funds in the reserve (currently $316,208) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 growers of South Texas melons in the production area and 20 handlers subject to regulation under the marketing order. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing melons. For the 1998–99 marketing year, melons produced on 8,364 acres were shipped by the industry's 20 handlers with the average acreage being 418 acres and the median volume handled was 193,867 cartons. In terms of production value, average revenues for the 20 handlers were estimated to be $2.9 million.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate commodities, like onions.

Based on the SBA's definition of small entities, the Committee estimates that a majority of the 20 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt

threshold. Of the 20 growers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, the majority of growers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.04 to $0.05 per carton of melons. The Committee unanimously recommended 1999–2000 expenditures of $265,500 and an assessment rate of $0.05 per carton of melons. In comparison, last year's budgeted expenditures were $219,148. The assessment rate of $0.05 is $0.01 higher than the 1998–1999 rate. At the rate of $0.05 per carton and an estimated 2000 melon production of 4,200,000 cartons, the projected income derived from handler assessments ($210,000), along with funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $98,800 for personnel and administrative expenses, $31,200 for compliance activities, $110,500 for research projects, and $25,000 for promotional activities. Budgeted expenses for these items in 1998–1999 were $97,600, $32,400, $79,148, and $10,000, respectively.

The Committee voted to increase its assessment rate because the current rate would not have generated the income needed to administer the marketing order and would have reduced the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with funds from the Committee's authorized reserve, should provide the Committee with adequate funds to meet its 1999–2000 fiscal period's expenses.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $265,500, which included increases in personnel, promotion, and research projects. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and Post Harvest Subcommittees. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the melon industry. The assessment rate of $0.05 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons, estimated at 4,200,000 cartons for the 1999–2000 fiscal period, and the amount of funds in the Committee's operating reserve. The recommended rate will generate $210,000, which is $55,500 below the anticipated expenses. The Committee found this acceptable because reserve funds will be used to make up the deficit.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1999–2000 marketing season could range between $9.00 and $12.00 per carton of cantaloupes and between $6.00 and $9.00 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .55 and .42 percent for cantaloupes and between .83 and .55 percent for honeydew melons.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 4, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2000 (65 FR 1347). Copies of the proposed rule were also mailed or sent via facsimile to all melon handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending February 9, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on October 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) the handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.219 is revised to read as follows:

§ 979.219 Assessment rate.

On and after October 1, 1999, an assessment rate of $0.05 per carton is established for South Texas melons.

Dated: February 23, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–4611 Filed 2–25–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–312–AD; Amendment 39–11568; AD 2000–03–09]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Cessna Model 560 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected. This amendment is prompted by reports indicating that, while operating in icing conditions or when ice is on the wings, some of these airplanes have experienced uncommanded roll at (or slightly higher than) the speed at which the stall warning system is activated. This amendment requires revising the AFM and revises the applicability of the existing AD. This amendment also requires modification of the stall warning system of the angle-of-attack computer. The actions specified by this AD are intended to prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected.

DATES: Effective April 3, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. 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: Carlos Blacklock, Aerospace Engineer, Flight Test and Program Management Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–24–06, amendment 39–9844 (61 FR 64456, December 10, 1996), which is applicable to certain Cessna Model 560 series airplanes, was published in the **Federal Register** on September 10, 1999 (64 FR 49115). The action proposed to require revising the AFM and would revise the applicability of the existing AD. That action also proposed to require modification of the stall warning system of the angle-of-attack computer.

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

Request to Withdraw the Proposal

One commenter, the manufacturer, requests that the FAA withdraw the proposal since the manufacturer has written confirmation that the modification described in the appropriate service bulletin, as specified in the proposed AD, has been accomplished on all affected airplanes.

The FAA does not concur that the final rule should be withdrawn. The FAA points out that compliance with the applicable service bulletins is not the only requirement of the final rule. Paragraph (a) of the final rule specifies certain Airplane Flight Manual (AFM) revisions and requires that the FAA-approved AFM be revised in accordance with those specified AFM revisions. The FAA notes that, although the service bulletins specified as the appropriate service information in the final rule contain instructions to revise the AFM, those instructions are not mandatory. Therefore, the FAA cannot be assured that the AFM revision would not be removed in the future. Further, paragraph (b) of the final rule only requires modification of the stall warning system of the angle-of-attack computer of the navigational system. It does not require that other instructions (*i.e.,* revision of the AFM) be accomplished. The FAA has determined that it is necessary to issue the final rule as proposed.

Conclusion

After careful review of the available data, including the comment 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 437 airplanes of the affected design in the worldwide fleet. The FAA estimates that 327 airplanes of U.S. registry will be affected by this AD.

For all airplanes, the new AFM revision that is required by this new AD will 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 AFM revision required by this AD on U.S. operators is estimated to be $19,620, or $60 per airplane.

For airplanes listed in Cessna Service Bulletin SB560–34–69, the modification that is required in this new AD will take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $8,036 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $10,436 per airplane.

For airplanes listed in Cessna Service Bulletin SB560–34–70, the modification that is required in this new AD will take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,762 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $10,162 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 a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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 39–9844 (61 FR 64456, December 10, 1996), and by adding a new airworthiness directive (AD), amendment 39–11568, to read as follows:

2000–03–09 Cessna Aircraft Company: Amendment 39–11568. Docket 98–NM–312–AD. Supersedes AD 96–24–06, Amendment 39–9844.

Applicability: Model 560 series airplanes having serial numbers (S/N) 560–0001 through 560–0437 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected, accomplish the following:

Airplane Flight Manual (AFM) Revisions

(a) Within 10 days after the effective date of this AD, revise the FAA-approved Airplane Flight Manual (AFM); to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected; in accordance with the applicable revision of the AFM specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes having S/N's 560–0001 through 560–0259 inclusive: AFM Model 560 Citation V, Revision 11, dated July 16, 1998.

(2) For airplanes having S/N's 560–0260 through 560–0437 inclusive: AFM Model 560 Citation V Ultra, Revision 7, dated July 16, 1998.

Modification

(b) Within 6 months after the effective date of this AD, modify the stall warning system of the angle-of-attack computer of the navigational system, in accordance with paragraph (b)(1) or (b)(2), as applicable, of this AD.

(1) For airplanes having S/N's 560–0001 through 560–0055 inclusive: Modify in accordance with Cessna Service Bulletin SB560–34–70, dated July 14, 1998.

(2) For airplanes having S/N's 560–0056 through 560–0437 inclusive: Modify in accordance with Cessna Service Bulletin SB560–34–69, Revision 2, dated July 24, 1998.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane an angle-of-attack computer having part number C11606–2 or C11606–3.

Alternative Methods of Compliance

(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, 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 2: 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

(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 actions shall be done in accordance with Cessna Airplane Flight Manual, Model 560 Citation V, Serial –0001 thru –0259, Revision 11, dated July 16, 1998; Cessna Airplane Flight Manual, Model 560 Citation V Ultra, Unit –0260 and on, Revision 7, dated July 16, 1998; Cessna Service Bulletin SB560–34–70, dated July 14, 1998, and Cessna Service Bulletin SB560–34–69, Revision 2, dated July 24, 1998.

(1) Cessna Airplane Flight Manual, Model 560 Citation V, Serial –0001 thru –0259, Revision 11, dated July 16, 1998, contains the following log of effective pages: (Note: The issue date of Revision 11 is indicated only on the title page of the revision.)

Page number	Revision level shown on page
Log of Effective Pages, Pages i through vi	11

(2) Cessna Airplane Flight Manual, Model 560 Citation V Ultra, Unit –0260 and on, Revision 7, dated July 16, 1998, contains the following log of effective pages: (Note: The issue date of Revision 7 is indicated only on the title page of the revision.)

Page No.	Revision level shown on page
Log of Effective Pages, Pages i through vi	7

(3) Cessna Service Bulletin SB560–34–69, Revision 2, dated July 24, 1998, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	2	July 24, 1998.
2, 4, 6–9	Original	September 19, 1997.
3, 5	1	December 16, 1997.
Supplemental Data		
1	A	December 16, 1997.

(4) 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 Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. 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.

(g) This amendment becomes effective on April 3, 2000.

Issued in Renton, Washington, on February 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–3532 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–58–AD; Amendment 39–11595; AD 2000–03–51]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–NM–58–AD that was sent previously to all known U.S. owners and operators of McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes by individual telegrams. This AD requires inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes. This action is prompted by a report from an operator that indicated two instances of metallic shavings in the vicinity of the jackscrew assembly and gimbal nut of the horizontal stabilizer. The actions specified by this AD are intended to prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in loss of vertical control of the airplane.

DATES: Effective March 6, 2000, to all persons except those persons to whom it was made immediately effective by telegraphic AD 2000–03–51, issued February 11, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 6, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Senior Engineer, Structures Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; Fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On February 11, 2000, the FAA issued telegraphic AD 2000–03–51, which is applicable to all Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes; certificated in any category.

Background

On January 31, 2000, a McDonnell Douglas Model DC–9–83 (MD–83) airplane was involved in an accident near Los Angeles, California, on a flight from Puerto Vallarta, Mexico, to San Francisco, California. The FAA has participated in the subsequent accident investigation to determine possible causes of the accident. One area of interest in the investigation has been the jackscrew assembly of the horizontal stabilizer. The FAA has received a report from an operator that indicated two instances of metallic shavings in the vicinity of the jackscrew assembly and gimbal nut of the horizontal stabilizer. Metallic shavings in the vicinity of the horizontal stabilizer indicate excessive wear of the jackscrew assembly. Such excessive wear, if not corrected, could result in possible loss of pitch trim capability, which could result in loss of vertical control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–27A362 (for Model DC–9 and Model MD–88 airplanes), Boeing Alert Service Bulletin MD90–27A034 (for Model MD–90–30 airplanes), and Boeing Alert Service Bulletin 717–27A0002 (for Model 717–200 airplanes), all dated February 11, 2000, which describe procedures for inspecting the general condition of the jackscrew assembly and the area around the jackscrew assembly to detect the presence of metal shavings and flakes.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD 2000–03–51 to prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in loss of vertical control of the airplane. Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this airworthiness directive requires the accomplishment of the previously referenced alert service bulletins.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on February 11, 2000, to all known U.S. owners and operators of McDonnell Douglas Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Interim Action

This is considered to be interim action until final action is identified.

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 2000–NM–58–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2000–03–51 McDonnell Douglas: Amendment 39–11595. Docket 2000–NM–58–AD.

Applicability: All Model DC–9, Model MD–90–30, Model 717–200, and Model MD–88 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) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of pitch trim capability due to excessive wear of the jackscrew assembly of the horizontal stabilizer, which could result in loss of vertical control of the airplane, accomplish the following:

Inspections and Test

(a) Prior to the accumulation of 650 hours total time-in-service (TTIS), or within 72 hours after the effective date of this AD, whichever occurs later, accomplish the actions required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this AD; in accordance with Boeing Alert Service Bulletin DC9–27A362 (for Model DC–9 and Model MD–88 airplanes), Boeing Alert Service Bulletin MD90–27A034 (for Model MD–90–30 airplanes), and Boeing Alert Service Bulletin 717–27A0002 (for Model 717–200 airplanes), all dated February 11, 2000. Repeat the inspections, thereafter, at intervals not to exceed 650 flight hours.

(1) Perform a general visual inspection of the lubricating grease on the jackscrew assembly and the area directly below the jackscrew and surrounding areas for the presence of metal shavings and flakes in accordance with paragraph 3.B.2. of the Accomplishment Instructions of the applicable alert service bulletin. If the presence of metal shavings or flakes is detected, prior to further flight, remove and replace the jackscrew assembly with a new or serviceable assembly, in accordance with the applicable alert service bulletin.

(2) Perform a general visual inspection of the jackscrew assembly to detect the presence of corrosion, pitting, or distress in accordance with paragraph 3.B.3. of the Accomplishment Instructions of the applicable alert service bulletin. If any corrosion, pitting, or distress is detected, prior to further flight, replace the jackscrew assembly with a new or serviceable assembly, in accordance with the applicable alert service bulletin.

(3) Check the condition of the jackscrew assembly lubricant in accordance with paragraph 3.B.4. of the Accomplishment Instructions of the applicable alert service bulletin. If the jackscrew assembly is dry, lubricate the assembly in accordance with the applicable alert service bulletin.

(4) Inspect the horizontal stabilizer jackscrew upper and lower mechanical stops for general condition in accordance with paragraph 3.B.5. of the Accomplishment Instructions of the applicable alert service bulletin, and record the condition.

(5) Perform a test of the horizontal stabilizer shutoff controls in accordance with paragraph 3.B.6. of the Accomplishment Instructions of the applicable alert service bulletin. If the mechanical stop on the jackscrew contacts the mechanical stop on the acme nut prior to limit switch shutoff, prior to further flight, adjust the horizontal stabilizer trim system in accordance with operator-approved maintenance instructions.

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

Wear Check

(b) Within 2,000 flight hours since the last acme screw and nut wear check conducted in accordance with the DC9 McDonnell Douglas Maintenance Manual, Chapter 27–41–1; MD80 McDonnell Douglas Maintenance Manual, Chapter 27–41–01; MD90 McDonnell Douglas Maintenance Manual, Chapter 27–41–10; or 717 McDonnell Douglas Maintenance Manual, Chapter 27–41–04; or within 30 days after the effective date of this AD, whichever occurs later: Perform an acme screw and nut wear check in accordance with paragraph 3.B., Phase 2, paragraph 2. of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A362 (for Model DC–9 and Model MD–88 airplanes), Boeing Alert Service

Bulletin MD90–27A034 (for Model MD–90–30 airplanes), and Boeing Alert Service Bulletin 717–27A0002 (for Model 717–200 airplanes), all dated February 11, 2000. Repeat the inspections, thereafter, at intervals not to exceed 2,000 flight hours.

Note 3: Accomplishment of paragraphs (c), (d), and (e) of the Boeing Service Engineering Message Number M–7200–00–00456, dated February 9, 2000, constitutes compliance with paragraphs (a)(2), (a)(3), and (a)(4) of this AD. Accomplishment of paragraph (a) of Boeing Service Engineering Message Number M–7200–00–00456 constitutes compliance with paragraph (b) of this AD.

Reporting Requirement

(c) If any damage is detected during any inspection required by paragraphs (a) and (b) of this AD, within 48 hours after accomplishing the inspections, report the inspection results in accordance with Boeing Alert Service Bulletin DC9–27A362 (for Model DC–9 and Model MD–88 airplanes), Boeing Alert Service Bulletin MD90–27A034 (for Model MD–90–30 airplanes), and Boeing Alert Service Bulletin 717–27A0002 (for Model 717–200 airplanes), all dated February 11, 2000. If no damage is detected during any inspection required by this AD, report the inspection results within 10 days of accomplishing that inspection in accordance with the appropriate alert service bulletin. For airplanes that are inspected after the effective date of this AD, include in the report the serial number of the airplane, the number of total flight hours and flight cycles accumulated on the airplane to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; Fax (562) 627–5210. 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

(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, Los Angeles 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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles 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 actions shall be done in accordance with Boeing Alert Service Bulletin DC9–27A362 (for Model DC–9 and Model MD–88 airplanes), dated February 11, 2000; Boeing Alert Service Bulletin MD90–27A034 (for Model MD–90–30 airplanes), dated February 11, 2000; and Boeing Alert Service Bulletin 717–27A0002 (for Model 717–200 airplanes), dated February 11, 2000. 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 6, 2000, to all persons except those persons to whom it was made immediately effective by telegraphic AD 2000–03–51, issued on February 11, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on February 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–4337 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–240–AD; Amendment 39–11596; AD 2000–04–13]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary. 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 of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane.

DATES: Effective April 3, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 26, 1999 (64 FR 57602). That action proposed to require initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary.

Comments Received

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

Approved Repairs

One commenter, an operator, expresses concern that paragraphs (c) and (d)(2)(ii) of the proposed AD mandate that any repairs, previously conducted through Aerospatiale, now must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). The commenter is concerned that, if the only resources for repair approvals are those mentioned here, any repair approval process will not be responsive on a timely basis. The commenter states that notification to the Manager, ANM–116, of damage found and the repair

method used, following embodiment, would be more appropriate.

The FAA infers that the commenter is requesting that the AD be revised to allow repair approvals through Aerospatiale, with subsequent notification to the Manager, ANM–116. The FAA does not concur. To specify within an AD that repairs are to be accomplished in accordance with the manufacturer would be delegating the FAA's rulemaking authority to the manufacturer. Since the referenced service information does not provide appropriate repair procedures, the FAA must require that operators accomplish necessary repairs in accordance with a method approved by the FAA or the DGAC (or its delegated agent). The FAA notes that, if Aerospatiale has been designated by the DGAC as a delegated agent for repair approvals, such approvals by Aerospatiale would be acceptable for compliance with this AD. No change to the AD is necessary.

Prior Repairs

The same commenter notes that there should be some consideration for airplanes on which the modification has already been accomplished with some form of repair (prior to the effective date of the AD). As written, the AD would require that any such repair be ''reapproved'' by the FAA or DGAC.

The FAA does not concur. As noted in the FAA's response to the previous comment, repairs approved by Aerospatiale may be acceptable for compliance with this AD, if Aerospatiale is a delegated agent of the DGAC for such repairs. If this is the case, no ''reapproval'' is necessary, since such approved repairs would be acceptable for compliance with the requirements of this AD. Further, sufficient time is provided prior to the compliance thresholds of this AD to allow operators to determine if approvals must be obtained for previously accomplished repairs, and to obtain such approvals, if necessary. No change to the AD is necessary.

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

The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1018 (14 U.S.-registered airplanes), it will take approximately 250 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $9,880 per airplane. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $348,320, or $24,880 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1013, Revision 2 (2 U.S.-registered airplanes), it will take approximately 3 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $360, or $180 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1019, Revision 2 (2 U.S.-registered airplanes), it will take approximately 100 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $12,000, or $6,000 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1028 (2 U.S.-registered airplanes), it will take approximately 5 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $600, or $300 per airplane, per inspection cycle.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1033, and ATR72–52–1029, Revision 1 (2 U.S.-registered airplanes), it will take approximately 145 work hours per airplane to accomplish the required door stop fitting replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the stop fittings replacement required by this AD on U.S. operators is estimated to be $17,400 or $8,700 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1 (2 U.S.-registered airplanes), it will take approximately 30 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $3,600, or $1,800 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2 (2 U.S.-registered airplanes), it will take approximately 8 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $960, or $480 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1020 (14 U.S.-registered airplanes), it will take approximately 6 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $5,040, or $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 a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2000–04–13 Aerospatiale: Amendment 39–11596. Docket 98–NM–240–AD.

Applicability: Model ATR72 series airplanes, certificated in any category; listed in the following Avions de Transport Regional (ATR) Service Bulletins:

- ATR72–52–1018, dated May 18, 1995;
- ATR72–53–1013, Revision 2, dated March 22, 1993;
- ATR72–53–1019, Revision 2, dated October 15, 1996;
- ATR72–52–1028, dated July 5, 1993;
- ATR72–52–1033, dated April 28, 1995;
- ATR72–52–1029, Revision 1, dated November 16, 1994;
- ATR72–53–1021, Revision 1, dated February 20, 1995;
- ATR72–53–1014, Revision 2, dated October 15, 1992; and
- ATR72–53–1020, dated October 6, 1992.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) For airplanes on which Aerospatiale Modification 03191 (reference Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995) has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a preliminary inspection of the existing fasteners to determine if the fasteners are out of tolerance in accordance with paragraph 2.C.(1) of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995. Depending on the results of the inspection, prior to further flight, accomplish the requirements in paragraphs (a)(1) and (a)(2), or (a)(2) and (a)(3), of this AD, as applicable, as specified by paragraph 2.C.(1) of the service bulletin.

(1) Remove the fasteners and inspect the fastener holes to determine if they are out of tolerance or cracking, in accordance with Part A of the Accomplishment Instructions of the service bulletin. Perform a visual inspection of the holes for correct tolerance, and a high frequency eddy current (HFEC) inspection for cracking.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Remove the existing fasteners and inspect the fastener holes for correct tolerance in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(3) Remove the existing fasteners, repair, and replace the cargo compartment door hinges with new hinges in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) For airplanes having serial numbers 108 through 210 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the key holes located on main frames 25 and 27 of the fuselage, between stringers 14 and 15, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1013, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (b) of this AD.

(2) If any rivet is missing, prior to further flight, perform an eddy current inspection of the affected key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, install rivets in all affected key holes, in accordance with the service bulletin. If installation of rivets is not possible, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(ii) If any crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For airplanes having serial numbers 108 through 207 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the tooling and key holes located on the standard frames of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1019, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (c) of this AD.

(2) If any rivet is missing, prior to further flight, perform a visual inspection of the affected tooling and key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, install new rivets in all affected tooling and key holes, in accordance with the service bulletin.

(ii) If any crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For airplanes on which Aerospatiale Modification 03775 (reference Avions de Transport Regional Service Bulletin ATR72–52–1029, Revision 1, dated November 16, 1994) or Aerospatiale Modification 03776 (reference Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the plug door stop fittings of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1028, dated July 5, 1993.

(1) If no crack is detected, repeat the eddy current inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected, prior to further flight, replace the cracked stop fittings with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995, or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that fitting.

(e) For airplanes on which Aerospatiale Modification 03775 or Aerospatiale Modification 03776 has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, replace the plug door stop fittings of the forward and aft passenger and service doors with new, improved fittings, in

accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995; or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD.

(f) For airplanes on which Aerospatiale Modification 02986 (reference Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995) has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks in the rivet holes of the door surround corners of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995.

(1) If no crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, modify the rivet holes, and replace the door surround corners with modified corners, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, repair and modify in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For airplanes on which Aerospatiale Modification 02397 (reference Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992.

(1) If no crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, install reinforcement angles on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For airplanes on which Aerospatiale Modification 03185 (reference Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on stringer 11 of frame 26 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992.

(1) If no crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, install doublers and stringer clips on the left and right sides on stringer 11 of frame 26 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Note 2: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Avions de Transport Regional Service Bulletins ATR72–53–1013, dated June 10, 1991, or Revision 1, dated June 12, 1992, or Revision 2, dated March 22, 1993; ATR72–53–1019, dated May 13, 1993, or Revision 1, dated November 11, 1994, or Revision 2, dated October 15, 1996; ATR72–52–1029, dated July 20, 1994; or ATR72–53–1014, Revision 1, dated June 30, 1992; are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

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

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

Special Flight Permits

(j) 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

(k) Except as required by paragraphs (a)(2)(i), (b)(2)(i), (b)(2)(ii), (c)(2)(ii), (f)(2), (g)(2), and (h)(2) of this AD, the actions shall be done in accordance with the following Avions de Transport Regional service bulletins, as applicable:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR72–52–1018, May 18, 1995	1–116	Original	May 18, 1995.
ATR72–53–1013, Revision 3, January 22, 1999	1–4, 7	3	January 22, 1999.
	5, 8–10	1	June 12, 1992.
	6, 11	Original	June 10, 1991.
ATR72–53–1019, Revision 3, January 22, 1999	1–4	3	January 22, 1999.
	5, 6, 9–14, 16, 17	1	November 11, 1994.
	7, 8, 15	Original	May 13, 1993.
ATR72–52–1028, July 5, 1993	1–21	Original	July 5, 1993.
ATR72–52–1033, April 28, 1995	1–41	Original	April 28, 1995.
ATR72–52–1029, Revision 1, November 16, 1994.	1, 8–14, 33, 34	1	November 16, 1994.
	2–7, 15–32, 35–50	Original	July 20, 1994.
ATR72–53–1021, Revision 1, February 20, 1995.	1, 3, 5, 8, 11, 35, 36	1	February 20, 1995.
	2, 4, 6, 7, 9, 10, 12–34	Original	July 8, 1993.
ATR72–53–1014, Revision 2, October 15, 1992	1, 9–11, 15	2	October 15, 1992.
	2–8, 12–14	1	June 30, 1992.
ATR72–53–1020, October 6, 1992	1–15	Original	October 6, 1992.

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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 92–046–012(B)R4, dated November 5, 1997.

(l) This amendment becomes effective on April 3, 2000.

Issued in Renton, Washington, on February 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–4338 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–77–AD; Amendment 39–11598; AD 2000–04–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, and 230 helicopters. This action requires inspecting the swashplate assembly drive pin (drive pin) for damage or looseness, torque testing to determine if the interference fit between the drive pin and rotating ring (ring) is adequate, and replacing any unairworthy drive pin. This amendment is prompted by an accident investigation that revealed fatigue failure of a drive pin. The actions specified in this AD are intended to prevent fatigue failure of a drive pin and subsequent loss of control of the helicopter.

DATES: Effective March 14, 2000.

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

Comments for inclusion in the Rules Docket must be received on or before April 28, 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–77–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. 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: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, and 230 helicopters. Transport Canada advises that an investigation into the crash of a BHTC Model 222 helicopter revealed that one of the two drive pins, part number (P/N) 222–010–455–003, had failed due to an insufficient interference fit between the pin and the ring.

BHTC has issued Service Bulletins 230–99–16, 222U–99–55, and 222–99–84, all dated February 15, 1999. These service bulletins describe procedures for inspecting each drive pin, P/N 222–010–455–003, for damage or looseness; conducting an initial torque test to determine if the interference fit between each drive pin and ring is adequate; and replacing any unairworthy drive pin. Transport Canada classified these service bulletins as mandatory and issued AD No. CF–99–16, dated June 9, 1999, to ensure the continued airworthiness of these helicopters in Canada.

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

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 222, 222B, 222U, and 230 helicopters of these same type designs registered in the United States, this AD is being issued to prevent fatigue failure of a drive pin, P/N 222–010–455–003, and subsequent loss of control of the helicopter. This AD requires inspecting each drive pin for damage or looseness, an initial torque test to determine if the interference fit between the drive pin and ring is adequate, and replacing any unairworthy drive pin. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, an inspection and torque test of the drive pin is required within the next 50 hours time-in-service (TIS) 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 105 helicopters will be affected by this AD, that it will take approximately 1 work hour to accomplish the inspection and the torque test, and that the average labor rate is $60 per work hour. A special tool to perform the torque test will cost approximately $196 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,880.

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–77–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2000–04–15 Bell Helicopter Textron Canada: Amendment 39–11598. Docket No. 99–SW–77–AD.

Applicability: Model 222, serial number (S/N) 47006 through 47089; Model 222B, S/N 47131 through 47156; Model 222U, S/N 47501 through 47574; and Model 230, S/N 23001 through 23038, helicopters, with swashplate drive pin (drive pin), part number (P/N) 222–010–455–003, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fatigue failure of a drive pin and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), and thereafter at intervals not to exceed 150 hours TIS, inspect for damage or looseness and torque test any drive pin, P/N 222–010–455–003, in accordance with the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletins 230–99–16, 222–99–84, or 222U–99–55, all dated February 15, 1999, as applicable. Replace any unairworthy drive pin with an airworthy drive pin.

(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, 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.

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

(d) The inspection and torque test shall be done in accordance with the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletins 230–99–16, 222–99–84, or 222U–99–55, all dated February 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 14, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–99–19, dated June 9, 1999.

Issued in Fort Worth, Texas, on February 16, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–4371 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–7]

Amendment of Class E Airspace; Lexington, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action makes a technical amendment to the Class E5 airspace description at Lexington, NC, by changing the name of the Lexington Municipal Airport to the Davidson County Airport. This action also updates the airport coordinates.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Since the Lexington Municipal Airport, NC, has been renamed the Davidson County Airport, the Class E5

airspace description must be amended to reflect this change. Since this amendment is technical in nature and does not change the dimensions of the Class E airspace area, it has no impact on users of the airspace. This rule will become effective on the date specified in the **EFFECTIVE DATE** section.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) makes a technical amendment to the Class E5 airspace description at Lexington, NC, by changing the airport name to Davidson County Airport and updating the airport coordinates.

Class E airspace areas are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. 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; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Lexington, NC [Revised]

Davidson County Airport, NC
(Lat. 35°46′52″ N., long. 89°18′14″ W.)

That airspace extending upward from 700 feet above within a 7-mile radius of Davidson County Airport; excluding that airspace within the Salisbury, NC, and Mocksville, NC, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on February 7, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–4227 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–03]

Removal of Class E Airspace; Oak Harbor, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action removes the Class E surface area at Oak Harbor, WA.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–03, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1999, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by removing the Oak Harbor, Class E surface area (64 FR 19728). The airport is no longer eligible to retain a Class E surface area because of a lack of weather reporting. The weather reporting requirements for a surface area dictate that weather observations must be taken by a Federally Certified Weather Observer and/or a Federally Commissioned Weather Observing System during the times and dates the surface area is designated. These weather observations routinely are not being met as required at the Oak Harbor Air Park. Attempts to have interested personnel fix the reporting problem were unsuccessful. The intended effect of this rule is designed to provide efficient and safe use of the navigable airspace. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as en route domestic airspace areas are published in Paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 removes the Class E surface area at the Oak Harbor Air Park, Oak Harbor, WA. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations at the Oak Harbor Air Park.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 CLAS 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. 105(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 designated as a surface area for an airport

* * * * *

ANM WA E2 Oak Harbor, WA [Remove]

* * * * *

Issued in Seattle, Washington, on February 10, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–4635 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–077–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects OSM's decision on an amendment submitted by the State of West Virginia as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM published its decision on the provision in the February 9, 1999, **Federal Register** (64 FR 6201). The decision being corrected concerns subsidence regulations, and specifically concerns certain rules that pertain to an ''angle of draw'' determination for subsidence damage. This correction is intended to comply with the decision of the United States Court of Appeals for the District of Columbia in *National Mining Association* v. *Babbitt,* No. 98–5320 (D.C. Cir., April 27, 1999).

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

Background

In a letter dated May 5, 1999 (Administrative Record Number WV–1127), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to the West Virginia program. We subsequently reviewed the amendment, and approved it on October 1, 1999 (64 FR 53200). Also in the May 5, 1999, letter the WVDEP requested that we reconsider our previous disapproval of parts of the West Virginia regulations at CSR 38–2–3.12 (concerning subsidence control plan) and 38–2–16.2 (concerning surface owner protection from subsidence damage) and remove the corresponding required regulatory program amendments specified in the February 9, 1999, **Federal Register** rule. The WVDEP stated the reason for the request is the April 27, 1999, United States Court of Appeals decision in *National Mining Association* v. *Babbitt.*

Need for Correction

On April 27, 1999, the United States Court of Appeals for the District of Columbia struck down two OSM regulations on coal mine subsidence. The regulations struck down were among those issued on March 31, 1995, at 60 FR 16722–16751, pursuant to SMCRA and section 2504 of the Energy Policy Act of 1992 (the EPAct) which added a new section 720 to SMCRA. Section 720 requires underground mine operators to repair or to compensate for material damage to residential structures and noncommercial buildings, and to replace residential water supplies adversely affected by underground mining.

The Court of Appeals struck down the rebuttable presumption that, when subsidence damage occurs within the so-called ''angle of draw,'' damage has been caused by the related underground mine (30 CFR 817.121(c)(4)). The Court emphasized that, for a regulatory presumption to withstand legal challenge, the circumstances giving rise to the presumption must make it more likely than not that the presumed fact exists. Slip op. at 6. The Court noted that OSM had characterized the angle of draw only as ''one way to define the outer boundary of subsidence displacement that *may* occur at the surface.'' 60 FR at 16738 (emphasis added by the Court). The Court ruled that OSM could not ''impose a presumption of causation of damage on a party based merely on the possibility that the party caused the damage.'' Slip op. at 10. Because it could not be said that subsidence-caused damage to structures within the angle of draw is more likely than not to occur, the Court struck down the regulation. *Id.*

The Court also vacated OSM's regulation requiring coal operators to conduct presubsidence structural condition surveys (30 CFR 784.20(a)(3)), solely because that regulation was interconnected with the angle of draw regulation. The Court ruled that, after enactment of the Energy Policy Act, OSM possessed the authority to require such surveys. Slip op. at 13–14. The Court, however, found it necessary to vacate the regulation because the regulation defined the area within which the pre-subsidence survey is required by reference to the angle of draw. *Id.* at 14.

In accordance with the Court's decision, we suspended the following regulations on December 22, 1999 (64 FR 71652). We suspended 30 CFR 817.121(c)(4) (i)–(iv). These provisions set out a procedure under which damage occurring within an area defined by an angle of draw would be subject to the rebuttable presumption: that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures within the angle of draw. We also suspended that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EPAct protected structures within an area defined by an angle of draw.

The Regulatory Decisions We Are Correcting

1. CSR 38–2–3.12.a.1. In our February 9, 1999, decision, we did not approve the phrase ''within an angle of draw of at least 30 degrees'' at CSR 38–2–3.12.a.1. This provision requires the identification (on a map) of the lands, structures, and water supplies that could be damaged by subsidence. We disapproved the phrase ''within an angle of draw of at least 30 degrees'' because it limited the identification of water supplies to areas within the angle of draw. This limitation renders the provision less effective than the Federal regulations at 30 CFR 784.20(a)(1) which has no ''angle of draw'' limit for the identification of water supplies that may be affected by subsidence. Our suspension of the Federal ''angle of draw'' criterion at 30 CFR 817.121(c)(4) (i)–(iv) does not affect this disapproval

of the State as it pertains to water supplies. Therefore, our disapproval of the phrase ''within an angle of draw of at least 30 degrees'' at CSR 38–2–3.12.a.1. continues in force.

In addition we required, at 30 CFR 948.16(zzz), that CSR 38–2–3.12.a.1 be amended to require that the map identify the type and location of all lands, structures, and drinking, domestic and residential water supplies within the permit and adjacent areas, and to include a narrative indicating whether subsidence, if it occurred, could damage or diminish the use of the lands, structures, or water supplies. This required amendment is not affected by our suspension of the Federal regulations cited above and, therefore, remains in force.

We also approved CSR 38–2–3.12.a.1 pertaining to an alternative, site-specific angle of draw, but only with the understanding that such an alternative angle of draw would be justified based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation. This decision is affected by our suspension of the ''angle of draw'' criterion, and must be corrected. We are correcting this decision by changing the qualified approval that CSR 38–2–3.12.a.1, to a complete approval, because there is now no Federal regulatory counterpart to this alternative angle of draw criterion. As we stated in the December 22, 1999, suspension notice, under section 505(b) of SMCRA, a State may elect to retain its existing regulations despite the fact that OSM has suspended their counterparts.

In addition we required, at 30 CFR 948.16(yyy), that CSR 38–2–3.12.a.1 be amended to clarify that approval of the proposed angle of draw has a more reasonable basis than the 30-degree angle of draw based on site-specific geotechnical analysis of the potential impacts of the proposed mining operation. Because our approval of CSR 38–2–3.12 is now unqualified, we are removing the required amendment at 30 CFR 948.16(yyy).

2. CSR 38–2–3.12.a.2. We approved CSR 38–2–3.12.a.2. concerning presubsidence surveys, except we did not approve the phrase ''within the area encompassed by the applicable angle of draw'' as it applies to water supply surveys. In addition we required, at 30 CFR 948.16(aaaa), that CSR 38–2–3.12.a.2. be amended to require a pre-subsidence survey without limitation by an angle of draw, of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. The Federal regulations concerning pre-subsidence surveys of water supplies have never incorporated an ''angle of draw'' criterion. CSR 38–2–3.12.a.2. does contain an ''angle of draw'' criterion for water supplies, and that criterion renders the State provision less effective than 30 CFR 784.20(a)(3) as it pertains to water supplies. Therefore, the disapproval and required amendment concerning water supplies continue to be in effect, because they are not affected by our suspension of the Federal ''angle of draw'' provision.

CSR 38–2–3.12.a.2. also contains a requirement for pre-subsidence surveys for non-commercial or residential dwellings and structures that incorporates an ''angle of draw'' criterion. Although the counterpart Federal requirement contained an ''angle of draw'' criterion and has been suspended, the suspension does not render the State provisions inconsistent with the Federal regulations. Under section 505(b) of SMCRA, a State may elect to retain its existing regulations despite the fact that OSM has suspended its counterparts. Therefore, CSR 38–2–3.12.a.2. concerning pre-subsidence surveys for non-commercial or residential dwellings and structures continues to be approved.

CSR 38–2–3.12.a.2.A. and B. We did not approve CSR 38–2–3.12.a.2.A. and B. concerning exemption and postponement of the pre-subsidence structural survey. These provisions were disapproved because we found them to be less effective than 30 CFR 784.20(a)(3) and 817.121(c)(4)(ii). Both of these Federal provisions have been suspended. Therefore, CSR 38–2–3.12.a.2.A. and B. are no longer less effective than the Federal regulations. We are correcting our finding to approve CSR 38–2–3.12.a.2.A. and B. concerning exemption and postponement of the pre-subsidence structural surveys. As we stated in the December 22, 1999, suspension notice, under section 505(b) of SMCRA, a State may elect to retain its existing regulations despite the fact that OSM has suspended its counterparts.

We required, at 30 CFR 948.16(bbbb), that CSR 38–2–3.12.a.2. be amended to require that the permit applicant pay for any pre-subsidence surveys of protected structures and water supplies, and to require the applicant to provide copies of the surveys to the property owner and the regulatory authority. The Federal requirements at 30 CFR 784.20(a)(3) concerning pre-subsidence structural surveys have been suspended, but the Federal requirements concerning pre-subsidence surveys of water supplies have not been suspended. Therefore, we are correcting our required amendment at 30 CFR 948.16(bbbb) to remove all references to presubsidence surveys of protected structures, since the portion of 3.12.a.2. referring to presubsidence surveys no longer has a Federal counterpart. Pursuant to section 505(b) of SMCRA, a State may elect to retain its existing regulations, despite the fact that OSM has suspended its counterparts. As corrected, 30 CFR 948.16(bbbb) will now only require that the permit applicant pay for any pre-subsidence surveys of protected water supplies, and that the applicant provide copies of the surveys to the property owner and the regulatory authority.

We did not approve, at CSR 38–2–3.12.a.2., the definition of ''non-commercial building.'' In addition, we required, at 30 CFR 948.16(cccc), that CSR 38–2–3.12.a.2. be amended to clarify that the definition of ''non-commercial building'' includes such buildings used on a regular or temporary basis. These two decisions are affected by our suspension of 30 CFR 784.20(a)(3). The State's definition of ''non-commercial building'' pertains directly to its pre-subsidence survey requirement for structures at CSR 38–2–3.12.a.2. Since the Federal pre-subsidence survey requirement for structures at 30 CFR 784.20(a)(3) has been suspended, the State's definition is applied to a provision for which the Federal regulations have no counterpart. Pursuant to SMCRA section 505(b), the State's use of the definition of ''non-commercial building'' at CSR 38–2–3.12.a.2. is not inconsistent with SMCRA and can be approved. Therefore, we are correcting our decision regarding the definition of ''non-commercial building'' at CSR 38–2–3.12.a.2. to approve the definition. In addition, we are deleting the required amendment at 30 CFR 948.16(cccc).

3. CSR 38–2–16.2.c.3. In our February 9, 1999, decision, we found that CSR 38–2–16.2.c.3. was less effective than 30 CFR 817.121(c)(4)(i) to the extent that the State's presumption of causation of subsidence damage only applies within the area which a pre-subsidence structural survey is required. In addition, we required, at 30 CFR 948.16(dddd), that CSR 38–2–16.2.c.3. be amended to provide that a rebuttable presumption of causation would exist within the applicable angle of draw regardless of whether or not a pre-subsidence survey had been conducted. These two decisions are no longer valid because of our suspension of the Federal regulations at 30 CFR 817.121(c)(4) (i)–(iv). The Federal regulations no longer contain a presumption of causation of

subsidence damage. As we stated in the December 22, 1999, suspension notice, under section 505(b) of SMCRA, a State may elect to retain its existing regulations despite the fact that OSM has suspended its counterparts. Therefore, we are correcting our decision on CSR 38–2–16.2.c.3. concerning presumption of causation of damage by subsidence, to be an approval of this provision. In addition, we are deleting the required amendment codified at 30 CFR 948.16(dddd).

CSR 38–2–16.2.c.3.B. Finally, in our February 9, 1999, decision we did not approve the word ''or'' at CSR 38–2–16.2.c.3.B. concerning rebuttal of the presumption. In addition, we required, at 30 CFR 948.16(eeee) that CSR 38–2–16.2.c.3.B. be amended to make it clear that the presumption of subsidence causation of damage can be rebutted only where the permittee demonstrates that the damage was proximately caused by some other factor or factors ''and'' was not proximately caused by subsidence. These two decisions are no longer valid because of our suspension of the Federal regulations at 30 CFR 817.121(c)(4) (i)–(iv). As we stated in the December 22, 1999, suspension notice, under section 505(b) of SMCRA, a State may elect to retain its existing regulations despite the fact that OSM has suspended its counterparts. Therefore, we are correcting our previous decision on CSR 38–2–16.2.c.3.B. concerning rebuttal of the presumption, and are approving this provision. In addition, we are deleting the required amendment codified at 30 CFR 948.16(eeee).

Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this rule merely makes corrections that are indirectly mandated by the decision of the court in *National Mining Association* v. *Babbitt, supra.* Therefore, notice and opportunity for prior comment are unnecessary and we are issuing these corrections as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of this final rule because we are merely making corrections indirectly mandated by the court in *National Mining Association* v. *Babbitt, supra.*

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by revising the entry with the ''Date of Final Publication'' of February 9, 1999, to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
April 28, 1997	February 9, 1999	W.Va. Code 22–3 Sections 3(u)(2)(1) (decision deferred), (2)(not approved), (3); 3(x), (y) (partial approval), (z) (partial approval); 13(b)(20), (22), (c)(3) (decision deferred); 15(h); 17(b); 18(c), (f); 28 (a–c) (not approved), (d), (e) (decision deferred), (f). WV Regulations CSR 38–2 Sections 2.4, 2.43 (not approved), 2.95 (not approved), 2.108, 2.120; 3.2.e; 3.12.a.1 (partial approval), .2 (partial approval); 3.14.b.7 & .8 deleted, .12.E, .15.B deleted, .13.B; 3.29.a (partial approval); 3.35; 5.5.c; 6.5.a; 8.2.e; 9.2.i.2; 9.3.h.1, .2; 14.11.e, .f, .g, .h; 14.15.b.6.A, .c, .d; 16.2.c (partial approval), .2, .3, .4 (partial approval for .4); 20.1.e
*	*	*

3. Section 948.16 is amended by removing and reserving paragraphs (yyy), (cccc), (dddd), and (eeee), and by revising paragraph (bbbb) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(yyy) [Reserved]

* * * * *

(bbbb) By April 28, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining quality and quantity of drinking, domestic or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

(cccc) [Reserved]

(dddd) [Reserved]

(eeee) [Reserved]

* * * * *

[FR Doc. 00–4329 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–6541–2]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Three Local Air Agencies in Washington; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: This action provides an amendment to **Federal Register** actions published on December 1, 1998, and April 22, 1999, that granted Clean Air Act, Section 112(l), delegation of authority for three local air agencies in Washington to implement and enforce specific federal National Emission Standards for the Hazardous Air Pollutants (NESHAP) regulations which have been adopted into local law. The three local air agencies are: the Northwest Air Pollution Authority, the Puget Sound Clean Air Agency, and the Southwest Air Pollution Control Agency. This action amends the tables outlining these three local agencies' current delegation status.

DATES: This amendment is effective on February 28, 2000.

ADDRESSES: Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I Administrative Requirements

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with state, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because 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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

II Clarification

What Action Is EPA Taking Today?

EPA is publishing this notice to inform the public that EPA has approved the Washington Department of Ecology's (Ecology) updated delegation requests on behalf of the Northwest Air Pollution Authority (NWAPA), the Puget Sound Clean Air Agency (Puget Sound Clean Air),[1] and the Southwest Air Pollution Control Agency (SWAPCA), to implement certain 40 CFR parts 61 and 63 National Emission Standards for Hazardous Air Pollutants (NESHAP). This action also provides an amendment to **Federal Register** actions published on December 1, 1998 (*see* 63 FR 66054) and April 22, 1999 (*see* 64 FR 19719), that granted Clean Air Act, Section 112(l), delegation of authority for these three local air agencies in Washington to implement and enforce specific 40 CFR parts 61 and 63 federal NESHAP regulations which have been adopted into local law. Specifically, this action amends 40 CFR 61.04 and 63.99 by revising the tables outlining these three local agencies' current delegation status.

Which 40 CFR Parts 61 and 63 Subparts Are Now Delegated?

With this updated delegation, NWAPA, Puget Sound Clean Air, and SWAPCA now have the authority to implement and enforce 40 CFR parts 61 and 63 NESHAPs in effect as of July 1, 1999 (NWAPA and Puget Sound Clean Air), or August 1, 1998 (SWAPCA). This update includes any revisions to previously delegated 40 CFR parts 61 and 63 standards, and any new NESHAPs. At the end of this rule is an updated delegation table reflecting this approval and identifying the delegated standards. Please note that EPA has withheld delegation of several subparts as explained below.

Which Requested Subparts Did EPA Not Delegate to These Three Agencies?

EPA decided not to delegate to these three agencies any 40 CFR part 61 subparts pertaining to radon or radionuclides. Typically, EPA delegates all standards adopted (and requested) by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA decided not to delegate any 40 CFR part 61 NESHAPs pertaining to radon or radionuclides (subparts B, H, I, K, Q, R, T, and W). EPA determined that it is not necessary to delegate these standards to NWAPA, Puget Sound Clean Air, and SWAPCA for the following reasons: (1) There are no radon sources in any of these three locals' jurisdictions and only one radionuclide source, as explained below; (2) It is highly unlikely that any

[1] PSCAA was formerly known as the Puget Sound Air Pollution Control Agency (PSAPCA). All previous **Federal Register** rules regarding this agency have used the PSAPCA name.

new radon or radionuclide sources will emerge; and (3) The Washington Department of Health has the expertise and authority to implement radionuclide standards (subparts H and I) for the State of Washington. For the one radionuclide source within Puget Sound Clean Air's jurisdiction, the agency currently has a Memorandum of Understanding for the Washington Department of Health to regulate that facility.

EPA also did not delegate 40 CFR part 63, subpart LL (Primary Aluminum) and subpart S (Pulp & Paper), as it pertains to kraft and sulfite pulping mills. EPA cannot delegate all or part of these subparts, respectively, to these three locals because Ecology retains the sole authority for regulating these particular industries in the State of Washington. The Revised Code of Washington (RCW) 70.94.395 gives Ecology the authority to regulate a particular class of air contaminant sources on a state-wide basis. Ecology has enacted that authority in the Washington Administrative Code Chapters 173–405–012, 173–410–012, and 173–415–012 to regulate Kraft Pulping Mills, Sulfite Pulping Mills and Primary Aluminum Plants, respectively, on a state-wide basis. Because of these regulations, NWAPA, Puget Sound Clean Air, and SWAPCA cannot regulate primary aluminum facilities and kraft and sulfite pulping mills. Therefore, EPA is unable to delegate 40 CFR part 63, subpart LL (Primary Aluminum), and part of subpart S (Pulp & Paper). Since 40 CFR part 63, subpart S is applicable to more facilities and processes than kraft and sulfite pulping mills, EPA did delegate subpart S as it applies to all applicable facilities, as defined in 40 CFR 63.440, *except* kraft and sulfite pulping mills. Please note that EPA had originally delegated both subpart S and LL to Puget Sound Clean Air in a letter dated March 19, 1999, granting updated delegation (see 64 FR 19719, April 22, 1999), but this current updated delegation now supercedes the March 19, 1999, delegation.

What Is the Delegation Process to Local Agencies in Washington?

Local agencies in Washington submit delegation requests to Ecology and ask that Ecology forward those requests to EPA. Consistent with Ecology's interpretation of RCW 70.94.860, Ecology must first accept delegation of a program on behalf of the local agency and then redelegate the program to that agency. Ecology's Delegation Orders outline this redelegation process for each delegation, and are signed by both Ecology and the local agency. As described in the orders, the effective date of the orders is the same as the effective date of EPA's delegation action. Therefore, the delegation to local agencies via Ecology causes no delay.

When Did These Agencies Previously Receive Delegation?

On December 1, 1998, EPA promulgated direct final approval of Ecology's request, on behalf of NWAPA, Puget Sound Clean Air, and SWAPCA for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 federal NESHAP regulations which have been adopted into local law (as they apply to both part 70 and non-part 70 sources). That delegation was effective on February 1, 1999. Additionally, on April 22, 1999, EPA published an amendment to the December 1, 1998, direct final rule. This amendment revised Puget Sound Clean Air's current delegation status based on a delegation update that was effective on March 29, 1999. Since the February 1, 1999, effective date of the program approval and delegation for NWAPA and SWAPCA and since the March 29, 1999, effective date for the updated delegation for Puget Sound Clean Air, Ecology has submitted updated delegation requests on behalf of each of these three agencies.

When Did Ecology Submit the Updated Delegation Requests on Behalf of NWAPA, Puget Sound Clean Air and SWAPCA?

On November 24, 1999, Ecology submitted a request on behalf of NWAPA for updated delegation of those NESHAPs in 40 CFR Parts 61 and 63 in effect on July 1, 1999. These new and revised standards have been adopted unchanged into NWAPA Regulation Section 104.2 (as amended on November 12, 1999). In a letter dated November 8, 1999, Ecology submitted a request on behalf of Puget Sound Clean Air for updated delegation of those NESHAPs in 40 CFR parts 61 and 63 in effect on July 1, 1999. These new and revised standards have been adopted unchanged into PSCAA Regulation III, Section 2.02 (as amended on September 9, 1999). Ecology also submitted a request dated November 4, 1999, on behalf of SWAPCA for updated delegation of those NESHAPs in 40 CFR parts 61 and 63 in effect on August 1, 1998. These new and revised standards have been adopted unchanged into SWAPCA 400–075 (as amended on April 11, 1999).

Ecology also submitted copies of its Delegation Orders for each local agency for this updated delegation. Ecology signed the orders for Puget Sound Clean Air and SWAPCA on November 18, 1999. Puget Sound Clean Air signed the orders on October 27, 1999, while SWAPCA signed them on October 20, 1999. Ecology signed the orders for NWAPA on November 23, 1999, and NWAPA signed them on November 19, 1999.

When Did EPA Approve the Updated Delegation Request?

Consistent with the approved mechanism for streamlined delegation (see page 66057, 63 FR 66054, December 1, 1998) and with Ecology's interpretation of RCW 70.94.860, EPA granted these updated delegation requests to Ecology for purposes of redelegating to NWAPA, Puget Sound Clean Air, and SWAPCA, in a letter to Ecology dated January 25, 2000. The effective date of that letter and the updated delegation was February 4, 2000. As described in Ecology's delegation orders, the effective date of the redelegation to the three locals is the same as the effective date of the updated delegation. Therefore, the delegation to these agencies via Ecology caused no delay in this delegation to NWAPA, Puget Sound Clean Air, and SWAPCA.

Where Should Sources Send Notifications and Reports?

NWAPA, Puget Sound Clean Air, and SWAPCA are now the primary point of contact with respect to these delegated NESHAPs. Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA waived the requirement that notifications and reports for delegated standards be submitted to EPA in addition to these agencies. Therefore, sources within NWAPA, Puget Sound Clean Air, or SWAPCA's jurisdiction should send notifications and reports for delegated NESHAPs directly to NWAPA, Puget Sound Clean Air, or SWAPCA, and do not need to send a copy to EPA.

How Does This Delegation Affect Facilities in Indian Country?

This updated delegation for NWAPA, Puget Sound Clean Air, and SWAPCA to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151, except for those non-trust lands within the boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies, such as Puget Sound Clean Air, authority over activities on non-trust lands within the 1873 Survey Area. Therefore, Puget Sound Clean Air will implement and enforce the

NESHAPs on these non-trust lands within the 1873 Survey Area. EPA will continue to implement the NESHAPs in all other Indian country, consistent with previous federal program approvals or delegations, because NWAPA, Puget Sound Clean Air, and SWAPCA do not have authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl Chloride.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 8, 2000.

Chuck Findley,

Acting Regional Administrator, Region X.

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraph (b)(WW)(iii); and by revising the table in paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(WW) * * *

(iii) Puget Sound Clean Air Agency (Puget Sound Clean Air). 110 Union Street, Suite 500, Seattle, WA 98101–2038.

Note: For a table listing Puget Sound Clean Air's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

Subpart	ADEC[1]	IDEQ[2]	ODEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	OAPCA[8]	PSCAA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A. General Provisions[13]	X						X		X		X	
B. Radon from Underground Uranium Mines												
C. Beryllium							X		X		X	
D. Beryllium Rocket Motor Firing							X		X		X	
E. Mercury	X						X		X		X	
F. Vinyl Chloride							X		X		X	
H. Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I. Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J. Equipment Leaks of Benzene	X						X		X		X	
K. Radionuclides from Elemental Phosphorus Plants												
L. Benzene from Coke Recovery							X		X		X	
M. Asbestos	X[1]						X		X		X	
N. Arsenic from Glass Plants							X		X		X	
O. Arsenic from Primary Copper Smelters							X		X		X	
P. Arsenic from Arsenic Production Facilities							X		X		X	
Q. Radon from Dept of Energy facilities												
R. Radon from Phosphogypsum Stacks												
T. Radon from Disposal of Uranium Mill Tailings												
V. Equipment Leaks	X						X		X		X	
W. Radon from Operating Mill Tailings												
Y. Benzene from Benzene Storage Vessels	X						X		X		X	
BB. Benzene from Benzene Transfer Operations							X		X		X	
FF. Benzene Waste Operations	X						X		X		X	

[1] Alaska Department of Environmental Conservation (1/18/97).

Note: Alaska received delegation for sections 61.145 and 61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in 61.145, as 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. EPA retains the authority to implement and enforce Subpart M for area source asbestos demolition and renovation activities.

[2] Idaho Division of Environmental Quality

[3] Oregon Department of Environmental Quality

[4] Lane Regional Air Pollution Authority

[5] Washington Department of Ecology

[6] Benton Clean Air Authority

[7] Northwest Air Pollution Authority (7/1/99)

[8] Olympic Air Pollution Control Authority

[9] Puget Sound Clean Air Agency (7/1/99)

[10] Spokane County Air Pollution Control Authority

[11] Southwest Air Pollution Control Authority (8/1/98)

[12] Yakima Regional Clean Air Authority

[13] Authorities which are not delegated include: 40 CFR 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; 61.14(g)(1)(ii) for approval of major alternatives to monitoring; 61.16; 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under ''Delegation of Authority'') that cannot be delegated.

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising the table in paragraph (a) (47)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(47) * * *

(i) * * *

DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON

Subpart	Description	Ecology[1]	BCAA[2]	NWAPA[3]	OAPCA[4]	PSCAA[5]	SCAPCA[6]	SWAPCA[7]	YRCAA[8]
A	General Provisions[9]			X		X		X	
D	Early Reductions			X		X		X	
F	HON-SOCMI			X		X		X	
G	HON-Process Vents			X		X		X	
H	HON-Equipment Leaks			X		X		X	
I	HON-Negotiated Leaks			X		X		X	
L	Coke Oven Batteries			X		X		X	
M	Perc Dry Cleaning			X		X		X	
N	Chromium Electroplating			X		X		X	
O	Ethylene Oxide Sterilizers			X		X		X	
Q	Industrial Process Cooling Towers.			X		X		X	
R	Gasoline Distribution			X		X		X	
S	Pulp and Paper[10]			X		X		X	
T	Halogenated Solvent Cleaning.			X		X		X	
U	Polymers and Resins I			X		X		X	
W	Polymers and Resins II—Epoxy.			X		X		X	
X	Secondary Lead Smelting			X		X		X	
Y	Marine Tank Vessel Loading			X		X		X	
AA	Phosphoric Acid Manufacturing Plants.			X		X			
BB	Phosphate Fertilizers Production Plants.			X		X			
CC	Petroleum Refineries			X		X		X	
DD	Off-Site Waste and Recovery.			X		X		X	
EE	Magnetic Tape Manufacturing.			X		X		X	
GG	Aerospace Manufacturing & Rework.			X		X		X	
HH	Oil and Natural Gas Production Facilities.			X		X			
II	Shipbuilding and Ship Repair.			X		X		X	
JJ	Wood Furniture Manufacturing Operations.			X		X		X	
KK	Printing and Publishing Industry.			X		X		X	
LL	Primary Aluminum[11]			X		X			
OO	Tanks—Level 1			X		X			
PP	Containers			X		X			
QQ	Surface Impoundments			X		X			
RR	Individual Drain Systems			X		X			
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process.			X		X			
TT	Equipment Leaks—Control Level 1.			X		X			
UU	Equipment Leaks—Control Level 2.			X		X			
VV	Oil—Water Separators and Organic-Water Separators.			X		X			
WW	Storage Vessels (Tanks)—Control Level 2.			X		X			

DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON—Continued

Subpart	Description	Ecology[1]	BCAA[2]	NWAPA[3]	OAPCA[4]	PSCAA[5]	SCAPCA[6]	SWAPCA[7]	YRCAA[8]
YY	Source Categories: Generic MACT.			X		X			
CCC	Steel Pickling—HCI Process Facilities and Hydrochloric Acid Regeneration Plants.			X		X			
DDD	Mineral Wood Production			X		X			
EEE	Hazardous Waste Cumbustors.			X		X			
GGG	Pharmaceuticals Production			X		X			
HHH	Natural Gas Transmission and Storage Facilities.			X		X			
III	Flexible Polyurethane Foam Production.			X		X			
JJJ	Polymers and Resins IV			X		X		X	
LLL	Portland Cement Manufacturing.			X		X			
MMM	Pesticide Active Ingredient Production.			X		X			
NNN	Wood Fiberglass Manufacturing.			X		X			
PPP	Polyether Polyols Production			X		X			
TTT	Primaryl Lead Smelting			X		X			
XXX	Ferroalloys Production: Ferromanganese & Silicomanganese.			X		X			

[1] Washington Department of Ecology
[2] Benton Clean Air Authority
[3] Northwest Air Pollution Authority (7/1/99)
[4] Olympic Air Pollution Control Authority
[5] Puget Sound Clean Air Agency (7/1/99)
[6] Spokane County Air Pollution Control Authority
[7] Southwest Air Pollution Control Authority (8/1/98)
[8] Yakima Regional Clean Air Authority
[9] Authorities which may not be delegated include: 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; 63.10(f); and all authorities identified in the subparts (i.e., under ''Delegation of Authority'') that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies.''
[10] Subpart S is delegated to these agencies as applies to all applicable facilities and processes as defined in 40 CFR 63.440, except kraft and sulfite pulping mills. The Washington Department of Ecology (Ecology) retains the authority to regulate kraft and sulfite pulping mills in the State of Washington, pursuant to Washington Administrative Code (WAC) 173–405–012 and 173–410–012.
[11] Subpart LL cannot be delegated to any local agencies in Washington because Ecology retains the authority to regulate primary aluminum plants, pursuant to WAC 173–415–012.

Note to paragraph (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

[FR Doc. 00–4653 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300971; FRL–6490–8]

RIN 2070–AB78

Polyoxyethylated Sorbitol Fatty Acid Esters; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the polymers polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum molecular weight of 1,300 when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Uniqema, formerly known as ICI Surfactants, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum molecular weight (MW) of 1,300.

DATES: This regulation is effective February 28, 2000. Objections and requests for hearings, identified by docket control number OPP–300971, must be received by EPA on or before April 28, 2000.

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

300971 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6304 and e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production.
	112	Animal production.
	311	Food manufacturing.
	32532	Pesticide manufacturing.

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300971. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 24, 1999 (64 FR 4751) (FRL–6058–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (9E5063) by Uniqema (formerly known as ICI Surfactants), 3411 Silverside Road, Wilmington, DE 19803–8340. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001 (c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum MW of 1,300.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the

requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymers, polyoxyethylated sorbitol fatty acid esters, are not cationic polymers nor are reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. The polymers do contain as an integral part of their composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymers do not contain as an integral part of their composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymers are neither designed nor can be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymers are not water absorbing polymers with a number average MW greater than or equal to 10,000 daltons.

Additionally, the polymers, polyoxyethylated sorbitol fatty acid esters also meet as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymers' number average MW are greater than 1,000 and less than 10,000 daltons. The polymers contain less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymers do not contain any reactive functional groups.

Thus, polyoxyethylated sorbitol fatty acid esters meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to polyoxyethylated sorbitol fatty acid esters.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that polyoxyethylated sorbitol fatty acid esters could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of polyoxyethylated sorbitol fatty acid esters are greater than 1,000 and less than 10,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since polyoxyethylated sorbitol fatty acid esters conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to polyoxyethylated sorbitol fatty acid esters, a tolerance is not necessary.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not polyoxyethylated sorbitol fatty acid esters share a common mechanism of toxicity with any other chemicals. However, polyoxyethylated sorbitol fatty acid esters conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of polyoxyethylated sorbitol fatty acid esters.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of polyoxyethylated sorbitol fatty acid esters, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that polyoxyethylated sorbitol fatty acid esters are an endocrine disruptor.

B. Existing Exemptions from a Tolerance

Currently, an Exemption from the Requirement of a Tolerance is established in 40 CFR 180.1001 in the table in paragraph (d) inert ingredients in pesticide formulations applied to growing crops only. The exemption reads as follows:

Polyoxyethylated Sorbitol Fatty Acid Esters; the polyoxyethylated sorbitol solution containing up to 15% water is reacted with fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids; the poly (oxyethylene) content averages 30 moles.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for polyoxyethylated sorbitol fatty acid esters nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum MW of 1,300 from

the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300971 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 28, 2000.

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

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300971, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section

12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient and by deleting the entire entry for ''Polyoxyethylated Sorbitol Fatty Acid Esters'' in paragraph (d) to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	*
Polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum MW (in amu) of 1,300.	.....	Dispersants, emulsifiers, surfactants, related adjuvants of surfactants.
* * *	* * *	*

* * * * * (e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	*
Polyoxyethylated Sorbitol Fatty Acid Esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum molecular weight (in amu) of 1,300.	.....	Dispersants, emulsifiers, surfactants, related adjuvants of surfactants
* * *	* * *	*

[FR Doc. 00–4660 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300973; FRL–6491–3]

RIN 2070–AB78

Ethoxylated Propoxylated C_{12}–C_{15} Alcohols; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of a range of polymers α-alkyl (C_{12}–C_{15})–ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly(oxypropylene) content is 3–60 moles and the poly(oxyethylene) content is 5–80 moles) also known as ethoxylated propoxylated C_{12}–C_{15} alcohols, CAS Reg. No. (68551–13–3) when used as an inert ingredient (surfactant) in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Omnichem S. A. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of α-alkyl (C_{12}–C_{15})–ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly (oxypropylene) content is 3–60 moles and the poly(oxyethylene) content is 5–80 moles).

DATES: This regulation is effective February 28, 2000. Objections and requests for hearings, identified by docket control number OPP–300973, must be received by EPA on or before April 28, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit XI. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300973 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–8377 and e-mail address: acierto.amelia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300973. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 26, 1999 (64 FR 28480) (FRL–6081–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (PP 8E4950) by Omnichem S. A., Industrial Research Park, 1348 Louvain-La-Neuve, Belgium. This notice included a summary of the petition prepared by the petitioner. The petition requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for residues of α-alkyl (C_{12}–C_{15})-ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly (oxypropylene) content is 3–60 moles and the poly (oxyethylene) content is 5–80 moles, CAS Reg. No. 68551–13–3). After publication of the **Federal Register** notice, Omnichem informed the Agency that their summary contained an error and that the exemption from the requirement of a tolerance should have requested C_{12}–C_{15} not C_{12}–C_{18}. Since the desired C range is less than the range in the notice of filing, and there were no comments received in response to the notice, the Agency will establish the exemption from the requirement of a tolerance for the C_{12}–C_{15} range.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all

anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, ethoxylated propoxylated C_{12}–C_{15} alcohols, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is not manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, ethoxylated propoxylated C_{12}–C_{15} alcohols, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's minimum number average MW of 1,500 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, ethoxylated propoxylated C_{12}–C_{15} alcohols meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to ethoxylated propoxylated C_{12}–C_{15} alcohols.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that ethoxylated propoxylated C_{12}–C_{15} alcohols could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of ethoxylated propoxylated C_{12}–C_{15} alcohols is 1,500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since ethoxylated propoxylated C_{12}–C_{15} alcohols conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to ethoxylated propoxylated C_{12}–C_{15} alcohols, a tolerance is not necessary.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not ethoxylated propoxylated C_{12}–C_{15} alcohols share a common mechanism of toxicity with any other chemicals. However, polyvinyl acetate, carboxyl modified sodium salt conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of ethoxylated propoxylated C_{12}–C_{15} alcohols.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of ethoxylated propoxylated C_{12}–C_{15} alcohols, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that ethoxylated propoxylated C_{12}–C_{15} alcohols is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no known exemptions from a tolerance for α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly(oxypropylene) content is 3–60 moles and the poly (oxyethylene) content is 5–80 moles).

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for ethoxylated propoxylated C_{12}–C_{15} alcohols nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly (oxypropylene) content is 3–60 moles and the poly (oxyethylene) content is 5–80 moles) also known as ethoxylated propoxylated C_{12}–C_{15} alcohols from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300973 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 28, 2000.

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

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300973, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly (oxypropylene) content is 3–60 moles and the poly (oxyethylene) content is 5–80 moles).	Not more than 20% of pesticide formulations	Surfactant
* * * * * * *		

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
α-alkyl (C_{12}–C_{15})–ω-hydroxypoly (oxypropylene) poly (oxyethylene) copolymers (where the poly (oxypropylene) content is 3–60 moles and the poly (oxyethylene) content is 5–80 moles).	Not more than 20% of pesticide formulations	Surfactant
* * * * * * *		

[FR Doc. 00–4661 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6543–6]

Missouri: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Missouri has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the state's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect opposing comments. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Missouri's changes to its hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on April 28, 2000 unless EPA receives adverse written comment by March 29, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101. We must receive your comments by March 29, 2000. You can view and copy Missouri's application during normal business hours at the following address: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176 (573) 751–3176.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101. (913) 551–7039.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made In This Rule?

We conclude that Missouri's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Missouri final authorization to operate its hazardous waste program with the changes described in the authorization application. Missouri has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Missouri, including issuing permits, until the state is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Missouri subject to RCRA will now have to comply with the authorized state requirements instead of the equivalent Federal requirements in order to comply with RCRA. Missouri has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003 which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports,
- Enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which Missouri is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in

the **Federal Register** before this rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the state hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Missouri Previously Been Authorized For?

On November 20, 1985, EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the State of Missouri which became effective December 12, 1985 (50 FR 47740). Missouri received authorization for revisions to its program as follows: February 27, 1989, effective April 28, 1989 (54 FR 8190); January 11, 1993, effective March 12, 1993 (58 FR 3497) and on May 30, 1997, effective July 29, 1997 (62 FR 29301). On January 7, 1998, (63 FR 683) a correction was made to the May 30, 1997 (62 FR 29301) notice to correct the effective date of the rule to be consistent with sections 801 and 808 of the Congressional Review Act, enacted as part of the Small Business Regulatory Enforcement Fairness Act. Additionally, the state adopted and applied for interim authorization for the corrective action portion of the HSWA Codification Rule (July 15, 1985, 50 FR 28702). For a full discussion of the HSWA Codification Rule, the reader is referred to the **Federal Register** cited above. The state was granted interim authorization for the corrective action portion on February 23, 1994, effective April 25, 1994 (50 FR 8544). Final authorization for corrective action was granted on May 4, 1999, effective July 5, 1999 (64 FR 23740).

G. What Changes Are We Authorizing With Today's Action?

On August 25, 1999, Missouri submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Missouri final authorization for the following program changes and revisions:

Checklist	FR date and page	State rule [1]
80—Toxicity Characteristic: Hydrocarbon Recovery Operations.	55 FR 40834–40837, 10/5/90; amended at 56 FR 3978, 2/1/91; and 56 FR 13406–13411, 4/2/91.	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
81—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038.).	55 FR 46354–46397, 11/2/90; amended at 55 FR 51707, 12/17/90.	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
84—Toxicity Characteristic; Chlorofluorocarbon Refrigerants.	56 FR 5910–5915, 2/13/91	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
86—Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment.	56 FR 7567–7568, 2/25/91	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
87—Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment.	56 FR 19290, 4/26/91	10 CSR 25–7.264(1), 7.265(1), 7.270(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
88—Administrative Stay for K069 Listing	56 FR 19951, 5/1/91	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
89—Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038.).	56 FR 21955–21960, 5/13/91	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
90—Mining Waste Exclusion III.	56 FR 27300–27330, 6/13/91	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
95—Land Disposal Restrictions for Electric Arc Furnace Dust (K061).	56 FR 41164–41178, 8/19/91	10 CSR 25–4.261(1), 4.261(2)(A)8, 7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395, and 260.400 RSMo 1994.
99—Amendments to Interim Status Standards for Downgradient Groundwater Monitoring Well Locations.	56 FR 66365–66369, 12/23/91	10 CSR 25–3.260(1), 7.265(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
100—Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units.	57 FR 3462–3497, 1/29/92	10 CSR 25–3.260(1); 7.264(1); 7.265(1); 7.264(2)(K)1.B.; 7.264(2)(K)1.C.; 7.264(2)(K)1.D.; 7.264(2)(K)1.E.; 7.264(2)(K)1.F.; 7.264(2)(L)2.B.; 7.264(2)(L)2.C.; 7.264(2)(L)2.D.; 7.264(2)(L)2.E.; 7.264(2)(L)2.F.; 7.264(2)(L)3.A.; 7.264(2)(N)2.B.; 7.264(2)(N)2.C.; 7.264(2)(N)2.D.; 7.264(2)(N)2.E.; 7.264(2)(N)2.F.; 7.264(2)(N)2.G.; 7.270(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994

Checklist	FR date and page	State rule [1]
102—Second Correction to the Third Third Land Disposal Restrictions.	57 FR 8086–8089, 3/6/92	10 CSR 25–7.264(1), 7.265(1), 7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
103—Hazardous Debris Case-by-Case Capacity Variance.	57 FR 20766–20770, 5/15/92	10 CSR 25–7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
104—Used Oil Filter Exclusion	57 FR 21524–21534, 5/20/92	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
106—Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance.	57 FR 28628–28632, 6/26/92	10 CSR 25–7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
107—Used Oil Filter Exclusion Technical Corrections.	57 FR 29220, 7/1/92	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
108—Toxicity Characteristic Revisions; Technical Corrections.	57 FR 30657–30658, 7/10/92	10 CSR 25–4.261(1), 7.265(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
113—Consolidated Liability Requirements	53 FR 33938–33960, 9/1/88; 56 FR 30200, 7/1/91; 57 FR 42832–42844, 9/16/92.	10 CSR 25–7.264(1); 7.265(1); 7.264(2)(H)6; 7.264(2)(H)7; 7.264(2)(H)8; 7.264(2)(H)9; 7.264(2)(H)10; 7.264(2)(H)11; 7.265(2)(H)5; 7.265(2)(H)8; 7.265(2)(H)9; 7.265(2)(H)10, and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
115—Chlorinated Toluenes Production Waste Listing.	57 FR 47376–47386, 10/15/92	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
116—Hazardous Soil Case-by-Case Capacity Variance.	57 FR 47772–47776, 10/20/92	10 CSR 25–7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395, and 260.400 RSMo 1994.
117A—Reissuance of the Mixture and Derived-From Rules.	57 FR 7628–7633, 3/3/92; 57 FR 23062–23063, 6/1/92; 57 FR 49278–49279, 10/30/92.	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
117B—Toxicity Characteristic Amendment	57 FR 23062–23063, 6/1/92	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
118—Liquids in Landfills II.	57 FR 54452–54461, 11/18/92.10	CSR 25–3.260(1), 7.264(1), 7.265(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
119—Toxicity Characteristic Revision; TCLP Correction.	57 FR 55114–55117, 11/24/92; 58 FR 6854, 2/2/93.	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
123—Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance.	58 FR 28506–28511, 5/14/93	10 CSR 25–7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
124—Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated.	58 FR 29860–29887, 5/24/93	10 CSR 25–7.264(1), 7.265(1), 7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
129—Revision of Conditional Exemption for Small Scale Treatability Studies.	59 FR 8362–8366, 2/18/94	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
131—Recordkeeping Instructions; Technical Amendment.	59 FR 13891–13893, 3/24/94	10 CSR 25–7.264(1), 7.265(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
133—Letter of Credit Revision	59 FR 29958–29960, 6/10/94	10 CSR 25–7.264(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
134—Correction of Beryllium Powder (P015) Listing.	59 FR 31551–31552, 6/20/94	10 CSR 25–4.261(1), 7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395, and 260.400 RSMo 1994.
135—Recovered Oil Exclusion	59 FR 38536–38545, 7/28/94	10 CSR 25–4.261(1), 7.266(1), and 260.370 RSMo Supp. 1998, 260.390 and 260.395 RSMo 1994.
136—Removal of the Conditional Exemption for Certain Slag Residues.	59 FR 43496–43500, 8/24/94	10 CSR 25–7.266(1), 7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
137—Universal Treatment Standards and Treatment Standards for Organic Characteristic Wastes and Newly Listed Waste.	59 FR 47982–48109, 9/19/94; 60 FR 242–302, 1/3/95.	10 CSR 25–3.260(1); 3.260(2)(B); 7.264(1); 7.265(1); 7.266(1); 7.268(1), and 260.370 RSMo Supp. 1998,260.390, 260.395 and 260.400 RSMo 1994.
139—Testing and Monitoring Activities Amendment I.	60 FR 3089–3095, 1/13/95	10 CSR 25–3.260(1), and 260.370 RSMo Supp. 1998.
140—Carbamate Production Identification and Listing of Hazardous Waste.	60 FR 7824–7859, 2/9/95; 60 FR 19165–19167, 4/17/95; 60 FR 25619–25620, 5/12/95.	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
141—Testing and Monitoring Activities Amendment II.	60 FR 17001–17004, 4/4/95	10 CSR 25–3.260(1), and 260.370 RSMo Supp. 1998.

Checklist	FR date and page	State rule [1]
144—Removal of Legally Obsolete Rules	60 FR 33912–33915, 6/29/95	10 CSR 25–4.261(1), 7.266(1), 7.270(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
145—Liquids in Landfills III	60 FR 35703–35706, 7/11/95	10 CSR 25–7.264(1), 7.265(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395 and 260.400 RSMo 1994.
150—Recovered Oil Exclusion, Correction	61 FR 13103–13106, 3/26/96	10 CSR 25–4.261(1), and 260.370 RSMo Supp. 1998.
152—Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	61 FR 16290–16316, 4/12/96	10 CSR 25–4.261(1); 5.262(1); 5.262(2)(E); 6.263(1); 7.264(1); 7.264(2)(B)1.; 7.265(1); 7.265(2)(B)1.; 7.266(1); 16.273(1); 16.273(2)(B)10.; 16.273(2)(C)14., and 260.370 RSMo Supp.1998, 260.380, 260.385, 260.390 and 260.395 RSMo 1994.
153—Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D.	61 FR 34252–34278, 7/1/96	10 CSR 25–4.261(1), 4.261(2)(A)11.C, and 260.370 RSMo Supp. 1998.
155—Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance.	62 FR 1992–1997, 1/14/97	10 CSR 25–7.268(1), and 260.370 RSMo Supp. 1998, 260.390, 260.395, and 260.400 RSMo 1994.
158—Testing and Monitoring Activities Amendment III.	62 FR 32452–32463, 6/13/97	10 CSR 25–3.260(1); 7.264(1); 7.265(1); 7.266(1), and 260.370 RSMo Supp. 1998, 260.390, and 260.395, and RSMo 1994.
159—Conformance with Carbamate Vacatur	62 FR 32974–32980, 6/17/97	10 CSR 25–4.261(1), 7.268(1), and 260.370 RSMo Supp. 1998, and 260.390, 260.395 and 260.400 RSMo 1994

[1] CSR refers to Missouri's Code of State Regulations, Hazardous Waste Management Law; RSMo refers to Revised Statues of Missouri.

H. Where Are the Revised State Rules Different From the Federal Rules?

We consider the following state requirements to be more stringent than the Federal requirements and, therefore, Federally enforceable:

• Missouri's 10 CSR 25–7.264(2)(K)1.B. Each new surface impoundment shall be constructed with a double liner as required in 40 CFR 264.221(c), incorporated in this rule in accordance with the additional requirements in subparagraphs (2)(K)1.C. and D. of the state's rule.

• Missouri's 10 CSR 25–7.264(2)(K)1.C. This state regulation imposes stricter standards with regard to what the lower component of the composite liner must consist of that is required by 40 CFR 264.221(c) which is incorporated by reference.

• Missouri's 10 CSR 25–7.264(2)(K)1.D. This state regulation requires the leak detection system required by 40 CFR 264.221(c)(2) to cover the entire sides and bottom of the surface impoundment, whereas 264.221(c)(2) requires the leak detection system to be installed between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems.

• Missouri's 10 CSR 25–7.264(2)(K)1.E., 7.264(2)(L)2.E., and 7.264(2)(N)2.F. When liquids are detected in a leak detection system, Missouri regulations require an owner/operator to notify the department within 30 days of the event, and to continue to operate and maintain the leak detection system so that liquids are removed as they accumulate or with sufficient frequency to prevent backwater within the system, and to implement leachate monitoring requirements in accordance with 7.264(2)(K)1.F. for surface impoundments, 7.264(2)(L)2.F. for waste piles, or 7.264(2)(N)2.G. for landfills. The Federal regulations do not contain these requirements.

• Missouri's CSR 10–25.7.264(2)(K)1.F.(I), 7.264(2)(L)2.F.(I), and 7.264(2)(N)2.G.(I). These state regulations require the owner operator who is required under 7.264 (2)(K)(1)E., 7.264 (2)(L)2.E., or 7.264 (2)(N)2.F. to initiate leachate monitoring to remove any accumulated leachate in the leak detection system collection sumps at least weekly during active life and closure periods. Whereas, 40 CFR 264.221(c)(3), 264.251(c)(4), and 264.301(c)(4) do not impose a time requirement and merely require the owner/operator to collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

• Missouri's 10 CSR 25–7.264(2)(K)1.F.(II), 7.264 (2)(L)1.F.(II), and 7.264(2)(N)2.G.(II). These state regulations require owner/operator to analyze the leachate at least annually. The Federal regulations do not contain this requirement.

• Missouri's 10 CSR 25–7.264(2)(L)2.B. Each new waste pile shall be constructed with a double liner as required in 40 CFR 264.251(c), incorporated in this rule, and in accordance with the additional requirements in subparagraphs (2)(L)2.C. and D. of the state's rule.

• Missouri's 10 CSR 25–7.264(2)(L)2.C. This state regulation imposes stricter standards with regard to what the lower component of the composite liner must consist of that is required by 40 CFR 264.251(c), which is incorporated.

• Missouri's 10 CSR 25–7.264(2)(L)2.D. This state regulation requires the leak detection system required by 40 CFR 264.251(c)(3) to be capable of detecting leaks from the entire area of the waste pile, whereas 264.251(c)(3) requires the leak detection system to be capable of detecting leaks through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period.

• Missouri's 10 CSR 25–7.264(2)(L)3.A. In addition to recording the amount of liquids removed from each leak detection system sump at least once per week during the active life and closure period, as required by 40 CFR 264.254(c), the owner/operator shall record the amount of liquids removed from each leachate collection/removal system sump at the same frequency.

• Missouri's 10 CSR 25–7.264(2)(N)2.B. Each new landfill shall

be constructed with a double liner as required in 40 CFR 264.301(c), incorporated in this rule, and in accordance with the additional requirements in subparagraphs (2)(N)2.C. of the state's rule.

• Missouri's 10 CSR 25–7.264(2)(N)2.C. This state regulation imposes stricter standards with regard to what the lower component of the composite liner must consist of that is required by 40 CFR 264.301(c), which is incorporated.

• Missouri's 10 CSR 25–7.264(2)(N)2.E. This state regulation requires the leak detection system required by 40 CFR 264.301(c)(3) to be capable of detecting leaks from the entire sides and bottom of each cell, whereas 264.301(c)(3) requires the leak detection system to be capable of detecting leaks through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period.

• Missouri's 10 CSR 25–7.264(2)(H)6. This state regulation modifies the requirements for letters of credit per 40 CFR 264.143(d), 264.145(d), and 264.147(h) which are incorporated. The Missouri regulation provides that letters of credit shall be issued by a state-or Federally-chartered and regulated bank or trust association. This state regulation also states that if the issuing institution is not located in Missouri, a bank or trust association located in Missouri shall confirm the letter of credit and the confirmation and the letter of credit shall be filed with the department.

• Missouri's 10 CSR 25–7.264(2)(H)7. An owner/operator of a facility that is a commercial facility may not satisfy financial assurance requirements for closure, post-closure, or liability coverage, or any combination of these, by the use of a financial test as specified in 40 CFR 264.143(f), 264.145(f), or 264.147(h), which are incorporated.

• Missouri's 10 CSR 25–7.264(2)(H)8. This state regulation modifies the requirements for closure insurance per 40 CFR 264.143(e), post-closure insurance per 264.145(e), liability coverage for sudden accidental occurrences per 264.147(a)(1), and liability coverage for non-sudden accidental occurrences per 264.147(b)(1), which are all incorporated. The state regulation provides that each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Missouri. In contrast, the Federal regulations require the insurer to be licensed or eligible to provide insurance as an excess or surplus lines insurer in one of more states.

• Missouri's 10 CSR 25–7.264(2)(H)9., 7.264(2)(H)10., and 7.264(2)(H)11. Missouri incorporates the cited Federal regulations (40 CFR 264.143(f), 264.145(f) and 264.147(g)) but deletes from them the phrase, ''or a firm with a 'substantial business relationship,' with the owner or operator.'' Missouri does not recognize a ''substantial business relationship,'' and deletes it from the incorporation wherever it occurs in the three CFR provisions noted.

• Missouri's 10 CSR 25–7.265(2)(H)5. This state regulation modifies the requirements for letters of credit per 40 CFR 265.143(c), 265.145(c), and 265.147(h), which are incorporated. The Missouri regulation provides that letters of credit shall be issued by a state-or Federally-chartered and regulated bank or trust association. The state regulation also states that if the issuing institution is not located in Missouri, a bank or trust association located in Missouri shall confirm the letter of credit and the confirmation and the letter of credit shall be filed with the department.

• Missouri's 10 CSR 25–7.265(2)(H)6. An owner/operator of a facility that is a commercial TSDF may not satisfy financial assurance requirements for closure, post-closure, or liability coverage, or any combination of these, by the use of a financial test as specified in 40 CFR 265.143(e), 265.145(e), or 265.147(f), which are incorporated.

• Missouri's 10 CSR 25–7.265(2)(H)7. This state regulation modifies the requirements for closure insurance per 40 CFR 265.143(d), post-closure insurance per 265.145(d), liability coverage for sudden accidental occurrences per 265.147(a)(1), and liability coverage for non-sudden accidental occurrences per 265.147(b)(1), which are all incorporated. The state regulation provides that each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Missouri. In contrast, the Federal regulations require the insurer to be licensed or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

• Missouri's 10 CSR 7.265(2)(H)8., 7.265(2)(H)9., and 7.265(2)(H)10. Missouri incorporates the cited Federal regulations (40 CFR 265 265.143(e), 265.145(e), and 265.147(g)), but deletes from them the phrase, ''or a firm with a ''substantial business relationship,' with the owner or operator.'' Missouri does not recognize ''a substantial business relationship,'' and deletes it from the incorporation wherever it occurs in the three CFR provisions noted.

• Missouri's 10 CSR 3.260(2)(B). 40 CFR 260, Subpart C, Rulemaking Petitions, is not incorporated in this rule; 3.260(2)(B) provides that not more than 60 days after promulgation of the final federal determination, the department shall approve or disapprove all delistings granted under 40 CFR 260.20 or 260.22. If the department fails to take action within that 60-day time frame, the delistings shall be deemed approved.

• Missouri's 10 CSR 25–7.264(2)(B)1. In addition to the requirements in 40 CFR 264.12(a) incorporated in this rule, an owner/operator shall submit a separate analysis for each hazardous waste that he/she intends to import.

• Missouri's 10 CSR 25–7.265(2)(B)1. In addition to the requirements in 40 CFR 265.12(a) incorporated in this rule, an owner/operator shall submit a separate analysis for each hazardous waste that he/she intends to import.

• Missouri's 10 CSR 25–4.261(2)(A)11.C. Missouri regulations specify that a process, procedure, method, or technology is considered on-site treatment, for the purposes of 40 CFR 261.5(f)(3) and 261.5(g)(3), as incorporated in this rule, only if the process, procedure, method or technology reduces the hazardous characteristics and/or the quantity of hazardous waste; and the process, procedure, method, or technology does not result in off-site emissions of any hazardous waste or constituent. These criteria provide a more specific definition of on-site treatment than the Federal analog and are, therefore, more stringent.

The following state requirement goes beyond the scope of the Federal program:

• Missouri's 10 CSR 25–4.261(2)(A)(8). The state rule does not incorporate 40 CFR 261.4(a)(11), which excludes from the definition of solid waste non-wastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery. Because the state regulation provides fewer exceptions, it is broader in scope.

Broader-in-scope requirements are not part of the authorized program and EPA can not enforce them. Although you must comply with these requirements in accordance with state law, they are not RCRA requirements.

I. Who Handles Permits After This Authorization Takes Effect?

Missouri will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Missouri is not yet authorized.

J. What Is Codification and Is the EPA Codifying Missouri's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the CFR. We do this by referencing the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart AA for this authorization of Missouri's program changes until a later date.

K. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

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 section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for state, local, and/or tribal governments in the aggregate, or the private sector. Costs to state, local and/or tribal governments already exist under the Missouri program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the state, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing state laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the state laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing state requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance with 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 section 6 of 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 authorization does not have Federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one state. This action simply approves Missouri's proposal to be authorized for updated requirements of the hazardous waste program that the state has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the state's program now apply in Missouri in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized state program provisions, as opposed to being subject to both Federal and state regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''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.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance with 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 with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Missouri is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the state.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 16, 2000.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 00–4650 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6543–3]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA is now making an immediate final decision, subject to receipt of written comments that oppose this action, that Louisiana's Hazardous Waste Program revision satisfies all the requirements necessary to qualify for final authorization.

DATES: This immediate final rule is effective on April 28, 2000 without further notice, unless EPA receives adverse comment by March 29, 2000.

Should EPA receive such comments, it will publish a timely document withdrawal informing the public that the rule will not take effect.

ADDRESSES: Written comments, referring to Docket Number LA–00–1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday, at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0617 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why are Revision to State Programs Necessary?

States that receives final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits, and (3) take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which Louisiana is being authorized by today's action are already effective, and are not changed by today's action.

C. What is the History of Louisiana's Final Authorization and its Revisions

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management Program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889); October 25, 1991 (56 FR 41958); August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995; (60 FR 4380), effective January 23, 1995 and another technical correction was made on April 11, 1995 (60 FR 18360). We authorized the additional following revisions: October 17, 1995; (60 FR 53704) January 2, 1996; March 28, (61 FR 13777–13782) effective June 11, 1996; December 29, 1997 (62 FR 67572–67577) effective March 16, 1998; October 23, 1998 (63 FR 56830–56891) effective December 22, 1998; August 25, 1999 (64 FR 46302–46316) effective October 25, 1999; and September 2, 1999 (48099–48103) effective November 1, 1999. On August 30, 1999, Louisiana applied for approval of its complete final program. In this application, Louisiana is seeking additional approval of its program revision in accordance with 40 CFR 271.21(b)(3). The State is also including in this authorization program revisions for RCRA Cluster VIII, waste minimization rules a requirement for generators and owners or operators of treatment, storage, and disposal facilities to certify that they have instituted a waste minimization program.

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes (LRS) 30:1051 *et seq.*, the Environmental Affairs Act. This Act created Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State. Also, LDEQ is designated to facilitate communication between EPA and the State. The State law governing the generation, transportation, treatment, storage and disposal of hazardous waste can be found in LRS 30:2171–2205. This part may be cited as the ''Louisiana Hazardous Waste Control Law.'' The laws governing hazardous waste should be viewed as part of a larger framework of environmental laws specified in Title 30, Subtitle II Louisiana Revised Statutes. The State of Louisiana has adopted the Federal regulations in Cluster VIII promulgated from July 1, 1997, through June 30, 1998; the State of Louisiana regulations became effective September 20, 1998, and March 20, 1999.

D. What Revisions are we Approving with Today's Action?

Louisiana applied for final approval of its revision to its hazardous waste program in accordance with 40 CFR 271.21. Louisiana's revisions consist of regulations which specifically govern RCRA Cluster VIII and waste minimization rules. Louisiana requirements are included in a chart with this document. The EPA is now making a final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Louisiana final authorization for the following program revisions:

Federal citation	State analog
1. HWSA Codification Rule; Waste Minimization, [50 FR 28702] July 15, 1985. (Checklist 17D).	Louisiana Revised States (LRS) 30: § 2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§ 309.J.2, as amended April 20, 1998, effective April 20, 1998; 901, 1107.B.2, as amended September 20, 1998, effective September 20, 1998; 1111.B.1.f-h, as amended October 20, 1994, effective October 20, 1994; 1529.B.19, 4301.B, 4301.F, as amended March 20, 1999, effective March 20, 1999.
2. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [61 FR 59931] November 25, 1996, [59 FR 62896] December 6, 1994], [60 FR 26828] May 19, 1995, [60 FR 50426] September 29, 1995, [60 FR 56952] November 13, 1995, [61 FR 4903] February 9, 1996, [61 FR 28508] June 5, 1996. (Checklists 154, 154.1, 154.2, 154.3, 154.4, 154.5 and 154.6.).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 307.A.2, 307.A.3, 307.A.4, 517.G, as amended September 20, 1998, effective September 20, 1998; 521.E, as amended March 20, 1998, effective March 20, 1998; 523.K, 525.K, 526.A, 526.A.1–7, 110.A.14, as amended September 20, 1998, effective September 20, 1998; September 20, 1996, effective September 20, 1996; 110.A.15, 110.B, 1109.E.1.a, as amended September 20, 1998, effective September 20, 1998; 1109.E.b, as amended March 20, 1995, effective March 20, 1995; 1109.E.7.a, as amended September 20, 1998, effective September 20, 1998; 1509.B.4, as amended March 20, 1999, effective March 20, 1999; 1519.B.7. 1519.B.9, 1519.B.9.a-b, 1529.B.6, as amended September 20, 1998, effective September 20, 1998; 1529.B.9, as amended March 20, 1999, effective March 20, 1999; 1529.E.3, as amended September 20, 1996, effective September 20, 1996; Chapter 17 Appendix Table 1, as amended September 20, 1996, effective September 20, 1996; 1703, 1703. Average Volatile Organic, 1703. Closure Device, 1703. Cover, 1703. Enclosure, 1703. Continuous Seal, 1703. External Floating Roof, 1703. Fixed Roof, 1703. Floating Membrane Cover, 1703. Floating Roof, 1703. Hard-piping, 1703. In Light Material Service, 1703. 1703. In Light Service, 1703. Internal Floating Roof, 1703. Liquid-Mounted Seal, 1703. Malfunction, 1703. Maximum Organic Vapor Pressure,1703. Metallic Shoe Seal, 1703. No Detectable Organic Emissions, 1703. Point of Waste Origination, 1703. Point of Waste Treatment, 1703. Single-Seal System, 1703. Vapor-Mounted Seal, 1703. Safety Device, 1703. Single-seal System, 1703. Volatile Organic Concentration or VO, 1703. Waste Determination, 1703. Waste Stabilization Process, 1705. A, 1705. A.1–3, 1705.B, 1705.D, 1705.Note 1,1709.A.2, 1709.A. 2.a-d, 1709.F.2.f.ii, 1709.K, 1709.K.1–2, 1709.L, 1709.L.1.a-b, 1709.L.1.b.i-ii, 1709.L.c-d, 1709.L.2, 1709.L.2.a-d, 1709.L.3, 1709.L.3.a-d, 1709.L.I, 1709.M, 1709.N, 1709.N.1, 1709.N.1.a-c, 1709.N.2, 1709.N.2.a-b, 1709.N.3, 1709.N.3.a-b, 1709.O, 1709.O.1–2, 1711.B, 1713.C.10, 1713.C.10.a-e, 1713.10.e.i-ii, 1713.C.3, 1713.C.9, 1713.D, 1717.B, 1717.B.1–3, as amended September 20, 1998, effective September 20, 1998; 1717.C, 1717.F, as amended March 20, 1999, effective March 20, 1999; 1717.Note, 1725.A–B,1725.B.1–3, 1725.C, 1725.E, 1735.A, as amended September 20, 1998, effective September 20, 1998; 1735.A.1, 1735.B.1–4, 1739.B.2–3, 1743.G.6, 1743.M, 1747.A, as amended March 20, 1999, effective March 20, 1999; 1747.B, 1747.B.1, as amended September 20, 1998, effective September 20, 1998; 1747.B.2, as amended March 20, 1999, effective March 20, 1999; 1747.B.3–8, 1747.C–D, 1747.D.1–3, 1749, 1751.A–C, 1751.C.1–2, 1751.C.2.a-d, 1751.C.2.d.i-ii, 1751.C.2.e, 1751.C.2.e.i-iii, 1751.C.2.f, 1751.C.2.g, 1751.C.2.g.i-ii, 1751.C.2.h, 1751.C.2.h.i-ii, 1751.C.2.i-ii, as amended September 20, 1998, effective September 20, 1999; 1751.C.3–4, as amended March 20, 1999, effective March 20, 1999; 1751.C.4.a-b, 1751.C.5, 1751.C.5.a-c, 1751.D, 1751.D.1–2, 1751.D.2.a-b, 1751.D.3–5, 1751.D.5.a-c, 1753.A, 1753.A.1, as amended September 20, 1998, effective September 20, 1998; 1753.A.2, as amended March 20, 1999, effective March 20, 1999; 1753.B, 1753.B.1–2, 1753.C., 1753.C.1–2, 1753.D, 1755.A–B, 1755.B.1, 1755.B.1.a, 1755.B.1.a.i-iii, 1755.B.1.b-c, 1755.B.2, 1755.C, 1755.C.1–2, 1755.b.1.b-c, 1755.B.2, 1755.C, 1755.C.1–2, 1755.C.2.a-c, 1755.C.2.C.i-ii, as amended September 20, 1998; 1755C.2.i-ii, 1755.C.2.c.ii(a)-(b), as amended March 20, 1999, effective March 20, 1999; 1755.C.2.d, 1755.C.3, 1755.C.3.a, 1755.C.3.a.i-ii, 1755.C.3.b-c, 1755.C.4, 1755.C.4.a-d, 1755.D, 1755.D.1–5, 1755.E, 1755.E.1, 1755.E.1.a-b, 1755.E.1.b.i-ii, 1755.E.1.c, 1755.E..1.C.i-vi, 1755.E.2, 1755.E.2.a-c, 1755.E.3, 1755.E.3.a-b, 1755.E.3.b.i-ii, 1755.E.3.c-d, 1755.E.3.d.i-ii, 1755.E.3.e-f, 1755.E.4, 1755.F, 1755.F.1, 1755.F.1.a-b, 1755.F.1.b.i-ii, 1755.F.1.c, 1755.F.1.c.i-iv, 1755.F.1.c.ix, 1755.F.1.c.v-viii,1755.F.2, 1755.F.2.a-h, 1755.F.3, 1755.F.3.a, 1755.F.3.a.i-iv, 1755.F.3.a.iv(a)-(d), 1755.F.a.v-vi, 1755.F.3.b, 1755.F.3.b.i-iv, 1755.F.3.c, 1755.F.3.c.i-iii, as amended September 20, 1998, effective September 20, 1998;

Federal citation	State analog
	1755.F.3.c.iv.d, 1755.F.4, 1755.G, as amended March 20, 1999, effective March 20, 1999; 1755.G.1, 1755.G.1.a-d, 1755.G.2, 1755.G.2.a, 1755.G.2.a.i-ii, 1755.G.2.b, 1755.G.3, 1755.G.3.a-e 1755.H, 1755.H.1–3, 1755.I, 1755.I.1–4, 1755.J, 1755.J.1–2, 1755.J.a-b, as amended September 20, 1998, effective September 20, 1998; 1755.J.2.c, as amended March 20, 1999, effective March 20, 1999; 1755.K, 1755.K.1–2, 1755.L, 1755.L.1, 1755.L.1.a-b, 1755.L.2, 1757.A–B, 1757.B.1–2, 1757.C, 1757.C.1, 1757.C.1.a-b, 1757.C.b.i-ii, 1757.C.1.c, 1757.1.d, 1757.C.1.e, 1757.C.1.f, 1757.C.2, 1757.C.2.a, 1757.C.2.a.i-ii, 1757.C.2.b, 1757.C.3, 1757.C.3.a-d, 1757.D, 1757.D.1, 1757.D.1.a-b, as amended September 20, 1998, effective September 20, 1998, 1757.D.1.c, as amended March 20, 1999, effective March 20, 1999; 1757.D.1.d, 1757.D.2, 1757.D.2.a, 1757.D.2.a.i-ii, 1757.D.b, 1757.D.3, 1757.D.3.a-e, 1757.E, 1757.E.1–2, 1757.E.2.a-c, as amended September 20, 1998, effective September 20, 1998; 1757.F, 1757.F.1–2, 1757.G, 1757.G.1–2, 1759.A–B, 1759.B.1, 1759.B.1.a-c, 1759.B.2, 1759.C, 1759.C.1, 1759.C.1.a-c, 1759.C.2, 1759.C.3, 1759.C.3.a, 1759.C.3.a.i-ii, 1759.C.3.b, 1759.C.3.b.i-ii, 1759.C.3.c-e, 1759.C.4, 1759.C.4.a-c, 1759.C.5, 1759.D, 1759.D.1, 1759.D.1.a-c, amended September 1998, effective September 1998; 1759.D.2–3, as amended March 20, 1999, effective March 20, 1999; 1759.D.3.a, 1759.D.a.i-ii, 1759.D.3.b, 1759.D.3.b.i-ii, 1759.D.3.c-e, 1759.D.4,as amended September 20, 1998, effective September 20, 1998; 1759.D.4.b-c, 1759.E, 1759.E.1, 1759.E.1.a-b, 1759.E.2, 1759.E.2.a-b, 1759.E.3–5, 1759.F, 1759.F.1–4, 1759.G, 1759.G.1–2, 1759.H, 1759.H.1–3, 1761.A–B, 1761.B.1–3, 1761.B.3.a-b, 1761.B.4, 1761.C, 1761.C.1, 1761.C.1.a-c, 1761.C.2, 1761.C.2.a-f, 1761.C.3, 1761.C.3.b, 1761.C.4–5, 1761.C.5.a, 176.C.5.a.i-v, 1761.C.5.b-e, 1761.C.6, as amended September 20, 1998, 1761.C.7, as amended March 20, 1999, effective March 20, 1999; 1763.A–B, as amended September 20, 1998, effective September 20, 1998; 1765.A, as amended March 20, effective March 20, 1999; 1765.B, 1765.B.1, 1765.B.1.a-b, 1765.B.1.b.i-ii, 1765.B.2, 1765.B.2.a-c, 1765.B.2.c.i-ii, 1765.B.2.d, 1765.B.2.d.i-ii, 1765.C, 1765.C.1–3, 1765.C.3.a-b, 1765.C.4, 1765.D, 1765.D.1–2, 1765.E, 1765.E.1–5, 1765.E.5.a-b, 1765.E.6, 1765.E.6.a-c, 1765.E.7, 1765.F, 1765.F.1–2, 1765.G, 1765.H, 1765.I, 1765.I.1–2, 1765.I.2.a-b, 1765.I.3, 1765.I.3.a-b, 1765.J, 1765.J.1–2, as amended September 20, 1998, effective September 20, 1998; 1765.A, as amended March 20, 1999, effective March 20, 1999; 1767.B–C, 1767.C.1–3, 1767.D, 1767.D.1–2, Chapter 17, Appendix Table 1, 1921, 2119, 2919, 3203, 4115.A, 4301.C, 4313.4.6, 4313.E.8, 4313.E.8.a-b, as amended September 20, 1998, effective September 20, 1998; 4317.B.3, 4357.B.5, as amended March 20, 1999, effective March 20, 1999; 4357.B.8, as amended March 20, 1999, effective March 20, 1999;4365.D as amended September 20, 1998, effective September 20, 1998; 4365.D, 4430, 4446, 4549.B, 4549.B.1–3, 4549.B. Note, as amended September 20, 1998, effective September 20, 1998; 4549.C, as amended March 20, 1999, effective March 20, 1999; 4456, 4555, as amended July 20, 1991, effective July 20, 1991, 4557, as amended March 20, 1999, effective March 20, 1999; 4559, as amended July 20, 1991 as amended July 20, 1991, effective July 20, 1991; 4561.B, 4561.B.1–2, as amended September 20, 1998, effective September 20, 1998; 4561.B.3, 4561.E, as amended March 20, 1999, effective March 20, 1999; 4561.note, as amended September 20, 1998, effective September 20, 1998; 4571, 4577, as amended July 20, 1991, effective July 20, 1991; 4581, as amended March 20, 1999, effective March 20, 1999; 4589, 4719, as amended March 20, 1999, effective March 20, 1999; 4721, as amended March 20, 1998, effective March 20, 1998; 4723.A, as amended September 20, 1998, effective September 20, 1998; 4723.A,1,–2, as amended March 20, 1999, effective March 20, 1999; 4723.A.2.a-d, as amended March 20, 1999, effective March 20, 1999; 4723.B, as amended September 20, 1998, effective September 20, 1998; 4723.B.1–2, 4723.B.2.a-c, 4723.C, 4723.D, 4725, as amended March 20, 1999, effective March 20, 1999; 4727.A, 4727.A.1–3, 4727.A.3.a-b, 4727.A.3.b.i-ii, 4727.A.3.c, 4727.A.3.c.i-v, 4727.A.3.c.v(a), 4727.A.3.c.vi, 4727.A,c,vi.(a)-(b), 4727.A.3.c.vii, 4727.A.3.c.vii.(a)-(b), 4727.A.3.c.viii, 4727.A.3.d, 4727.A.3.d.i-ii, 4727.A.3.d.ii.(a)-(b), 4727.A.3.e, 4727.A.4, 4727.A.4.a-d, 4727.B, 4727.B.1–3, 4727.b.3.a-b, 4727.B.3.b.i-iii, 4727.B.3.c-xi, 4727.B.c.vi.(a)-(b), 4727.B.3.c.vii, 4727.B.3.c.vii(a)-(b), 4727.B.3.c.viii, 4727.B.3.d-e, 4727.B.4, 4727.B.4.a-c, 4727.B.5, 4727.B.5.a-c, 4727.B.5.c.i-ii, 4727.B.5.d, 4727.B.5.d-e, 4727.B.6, 4727.B.6.a-b, 4727.B.7, 4727.B.7.a-d, 4727.B.8, 4727.a-c, 4727.B.3.c.iv, 4727.A.3.c.v, 4727.A.3.v.(a), 4727.B.9, 4727.B.9.a-d, 4727.C.1–3, 4727.C, 4727.C.3.a-b, 4727.C.3.b.i-v, 4727.C.4, 4727.D, 4727.D.1–5, 4727.D.a-b, 4727.D.6–9, 4727.A.3.d.ii.(a), 4727.B.9.d, 4739, as amended September 20, 1998, effective September 20, 1998; and LAC 33:III.3003, as amended December 20, 1997, effective December 20, 1997.
3. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] (June 17, 1997. (Checklist 159).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2221.F.1, 2221.F.4, Chapter 22 Table 2, as amended September 20, 1998, effective September 20, 1998; 3105.E.Table 1, as amended March 20, 1998, effective March 20, 1998; 4901.C. Table 2, as amended February 20, 1998, effective February 20, 1998; 4901.F.Table 4, as amended September 20, 1998, effective September 20, 1998; 4901.G. Table 6, as amended February 20, 1998, effective February 20, 1998.
4. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, [62 FR 37694]—July 14, 1997. (Checklist 160).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR § 2221.F.3, as amended March 20, 1999, effective March 20, 1999.

Federal citation	State analog
5. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production, [62 FR 45568] August 28, 1997 (Checklist 161).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2223.G, Chapter 22 Table 7, as amended September 20, 1998, effective September 20, 1998.
6. Clarification of Standards for Hazardous Waste LDR Treatment Variances [62 FR 64504] (December 5, 1997. (Checklist 162).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2231.A, 2231.A.1–2, 2231.A.2.a-b, 2231.G, 2231.G.1–2, 2231.G.2.a-b, 2231.G.3 and 2231.M, as amended March 20, 1999, effective March 20, 1999.
7. Organic Air Emissions Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment, [62 FR 64636] December 8, 1997. (Checklist 163).	LRS 30:2180 *et seq,*as amended June 14, 1991, effective June 14, 1991; LHWR §§ 307.A.2, 307.A.3, 307.A.4, 517.G, as amended September 20, 1998, effective September 20, 1998; 521.E, as amended March 20, 1998, effective March 20, 1998; 523.K, 525.K, 526.A, 526.A.1–7, 110.A.14, as amended September 20, 1998, effective September 20, 1998; September 20, 1996, effective September 20, 1996; 110.A.15, 110.B, 1109.E.1.a, as amended September 20, 1998, effective September 20, 1998; 1109.B.b, as amended March 20, 1995, effective March 20, 1995; 1109.E.7.a, as amended September 20, 1998, effective September 20, 1998; 1509.B.4, as amended March 20, 1999, effective March 20, 1999; 1519.B.7. 1519.B.9, 1519.B.9.a-b, 1529.B.6, as amended September 20, 1998, effective September 20, 1998; 1529.B.9, as amended March 20, 1999, effective March 20, 1999; 1529.E.3, as amended September 20, 1996, effective September 20, 1996; Chapter 17 Appendix Table 1, as amended September 20, 1996, effective September 20, 1996; 1703, 1703. Average Volatile Organic, 1703. Closure Device, 1703. Cover, 1703. Enclosure, 1703. Continuous Seal, 1703. External Floating Roof, 1703. Fixed Roof, 1703. Floating Membrane Cover, 1703. Floating Roof, 1703. Hard-piping, 1703. In Light Material Service, 1703. 1703. In Light Service, 1703. Internal Floating Roof, 1703. Liquid-Mounted Seal, 1703. Malfunction, 1703. Maximum Organic Vapor Pressure, 1703. Metallic Shoe Seal, 1703. No Detectable Organic Emissions, 1703. Point of Waste Origination, 1703. Point of Waste Treatment, 1703. Single-Seal System, 1703. Vapor-Mounted Seal, 1703. Safety Device, 1703. Single-seal System, 1703. Volatile Organic Concentration or VO, 1703. Waste Determination, 1703. Waste Stabilization Process, 1705.A, 1705.A.1–3, 1705.B, 1705.D, 1705. Note 1,1709.A.2, 1709.A.2.a-d, 1709.F.2.f.ii, 1709.K, 1709.K.1–2, 1709.L, 1709.L.1.a-b, 1709.L.1.b.i-ii, 1709.L.c-d, 1709.L.2, 1709.L.2.a-d, 1709.L.3, 1709.L.3.a-d, 1709.L.I, 1709.m, 1709.n, 1709.N.1, 1709.n.1.a-c, 1709.N.2, 1709.N.2.a-b, 1709.N.3,1709.n.3.a-b, 1709.O, 1709.O.1–2, 1711.B, 1713.C.10, 1713.C.10.a-e, 1713.10.e.i-ii, 1713.C.3, 1713.C.9, 1713.D, 1717.B, 1717.B.1–3, as amended September 20, 1998, effective September 20, 1998; 1717.C, 1717.F, as amended March 20, 1999, effective March 20, 1999; 1717. Note, 1725.A–B,1725.B.1–3, 1725.C, 1725.E, 1735.A, as amended September 20, 1998, effective September 20, 1998; 1735.A.1, 1735.A.B.1–4, 1739.B.2–3, 17.G.6, 1743.M, 1747.A, as amended March 20, 1999, effective March 20, 1999; 1747.B, 1747.B.1, as amended September 20, 1998, effective September 20, 1998; 1747.B.2, as amended March 20, 1999,effective March 20, 1999; 1747.B.3–8,1747.C–D, 1747.D.1–3, 1749, 1751.A–C, 1751.C.1–2, 1751.C.2.a-d, 1751.C.2.d.i-ii, 1751.C.2.e, 1751.C.e.i-iii, 1751.C.5.a-c, 1751.D, 1751.D.1–2, 1751.D.2.a-b, 1751.D.3–5, 1751.D.a-c, 1753.A, 1753.A.1, as amended September 20, 1998, effective September 20, 1998; 1753.A.2, as amended March 20, 1999, effective March 20, 1999; 1751.C.2.f, 1751.C.2.g, 1753.B, 1753, 1751.C.2.g, 1751.C.2.g.i-ii, 1751.C.2.h, 1751.C.2.h.i-ii, 1751.C.2.i-ii, as amended September 20, 1998, effective September 20, 1999; 1751.C.3–4, as amended March 20, 1999, effective March 20, 1999; 1751.C.4.a-b, 1751.C.5.a-c, 1751.D, 1751.D.1–2, 1751.D.2.a-b, 1751.D.3–5, 1751.D.a-c, 1753.A, 1753.A.1, as amended September 20, 1998, effective September 20, 1998; 1753.A.2, as amended March 20, 1999, effective March 20, 1999; 1753.B, 1753,1753.B.1–2, 1753.C., 1753.C.1–2, 1753.D, 1755.A–B, 1755.B.1, 1755.B.1.a, 1755.B.1.a.i-iii, 1755.B.1.b-c, 1755.B.2, 1755.C, 1755.C.1–2, 1755.b.1.b-c, 1755.B.2, 1755.C, 1755.C.1–2, 1755.C.2.a-c, 1755.C.2.C.i-ii, as amended September 20, 1998; 1755C.2.i-ii, 1755.C.2.c.ii(a)-(b), as amended March 20, 1999, effective March 20, 1999; , 1755.F.2.a-b-h, 1755.F.3, 1755.F.3.a, 1755.F.3.a.i-iv, 1755.F.3.a.iv(a)-(d), 1755.F.a.v-vi, 1755.F.3.b, 1755.F.3.b.i-iv, 1755.F.3.c, 1755.F.3.c.i-iii, as amended September 20, 1998, effective September 20, 1998; 1755.F.3.c.iv.d, 1755.F.4, 1755.G, as amended March 20, 1999, effective March 20, 1999;

Federal citation	State analog
	1755.C.2.d, 1755.C.3, 1755.C.3.a, 1755.C.3.a.i-ii, 1755.C.3.b-c, 1755.C.4, 1755.c.4.a-d, 1755.D, 17755.D.1–5,1755.E, 1755.E.1, 1755.E.1.a-b, 1755.E.1.b.i-ii, 1755.E.1.c, 1755.E..1.C.i-vi, 1755.E.2, 1755.E.2.a-c, 1755.E.3, 1755.E.3.a-b, 1755.E.3.b.i-ii, 1755.E.3.c-d, 1755.E.3.d.i-ii, 1755.E.3.e-f, 1755.E.4, 1755.F, 1755.F.1, 1755.F.1.a-b, 1755.F.1.b.i-ii, 1755.F.1.c, 1755.F.1.c.i-iv, 1755.F.1.c.ix, 1755.F.1.c.v-viii,1755.F.2, 1755.G.1, 1755.G.1.a-d, 1755.G.2, 1755.G.2.a, 1755.G.2.a.i-ii, 1755.G.2.b, 1755.G.3, 1755.G.3.a-e 1755.H, 1755.H.1–3, 1755.I,1755.J. 1755.J.a-b, as amended September 20, 1998, effective September 20, 1998; 1755.J.2.c,1755.I.1–4, 1755.J, 1755.J.1–2, as amended March 20, 1999, effective March 20, 1999; 1755.J. 1755.J.a-b, as amended September 20, 1998, effective September 20, 1998; 1755.J.2.c, as amended March 20, 1999, effective March 20, 1999; 1755.K, 1755.K.1–2, 1755.L, 1755.L.1, 1755.L.1.a-b, 1755.L.2, 1757.A–B, 1757.B.1–2, 1757.C, 1757.C.1, 1757.C.1.b, 1757.C.b.i-ii, 1757.C.1.c, 1757.1.d, 1757.C.1.e, 1757.C.1.f, 1757.C.2, 1757.C.2.a, 1757.C.2.a.i-ii, 1757.C.2.b, 1757.C.3, 1757.C.3.a-d, 1757.D, 1757.D.1, 1757.D.1.a-b, as amended September 20, 1998, effective September 20, 1998, 1757.D.1.c, as amended March 20, 1999, effective March 20, 1999; 1757.D.1.d, 1757.D.2, 1757.D.2.a, 1757.D.2.a.i-ii, 1757.D.b, 1757.D.3, 1757.D.3.a-e, 1757.E, 1757.E.1–2, 1757.E.2.a-c, as amended September 20, 1998, effective September 20, 1998; 1757.F, 1757.F.1–2, 1757.G, 1759.B.1.a-c, 1759.B.2, 1759.C, 1759.C.1, 1759.C.1.a-c, 1759.C.2, 1759.C.3, 1759.C.3.a, 1759.C.3.a.i-ii, 1759.C.3.b 1757.G.1–2, 1759.A–B, 1759.B.1, 1759.C.3.b.i-ii, 1759.C.3.c-e, 1759.C.4, 1759.C.4.a-c, 1759.C.5, 1759.D, 1759.D.1, 1759.D.1.a-c, amended September 1998, effective September 1998; 1759.D.2–3, as amended March 20, 1999, effective March 20, 1999; 1759.D.3.a, 1759.D.a.i-ii, 1759.D.1759.D.3.b, 1759D.3.b.i-ii, 1759.D.3.c-e, 1759.D.4,as amended September 20, 1998, effective September 20, 1998; 1759.D.4.b-c, 1759.E, 1759.E.1, 1759.E.1.a-b, 1759.E.2, 1759.E.2.a-b, 1759.E.3–5, 1759.F, 1759.F.1–4, 1759.G, 1759.G.1–2, 1759.H, 1759.H.1–3, 1761.A–B, 1761.B.1–3, 1761.B.3.a-b, 1761.B.4, 1761.B.4, 1761.C, 1761.C.1, 1761.C.1.a-c, 1765 1761.C.2, 1761.C.2.a-f, 1761.C.3, 1761.C.3.b, 1761.C.4–5, 1761.C.5.a, 176.C.5.a.i-v, 1761.C.5.b-e, 1761.C.6, as amended September 20, 1998, 1761.C.7, as amended March 20, 1999, effective March 20, 1999; 1763.A–B, as amended September 20, 1998, effective September 20, 1998; 1765.A, as amended March 20, effective March 20, 1999; 1765.B, 1765.B.1, 1765.B.1.a-b, 1765.B.1.b.i-ii, 1765.B.2, 1765.B.2.a-c, 1765.B.2.c.i-ii, 1765.B.2.d, 1765.B.2.d.i-ii, 1765.C, 1765.C.1–3, 1765.C.3.a-b, 1765.C.4, 1765.D, 1765.D.1–2, 1765.E,1765.E.1–5, 1765.E.5.a-b, 1765.E.6, 1765.E.6.a-c,1765.E.7, .F, 1765.F.1–2, 1765.G, 1765.H, 1765.I,1765.I.1–2, 1765.I.2.a-b, 1765.I.3, 1765.I.3.a-b, 1765.J, 1765.J, as amended September 20, 1998, effective September 20, 1998; 1765.J.2, 1765.A, as amended March 20, 1999, effective March 20, 1999, 4456, 4555, as amended September 20, 1998, effective September 20, 1998; 4557,as amended March 20, 1999, effective March 20, 1999; 4559, as amended July 20, 1991, effective July 20, 1991; 4561.B, 4561.B.1–2, as amended September 20, 1998, effective September 20, 1998; 4561.B.3, 4561.E, 4561. note, as amended March 20, 1999, effective March 20, 1999; 4571, as amended September 20, 1998, effective September 20, 1998; 4577, 4581, as amended July 20, 1991, effective July 20, 1991; 4589, 4719, 4721, 4723.A, as amended March 20, 1991, effective March 20, 1991; 4723.A,1, as amended September 20, 1998, effective September 20, 1998; 4723.A.2, 4723.A.2.a-d, as amended March 20, 1999, effective March 20, 1999; 4723.B, as amended September 20, 1998, effective September 20, 1998; 4723.B.1–2, 4723.b.2.a-c, 4723.C, 4723.D, 4725, 4727.A, as amended March 20, 1999, effective March 20, 1999; 4727.A.1–3, 4727.A.3.a-b, 4727.A.3.b.i-ii, 4727.A.3.c, 4727.A.3.c.i-v, 4727.A.3.c.v(a), 4727.A.3.c.vi, 4727.A.c.vi.(a)-(b), 4727.A.3.c.vii, 4727.A.3.c.vii.(a)-(b), 4727.A.3.c.viii, 4727.A.3.d, 4727.A.3.d.i-ii, 4727.A.3.d.ii.(a)-(b), 4727.A.3.e, 4727.A.4, 4727.A.4.a-d, 4727.B, 4727.B.1–3, 4727.b.3.a-b, 4727.B.3.b.i-iii, 4727.B.3.c, 4727.B.3.c-vi, 4727.B.c.vi.(a)-(b), 4727.B.3.c.vii, 4727.B.3.c.vii(a)-(b), 4727.B.3.c.viii, 4727.B.3.d-e, 4727.B.4, 4727.B.4.a-c, 4727.B.5, 4727.B.5.a-c, 4727.B.5.c.i-ii, 4727.B.5.d, 4727.B.5.d-e, 4727.B.6, 4727.B.6.a-b, 4727.B.7, 4727.B.7.a-d, 4727.B.8, 4727.a-c, 4723.C, 4723.D, 4725, 4727.A, as amended March 20, 1999, effective March 20, 1999;

Federal citation	State analog
	4727.A.1–3, 4727.A.3.a-b, 4727.A.3.b.i-ii, 4727.A.3.c, 4727.A.3.c.i-v,4 727.A.3.c.v(a), 4727.A.3.c.vi(b), 4727.A.3.c.vii, 4727.A.3.c.vii 4727,A,c,vi.(a)-(a)-(b), 4727.A.3.c.viii, 4727.A.3.d, 4727.A.3.d.i-ii.(a)-(b) -(b), 4727.A.3.e, 4727.A.4, 4727.A.4.a-d, 4727.B, 4727.B.1–3, 4727.b.3.a-b, 4727.B.3.b.i-iii, 4727.B.3.c, 4727.B.3.c-vi, 4727.B.c.vi.(a)-(b), 4727.B.3.c.vii, 4727.B.3.c.vii(a)-(b), 4727.B.3.c.viii, 4727.B.3.d-e, 4727.B.4, 4727.B.4.a-c, 4727.B.5, 4727.B.5.a-c, 4727.B.5.c.i-ii, 4727.B.5.d, 4727.B.5.d-e, 4727.B.6, 4727.B.6.a-b, 4727.B.7, 4727.B.7.a-d, 4727.B.8, 4727.a-c, 4727.B.9, 4727.B.9.a-d, 4727.C, 4727.C.1–3, 4727.C, 4727.C.3.a-b, 4727.C.3.b.i-v, 4727.C.4, 4727.D, 4727.D.1–5, 4727.D.a-b, 4727.D.6–9, 4727.A.3.d.ii.(a), 4727.B.9.d, 4739, as amended September 20, 1998, effective September 20, 1998; and LAC 33:III.3003, as amended December 20, 1997, effective December 20, 1997. LAC 33:V.1109.E.7.a is more stringent than 40 CFR 262.34(d)(2) because LDEQ does not recognize conditionally exempt small quantity generators. If a person generates greater than 100 kg but less than 1000kg in the State, the generator is equivalent to a large quantity generator and would follow the guidelines for large quantity generators. Additionally, the federal citation lists the accumulation time as 180 days or less and the State citation lists the accumulation time as 90 days or less.
8. Kraft Mill Steam Stripper Condensate Exclusion, [63 FR 24596] May 4, 1998. (Checklist 164).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR § 105.D.1.o, as amended March 20, 1999; effective March 20, 1999.
9. Recycled Used Oil Management Standards; Technical Correction and Clarification, [63 FR 24963] May 6, 1998. (Checklist 166).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 3913, as amended October 20, 1994, effective October 20, 1994, 3915, as amended August 20, 1998, effective August 20, 1998, 4003.I, 4013.D, 4013.D1–4, 4035.H, 4035.H.1–4, 4049.G, 4049.G.1–4, 4069.G, 4069.G.1–4, 4085.B, 4085.B.1–4, 4105.B–9–11, as amended March 20, 1999, effective March 20, 1999. LAC 33:V.3913 and LAC.3915 are more stringent than 40 CFR 261.5(j). The State does not recognize the class of generators generating 0–100kg/mth as conditionally exempt small quantity generators. Generators in Louisiana who generates 0–100kg/mth must follow more stringent guidelines such as filing annual reports, for small quantity generators.
10. Land Disposal Restrictions Phase IV-Treatment Standards for Metal Waste and Mineral Processing Wastes, [63 FR 28556] May 26, 1998]. (Checklist 167A).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2203. Underlying Hazardous Constituent, 2207.D, 2215.A–D, 2215.D.1–4, 2215.E, 2223.E, 2223.H, Chapter 22.Table 2 and 7, as amended March 20, 1999, effective March 20, 1999.
11. Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, [63 FR 28556] May 26, 1998. (Checklist 167B).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2203.Soil, 2231.G.3, 2231.G.3.a, 2231.G.a.i–ii, 2231.G.3.b, 2231.G.4–5, 2236.A–C, 2236.C.1, 2236.C.1.a–c, 2236.C.2–3, 2236.C.a–b, 2236.D–E, 2236.E.1–2, 2236.E.2.a–b, 2245.A–B, 2245.B.1, 2245.C, 2245.C.1.b, 2245.D, 2245.D.Table, 2245.E–F, 2246.F, 2246.F.1–2, 2247.A.1–2, 2247.C.1.a, as amended March 20, 1999; effective March 20. 1999.
12. Land Disposal Restrictions Phase IV—Corrections, [63 FR 28556] May 26, 1998. (Checklist 167C).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2223.E, 2227.A, 2227.A.1–3, 2230.A, 2230.D.3–4, 2237.A.2c, 2237.A.2.b.i–ii, 2245.G, 2245.D.Generators. Paperwork Requirements Table, 2247.B, 2247.C.4, 2247.C.5, 2247.D–E, Chapter 22 Table 2 and 7, as amended March 20, 1999; effective March 20, 1999. There is no State equivalent to 40 CFR 268 Appendix VII. The tables located in Appendices VII and VIII reflect dates for regulations promulgated for the federal rules. The promulgation dates for the State equivalent are different and contained within the text of LAC 33:V.Chapter 22 for the rules and are also in the historical note of the regulations for the State.
13. Mineral Processing Secondary Materials Exclusion, [63 FR 28556] May 26, 1998. (Checklist 167D).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.1.p, 105.D.p.i–iv,105.D.1.p.iv.(a)–(d), 105.D.p.vi, 109.Solid Waste.3.c, 109 Solid Waste.5.a.iii, 109.Solid Waste.Table.1, as amended March 20, 1999; effective March 20, 1999.
14. Bevill Exclusion Revisions and Clarification, [63 FR 28556] May 1998. (Checklist 167E).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105D.2.h, 105.D.h.i–ii, 105.D.2.h.ii.(a)–(t), 105.D.2.h.iii, 105.D.2.h.iii.(a)–(b), 109.Hazardous Waste.2.a, and 109.Hazardous Waste.2.c, as amended March 20, 1999; effective March 20, 1999.
15. Exclusion of Recycled Wood Preserving Wastewaters, [63 FR 28556] May 26, 1999. (Checklist 167F).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.1.i.iii, 105.D.1.i.iii(a)–(e), as amended March 20, 1999; effective March 20, 1999.
16. Hazardous Waste Combustors Revised Standards, [63 FR 33782] June 19, 1998. (Checklist 168).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.1.p.vi, 4909, 4909.A–A.2, 4909–B.B.5, chapter 49 Table 7,4909C, 4909.C.1, 4909.c.1.a, 4909C.1.a.i–iii, 4909.C.a.iii.(a)–(d), 4909.C.1.b, 4909.C.1.b.i–v, 4909.C.2, 4909.C.2.a–b, 4909.C.2.b.i–ii, 4909.C.2.c, 4909.C.3, 4909.C.3.a–c, 4909.C.4, 4909.C.4.a, 4909.C.4.a.i–iii, 4909.C.4.b, 4909.C.5, 4909.C.5.a, 4909.C.5.a.i–iii, 4909.C.5.b, 4909.C.6–7, 4909.c.7.a.i–v, 4909.C.7.b, 4909.C.7.b.i–viii, 4909.C.7.c, 4909.C.8, 4909.C.10.a.i–iii, 4909.C.10.b–h, 4909.C.10.h.a, 4909.C.10.h.a.i–viii, 4909.C.8.a, 4909.C.8.a.i.iv, 4909.C.8.b–c, 4909.C.8.c.i–ii, 4909.C.8.d–f, 4909C.8.g–h, 4909.C.8.h.i, 4909.C.h.ii, 4909.C.8.i, 4909.C.9–10, 4909.C.10.a, 4909.C.10.i.a, 4909.a.i–v, 4909.c.11, 4909.C.12.a, 4909.C.12.a.i–iii, 4909.C.13, 321.C.10, 321.C.10.a–b, 322.I.9, 4303.B.8, as amended March 20, 1999; effective March 20, 1999.

E. What Decisions has EPA Made?

We conclude that Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to operate its hazardous waste program as revised, assuming we receive no adverse comments as discussed above. Upon effective final approval Louisiana will be responsible for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

F. How do the Revised State Rules Differ from the Federal Rules?

The EPA considers the following State requirements to be more stringent than the Federal: LAC 33:V.3913 and LAC 33:V.3915 are more stringent than 40 CFR part 261.5(j). The State does not recognize the class of generators generating 0–100kg/per month as ''conditionally exempt small quantity generators.'' Generators in Louisiana who generates 0–100kg/mth must follow more stringent guidelines for small quantity generators. The State cited different promulgation dates for 40 CFR 268 Appendices VII and VIII. The tables in Appendices VII and VIII reflect dates for regulations promulgated for the federal rules. The promulgation dates for the state equivalent are different and contained within the text of LAC 33:V.Chapter 22 for the rules and are also in the historical note of the regulations for the State. In this authorization for the State of Louisiana's program revisions for RCRA cluster VIII and waste minimization, there are no provisions that are broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

G. Who Handles Permits After this Authorization Takes Effect?

The EPA will administer any RCRA permits or portions of permits it has issued to facilities in the State until the State becomes authorized. At the time the State program is authorized for new rules, EPA will transfer all permits or portions of permits issued by EPA to the State. The EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

H. Why wasn't there a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and we expect no comments that oppose this action. The EPA is providing an opportunity for public comment now. In addition, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments opposing this authorization, that document will serve as a proposal to authorize the changes.

I. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number LA–00–1. We must receive your comments by March 29, 2000. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, we will publish a second **Federal Register** document before the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

K. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on April 28, 2000.

L. Where Can I Review the State's Application?

You can view and copy the State of Louisiana's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0397 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian country.

N. What is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 Code of Federal Regulations part 272. The EPA reserves the amendment of 40 CFR part 272, subpart T for this codification of Louisiana's program changes until a later date.

Regulatory Requirements

Compliance With Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of E.O. 12866.

Compliance Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' applies to any rule that: (1) the OMB determines is ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the 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 an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law (P.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, the EPA 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 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 objective 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.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Louisiana's program, and today's action does not impose any additional obligations on regulated entities. In fact EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate Treatment, Storage, Disposal, Facilities, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate Treatment, Storage, Disposal, Facilities are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Executive Order 12875—Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by those governments. If EPA complies with consulting, E. O. 12875 requires EPA to provide to the OMB 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 communication from the governments and a statement supporting the need to issue the regulations. In addition, E. O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirement of E. O. 12875 do not apply to this rule.

Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If, EPA complies with consulting, E. O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Louisiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

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 E. O. 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 section 6 of E.O. 13132, EPA may not issue a regulation that has federalism implications, that impose 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 Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it affects only one State. This action simply approves Louisiana's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as result of this action, those newly authorized provisions of the State's program now apply in the State of Louisiana in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the E.O. do not apply.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 9, 2000.

Jerry Clifford,

Acting, Regional Administrator, Region 6.

[FR Doc. 00–4648 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF00

Endangered and Threatened Wildlife and Plants; Delisting of the Dismal Swamp Southeastern Shrew (*Sorex longirostris fisheri*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, remove the Dismal Swamp southeastern shrew (*Sorex longirostris fisheri Merriam*) from the List of Endangered and Threatened Wildlife. The Dismal Swamp southeastern shrew was listed as a threatened species in 1986 under the Endangered Species Act of 1973, as amended (Act). New data confirm that this species is more widely distributed than previously believed, is fairly abundant within its range, occurs in a wide variety of habitats, and is genetically secure. We conclude that the data supporting the original classification were incomplete and that the new data confirm that removing the Dismal Swamp southeastern shrew from the List of Endangered and Threatened Wildlife is warranted.

EFFECTIVE DATE: February 28, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Virginia Field Office, U.S. Fish and Wildlife Service, P.O. Box 99, 6669 Short Lane, Gloucester, VA 23061.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Schulz at the above address, telephone 804/693–6694, extension 127, or facsimile 804/693–9032.

SUPPLEMENTARY INFORMATION:

Background

The Dismal Swamp southeastern shrew is a small, long-tailed shrew with a brown back, slightly paler underparts, buffy feet, and a relatively short, broad nose (Handley 1979a). It weighs 3 to 5 grams and measures up to 10 centimeters in length. The species was first described as *Sorex fisheri* by C.H. Merriam (Merriam 1895). Merriam's description was based on four specimens trapped near Lake Drummond, Virginia, by A.K. Fisher of the U.S. Department of Agriculture's Bureau of Biological Surveys. Rhoads and Young (1897) captured a specimen in Chapanoke, Perquimans County, North Carolina, that seemed intermediate between *S. fisheri* and the southeastern shrew (*Sorex longirostris* Bachman) (Handley 1979b). Jackson (1928) subsequently reduced *S. fisheri* to a subspecies of *S. longirostris.* Three subspecies of southeastern shrew are now recognized—*Sorex longirostris eionis,* which occurs in the northern two-thirds of peninsular Florida (Jones *et al.* 1991); *S. l. fisheri,* which occurs in southeastern Virginia and eastern North Carolina; and *S. l. longirostris,* which occurs in the rest of the range that extends through eastern Louisiana, eastern Oklahoma, and Missouri, then eastward through central Illinois and Indiana, southern Ohio, and Maryland. Jones *et al.* (1991) examined the taxonomic status of these three subspecies and verified substantial size differences. Jones *et al.* (1991) found that *S. l. eionis* was significantly larger in four cranial measurements when compared with the other two subspecies; *S. l. fisheri* was significantly larger in one cranial and one external measurement; and *S. l. longirostris* had a relatively short palate and rostrum, narrow skull, and short foot and tail. This study confirmed the subspecific status of *S. l. fisheri.*

Apart from a litter of five young found in a nest in the Dismal Swamp in 1905, little is known about reproduction or other life history features of *Sorex longirostris fisheri* (Handley 1979b). However, more is known about the life history of other *Sorex* species, and this information may apply to *S. l. fisheri. Sorex longirostris* reproduces from March through October, and two litters are likely born each year, with one to six young produced per litter (Webster *et al.* 1985). Nests are shallow depressions lined with dried leaves and grasses and are usually associated with rotting logs (Webster *et al.* 1985). Young shrews grow rapidly and are almost adult size when they leave the nest (Jackson 1928). *Sorex longirostris* forage on spiders, crickets, butterfly and moth larvae, slugs, snails, beetles, centipedes, and vegetation (Webster *et al.* 1985, Whitaker and Mumford 1972). Little information is available about the daily activity patterns of *S. longirostris.* They forage intermittently throughout the day and night in all seasons, seem to be most active after rains and during periods of high humidity, and do much of their foraging in the leaf litter or in tunnels in the upper layers of the soil (Jackson 1928).

The Dismal Swamp, the type locality for *Sorex longirostris fisheri,* is a forested wetland with a mosaic of habitat types located in southeastern Virginia and adjacent North Carolina. Within the Dismal Swamp, *S. l. fisheri* has been found in a variety of habitat types, including recent clearcuts, regenerating forests, young pine plantations, grassy and brushy roadsides, young forests with shrubs and saplings, and mature pine and deciduous forests (Padgett 1991, Rose 1983). *Sorex longirostris fisheri* has also been collected in utility line rights-of-way. The highest densities of *S. l. fisheri* occur in early successional stage habitats and the lowest densities in mature forests (Everton 1985), although mature forests are likely to be important to the survival of the shrew during periods of drought or fire. Densities of southeastern shrews in early successional stage habitats are 10 to 30 per hectare (Rose 1995).

Until recently, the distribution of *Sorex longirostris fisheri* was considered coincidental with the historical boundaries of the Dismal Swamp (Handley 1979a, Hall 1981, Rose 1983). After collection of the original type series, additional *S. l. fisheri* specimens were collected from similar habitats in the Dismal Swamp between 1895 and 1902. Prior to 1980, only 20 specimens of *S. l. fisheri* were known. In 1980, 15 *S. longirostris fisheri* were collected in pitfall traps in Suffolk, Virginia, from the northwest section of the Great Dismal Swamp National Wildlife Refuge (Refuge) located in North Carolina and Virginia (Rose 1981).

From December 1980 through July 1982, researchers established 37 pitfall grids in Currituck and Gates Counties, North Carolina and the Cities of Chesapeake, Suffolk, and Virginia Beach and Isle of Wight and Surry Counties, Virginia (Rose 1983). This trapping produced 24 specimens from 10 populations classified as *Sorex longirostris fisheri,* 62 specimens from 9 populations classified as intergrades, and 30 specimens from 7 populations classified as *S. l. longirostris.* Three grids each contained one specimen classified as *S. l. longirostris,* while the remaining specimens were classified as *S. l. fisheri.* Rose (1983) determined that *S. l. fisheri* was associated with the Dismal Swamp proper, except for a population north of the Refuge and another population east of the Refuge. A narrow zone of hybridization (these populations contained specimens that represent the parent stocks and individuals that may be hybrids) was found to border the Dismal Swamp running approximately north/south along its western edge and running northwest/southeast adjacent to the southeastern corner of the Refuge. *Sorex longirostris longirostris* was found to the east and west of the Dismal Swamp with distinctive populations of *S. l. longirostris* occurring within 20 miles of the Dismal Swamp border (Rose 1983). The results of this analysis indicated that the largest *Sorex* were located within the Refuge and the smallest Sorex were located at greater distances from the Refuge, with specimens of intermediate size on the margins of the Refuge. This finding suggested that interbreeding of the two subspecies might be occurring, particularly at the margins of the Refuge. Rose (1983) tentatively recommended that *S. l. fisheri* be listed as threatened primarily because of the potential for contact and interbreeding with *S. l. longirostris.* ''If widespread, this interbreeding can result in an alteration of the gene pools of both subspecies in the zone of contact, and the integrity of both subspecies may be lost in the extreme'' (Rose 1983).

Additional study of *Sorex* was conducted from October 1986 through June 1989, focusing within the Refuge but also including outlying areas of the historical Dismal Swamp (Padgett 1991). Particular emphasis was placed on determining whether the nominate subspecies might be expanding into the remaining Dismal Swamp proper and interbreeding with *Sorex longirostris fisheri.* Padgett's (1991) study indicated that *S. l. fisheri* was restricted to the historic Dismal Swamp and that no strong evidence existed that *S. l. longirostris* was using roadways to enter the interior of the Refuge. Between 1989 and 1991, Erdle and Pagels (1991) collected shrews to further delineate the distributions of *S. l. fisheri* and *S. l. longirostris* in Virginia. Sampling was conducted in much of the historic Dismal Swamp east of the Refuge and north of the Virginia-North Carolina State line. Shrews referable to both taxa and intergrades were represented in the 26 *Sorex* trapped. These findings supported the hypothesis that *S. l.*

longirostris might be moving into areas of the historical Dismal Swamp. During the 1990s, many additional areas were surveyed within the historical Dismal Swamp in Virginia; the specimens found were referable to *S. l. fisheri* or *S. l. longirostris* or were of intermediate size.

Although researchers had significant information on the distribution of *Sorex longirostris fisheri* in Virginia, knowledge of the species in North Carolina was sparse. In the early 1980s, D.W. Webster from the University of North Carolina-Wilmington collected *Sorex longirostris* from southeastern North Carolina (D.W. Webster, pers. comm. 1997). Using the existing range maps for *S. longirostris,* Webster determined the specimens were *S. l. longirostris.* In the late 1980s, Webster collected *S. longirostris* from Beaufort County, North Carolina and realized that those specimens looked the same as those collected from southeastern North Carolina. Still using the existing range maps (Webster, pers. comm. 1997), assumed these specimens were *S. l. longirostris.* Webster (1992) summarized historical locations of *S. l. fisheri* in North Carolina, indicating collection of *S. l. fisheri* from Camden, Currituck, and Gates Counties, and that *S. l. fisheri* probably inhabits parts of Chowan, Pasquotank, and Perquimans Counties. Webster continued to collect shrews from coastal North Carolina throughout the early 1990s (D.W. Webster, pers. comm. 1997).

In January 1994, Webster visited the Smithsonian's National Museum of Natural History and compared his specimens, collected from southeastern North Carolina and Beaufort and Gates Counties, North Carolina, to the specimens at the Smithsonian. He realized that his specimens were of the same size as the voucher specimen for *Sorex longirostris fisheri* from Lake Drummond, the type locality. Charles O. Handley, at the time curator of mammals for the museum, agreed with Webster that these shrews were referable to *S. l. fisheri* based on size. Based on that information, Webster hypothesized that the ''dividing line'' between *S. l. fisheri* and *S. l. longirostris* may be somewhere between Wilmington, North Carolina and Charleston, South Carolina.

In May 1994, Webster visited the North Carolina State Museum of Natural Sciences and found a series of relatively large *Sorex longirostris* (not identified to subspecies) from Croatan National Forest (Jones, Craven, and Carteret Counties) in North Carolina (U.S. Fish and Wildlife Service 1995). He presumed that this series of shrews was *S. l. fisheri* based on his trip to the Smithsonian (D.W. Webster, pers. comm. 1997). The State museum also had specimens of southeastern shrews from Chowan, Bladen, and Brunswick Counties that Webster assumed were *S. l. fisheri* (D.W. Webster, pers. comm. 1997). In May and June 1994, Webster collected *S. longirostris* near the town of Warsaw in Duplin County, midway between Wilmington and Raleigh, North Carolina. He determined that these specimens were referable to *S. l. fisheri* (D.W. Webster, pers. comm. 1997).

Webster *et al.* (1996a, 1996b) compared *Sorex longirostris* specimens from east-central and southeastern North Carolina to specimens from the Dismal Swamp. They also examined specimens from Charleston County, South Carolina (near the type locality for *S. l. longirostris*), and Citrus County, Florida (the type locality for *S. l. eionis*), and representative samples of *S. longirostris* from throughout the southeastern United States. They concluded that *S. l. fisheri* is much more widespread and ubiquitous than previously believed. Webster's group undertook an analysis of physical characteristics to better delineate the geographic distribution of *S. l. fisheri* in Virginia and North Carolina. This analysis used 626 *S. longirostris* from the southeastern United States (15 from Florida, 375 from North Carolina, 159 from Virginia, and the remaining 77 from Alabama, the District of Columbia, Indiana, Kentucky, Maryland, Mississippi, Missouri, South Carolina, and Tennessee). The analysis included six cranial measurements, palatal length, and braincase length. If available from specimen tags, the total specimen length, tail length, hind foot length, and weight were also used. Head and body length or the difference between total length and tail length were determined where possible. Significant geographic variation occured in all cranial measurements; samples from southeastern Virginia, eastern North Carolina, and southern Georgia and Florida had much larger cranial characteristics than samples from elsewhere in the range. The significant geographic variation in external measurements and weight typically followed the same pattern. A two-dimensional plot of the samples formed three clusters: (1) shrews from Georgia and Florida that have longer and overall much wider crania; (2) shrews from southeastern Virginia and eastern North Carolina that have longer crania with relatively narrower rostra; and (3) shrews from elsewhere in the range that were smaller in all cranial measurements. This plot explained 93.2 percent of the total morphometric variation exhibited in *S. longirostris* crania. Shrews from the piedmont and mountains of Virginia and North Carolina were more similar to specimens from the Mississippi and Ohio River basins than they were to those from the mid-Atlantic coast.

Webster *et al.* (1996a, 1996b) established 84 survey sites in a wide range of habitats throughout North Carolina and Virginia to ensure that both *Sorex longirostris longirostris* and *S. l. fisheri* would be captured. Of the 84 sites, 49 (58.3 percent) were located in abandoned fields and powerline rights-of-way that were dominated by herbaceous vegetation typical of early stages of succession. The other 35 sites (41.7 percent) were dominated by arborescent vegetation, including such forest types as longleaf pine/turkey oak, pocosin/bay, Atlantic white cedar, shortleaf pine, riparian hardwood, and cove hardwood. The researchers collected 18 species of small mammals, and *S. longirostris* was the most abundant and ubiquitous. The researchers divided survey sites into two groups, those occurring in the newly delineated range of *S. l. fisheri* and those occuring in the newly delineated range of *S. l. longirostris.* Within each the results were similar. Within its geographic distribution, *S. l. fisheri* was the most abundant small mammal, or shared that distinction with other species at 31 of the 84 sites sampled. *Sorex longirostris fisheri* was especially abundant in forested habitats in and adjacent to the Refuge, comprising 84 percent of the specimens taken. The only habitat sampled where *S. l. fisheri* was absent was xeric longleaf pine/turkey oak. Both taxa were found in a wide range of habitat types and moisture regimes, from early successional to mature second-growth forest and from well-drained uplands to seasonally inundated wetlands. Webster (1996a, 1996b) concluded that ''* * *even the smallest specimens from relatively dry, upland sites in the Dismal Swamp region clearly are assignable to *S. l. fisheri.*''

Gurshaw (1996) examined allozyme variability in specimens of the southeastern shrew from North Carolina and Virginia to identify characters that differentiate *Sorex longirostris fisheri* and *S. l. longirostris* and to determine if there are similarities between shrews from the Dismal Swamp region and the coastal plain of southeastern North Carolina. She found that shrews from the coastal plain of southeastern North Carolina grouped most closely with those from the Dismal Swamp. The

author found an allele in the shrews from the coastal plain that represents a genetic distinction from *S. l. longirostris.* Distribution of this allele appeared to follow the Fall Line, the boundary between the piedmont plateau and upper coastal plain in the southeastern United States.

Webster *et al.* (1996a, 1996b) concluded that *Sorex longirostris fisheri* ''* * * has a much broader geographic distribution than previously believed, extending from southeastern Virginia to southeastern North Carolina along the outer coastal plain. In Virginia, all specimens examined from Isle of Wight County, the City of Chesapeake, and the City of Virginia Beach are referable to *S. l. fisheri,* whereas those from Surry, Sussex, and Southampton Counties are assignable to *S. l. longirostris.* In North Carolina, *S. l. fisheri* is distributed throughout the coastal counties as far south as New Hanover, Brunswick, and Columbus Counties.'' Since the conclusion of that study, *S. l. fisheri* has been documented in Hyde County, North Carolina (D.W. Webster, pers. comm. 1997). No trapping for *S. longirostris* has been conducted in Onslow, Martin, Pamlico, or Burtie Counties, North Carolina (D.W. Webster, pers. comm. 1997). Webster (pers. comm. 1997) does not have any records of *S. l. fisheri* from Pasquotank County, although surveys were conducted there in 1995. At the time of listing, Pasquotank County was listed as a county of occurrence for *S. l. fisheri,* however, the literature cited does not support this designation.

At the time of listing, *Sorex longirostris fisheri* was believed to occur in only two cities in Virginia and four counties in North Carolina. *Sorex longirostris fisheri* is now known to occur in Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Duplin, Gates, Greene, Hyde, Jones, Lenoir, New Hanover, Pender, Perquimans, Robeson, Scotland, Tyrrell, and Washington Counties in North Carolina and Chesapeake, Suffolk, and Virginia Beach Cities and Isle of Wight County in Virginia. Information gaps still exist in the distribution of *S. l. fisheri* in North Carolina and potentially South Carolina. Jones *et al.* (1991) noted a sample of *Sorex* specimens from coastal South Carolina that appeared to be similar to *S. l. fisheri,* but substantiation is needed regarding the taxonomy of these specimens.

Previous Federal Action

On December 30, 1982, in our Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454), we designated the Dismal Swamp southeastern shrew as a category 2 candidate species, meaning that a proposal to list the subspecies as threatened or endangered was possibly appropriate, but that substantial biological data were not available at that time to support such a proposal. Rose (1981, 1983) and Everton (1985) conducted pre-listing status surveys that documented large shrews within the Refuge, small shrews outside the Refuge, and intermediate-sized shrews near the Refuge boundaries.

On July 16, 1985, we published a proposed rule to list the Dismal Swamp southeastern shrew as a threatened species (50 FR 28821). The final rule to list the species was published in the **Federal Register** on September 26, 1986 (51 FR 34422), and became effective on October 27, 1986. The reasons for listing the Dismal Swamp southeastern shrew were habitat loss and alteration and possible loss of genetic integrity through interbreeding with *S. l. longirostris*.

In the early 1990s, a group of biologists from Virginia held meetings to discuss information and issues related to the recovery of the Dismal Swamp southeastern shrew. Initially, most of the effort was focused in Virginia because of the development pressure occurring there. In 1992, biologists from North Carolina were included in the group. The Service then convened an official recovery team, and held the first meeting in February 1993.

The recovery team completed a draft recovery plan in July 1994, and we published a notice of availability for the plan in the **Federal Register** (59 FR 37260). The recovery plan was finalized on September 9, 1994, and updated on June 13, 1995.

In March 1995, based on questions raised by D.W. Webster about the shrew's distribution and taxonomy, the Virginia Department of Game and Inland Fisheries and the Service funded studies to determine if large shrews are distributed from the Dismal Swamp region southward throughout the coastal plain of North Carolina, and if the large shrews from coastal North Carolina are similar to *S. l. fisheri* from near the type locality. A combination of morphometric and genetic analyses was proposed to answer these questions. The results of the morphological and genetic analyses that followed are discussed in detail in the Background section of this rule.

In May 1996, we received reports on morphometric variation among the three *Sorex longirostris* subspecies (Webster *et al.* 1996a) and protein electrophoresis and allozymic variation between *S. l. fisher* and *S. l. longirostris* (Gurshaw 1996) and sent this information to the recovery team members. The recovery team convened in June 1996 to discuss the two reports. The consensus of the team was that the results of both the morphological and genetic analyses conclusively show that *S. l. fisheri* is widely distributed along the coastal plain of southeastern Virginia and eastern North Carolina at least as far south as Wilmington, North Carolina; that *S. l. fisheri* uses a wide variety of habitat types; and that *S. l. fisheri* is not in danger of genetic swamping by *S. l. longirostris*. However, the team agreed that the reports should undergo independent peer review before further action was taken and sent them to reviewers in June 1996. Reviewers who responded concurred with the conclusions of the authors and supported delisting. Based on comments provided by recovery team members, the Service, and peer reviewers, the original manuscripts were revised (Moncrief 1996, Webster *et al.* 1996b).

Federal involvement with the Dismal Swamp southeastern shrew after listing has included surveys for new locations and informal and formal consultations under section 7 of the Act for activities involving a Federal action occurring in suitable habitat within the historical Dismal Swamp. No biological opinion reflecting a conclusion that a project could result in the extinction of this species has ever been issued.

We published a proposed rule to remove the shrew from the List of Endangered and Threatened Wildlife in the **Federal Register** on October 21, 1998 (63 FR 56128).

Summary of Comments and Recommendations

In the October 21, 1998, proposed rule (63 FR 56128) and associated notifications, we invited all interested parties to submit factual reports or information that might contribute to the development of a final rule. We also contacted appropriate State and Federal agencies, county governments, scientific organizations, members of the recovery team, and other interested parties and asked them to comment. We published legal notices soliciting comments in one North Carolina newspaper, *The Wilmington Journal,* on November 5, 1998. Legal notices were also published in two Virginia newspapers, *The Virginian-Pilot* and *The Suffolk News-Herald*, on November 1, 1998.

Ten individuals or organizations submitted comment letters. Two peer reviewers supported the delisting, and one of the reviewers provided additional pertinent information that was incorporated into the final rule. The

Virginia Department of Game and Inland Fisheries; U.S. Army Corps of Engineers, Wilmington District; Isle of Wight County, Virginia; and the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, and North Carolina Natural Heritage Program supported the delisting. The Virginia Department of Conservation and Recreation, Hampton Roads Planning District Commission (representing Cities of Chesapeake, Suffolk, and Virginia Beach), and Virginia Department of Environmental Quality had no comment. The Virginia Department of Agriculture and Consumer Services stated that delisting would have no adverse impacts on their regulatory responsibilities. We received no additional written or oral comments during the comment period.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Dismal Swamp southeastern shrew should be removed from the List of Endangered and Threatened Wildlife. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. Regulations at 50 CFR 424.11 require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to the Dismal Swamp southeastern shrew (*Sorex longirostris fisheri* Merriam) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Extensive habitat alteration has occurred within the area historically occupied by the Dismal Swamp. At the beginning of the twentieth century, the Dismal Swamp occupied 2,000 to 2,200 square miles (mi^2) (5,200 to 5,700 square kilometers (km^2)). Currently, less than 320 mi^2 (830 km^2) of the historical Dismal Swamp remain, 189 mi^2 (490 km^2) of which are protected within the Refuge and the Great Dismal Swamp State Park in North Carolina. Remnants of the historical Dismal Swamp outside Refuge and State Park boundaries and land beyond the historical Dismal Swamp boundaries are disappearing due to development associated with the rapid growth of the Hampton Roads metropolitan area of southeastern Virginia. Agricultural and silvicultural conversions (especially in North Carolina) also contribute significantly to habitat loss. Habitat loss was a primary reason for listing the Dismal Swamp southeastern shrew, considered at the time to be endemic to the historical Dismal Swamp. However, because the species is now known to occur across a much larger area and in a wider variety of habitats, this threat is not as significant as was believed at the time of listing.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At present, the only known method for studying or monitoring the Dismal Swamp southeastern shrew involves lethal collection with pitfall traps. Researchers have been permitted to take individuals of the species to gain an understanding of its taxonomy, ecology, and distribution. However, because the Dismal Swamp southeastern shrew has a high reproductive potential and a rapid maturation rate, limited collection of individuals is not considered detrimental to healthy populations. Utilization for commercial, recreational, or educational purposes is not known to occur.

C. *Disease or predation.* Southeastern shrews are subject to some predation, most frequently by owls, snakes, opossums, and domestic cats and dogs (French 1980, Webster et al. 1985). The number of dead shrews found in woods and on roads suggests that many predators reject the shrew, probably because of the bad taste associated with their musk glands (French 1980). We have no evidence that predation or disease is a significant threat to the Dismal Swamp southeastern shrew.

D. *The inadequacy of existing regulatory mechanisms.* Wetland habitats for the Dismal Swamp southeastern shrew will continue to receive protection indirectly under Section 404 of the Clean Water Act, which requires the Department of the Army, Corps of Engineers to regulate certain activities affecting ''waters of the United States,'' including wetlands. Delisting the Dismal Swamp southeastern shrew removes Federal prohibitions against take and activities involving a Federal action that would jeopardize the continued existence of the species. However, because of its wide distribution and use of a wide variety of habitats, the removal of these protections afforded by the Act will not pose a significant threat to the Dismal Swamp southeastern shrew.

The Dismal Swamp southeastern shrew is listed as threatened by the State of Virginia. Virginia's Endangered Species Act of 1972, as amended (Code of Virginia Section 29.1–564–568), prohibits the taking, transportation, processing, sale, or offer for sale of endangered and threatened species except as permitted. The Virginia Department of Game and Inland Fisheries provides general protection to wildlife through State law Section 29.1–521, which prohibits their possession and capture, including the attempt to capture, take, kill, possess, offer for sale, sell, offer for purchase, purchase, deliver for transportation, transport, cause to be transported, receive, export, import in any manner or in any quantity except as specifically permitted.

The Dismal Swamp southeastern shrew is listed as threatened by the State of North Carolina. The species is protected by North Carolina general statute Article 25, section 113–337, which makes it unlawful to take, possess, transport, sell, barter, trade, exchange, export, or offer for sale, barter, trade, exchange, or export, or give away for any purpose including advertising or other promotional purpose any animal on a protected wild animal list, except as authorized according to the regulations of the North Carolina Wildlife Resources Commission.

All States have the option of retaining the Dismal Swamp southeastern shrew on their various lists. Both the States of Virginia and North Carolina support the delisting. The State of North Carolina plans to delist the Dismal Swamp southeastern shrew (H. LeGrand, North Carolina Natural Heritage Program, pers. comm. 1997). However, because of its wide distribution and use of a wide variety of habitats, the removal of State protection will not constitute a significant threat to the species.

E. *Other natural or manmade factors affecting its continued existence.* One of the reasons for listing the Dismal Swamp southeastern shrew was concern regarding the possible loss of genetic integrity through interbreeding with the nominate subspecies. Gurshaw (1996) examined allozyme variability in specimens of the southeastern shrew from North Carolina and Virginia. She found an allele in the shrews from the coastal plain that represents a genetic distinction from *Sorex longirostris longirostris* and that appeared to follow the Fall Line. The author stated, ''A cline for this allele may be shifted in the direction of dispersal in proportion to the direction of gene flow through barriers such as the Fall Line and population size. If the populations containing [this] allele are small, they will not have as many individuals dispersing* * *and gene flow may be restricted (Endler, 1977). In this study, however, the opposite appears to be happening. Populations with [this allele] are widespread in eastern North Carolina and southeastern Virginia, with gene flow carrying [this] allele above the

Fall Line in central North Carolina.'' She concluded that genetic swamping within the Dismal Swamp region was not evident.

Webster *et al.* (1996a, 1996b) found that intergradation between *Sorex longirostris fisheri* and *S. l. longirostris* is evident in specimens from the inner coastal plain of Virginia and North Carolina. The zone of intergradation is relatively narrow in Virginia and relatively wide in North Carolina, commensurate with the relative size of the inner coastal plain. Shrews from samples immediately to the east and west of the present Dismal Swamp were slightly smaller than shrews from the Dismal Swamp in cranial and external measurements. Padgett et al. (1987) noted this trend. However, when compared with specimens from throughout the range of the species, these shrews are referable to *S. l. fisheri.*

The following summarizes available information regarding potential environmental contaminant threats to the Dismal Swamp southeastern shrew throughout its range. In 1987 and 1989, we conducted a preliminary study (Ryan *et al.* 1992) within the Refuge to determine if contaminants were impacting fish and small mammals. All water (metal-laden leachate and groundwater) draining the Suffolk City Landfill, at the time a federally designated Superfund site, enters the Refuge. This landfill received industrial and domestic wastes, including 30 tons of organophosphate pesticides in the 1970s. Numerous automobile junkyards border the Refuge to the north and drain into the Dismal Swamp and the Refuge. Oil, grease, metals, polycyclic aromatic hydrocarbons (PAHs) and alkanes (PAHs and alkanes are components of petroleum products) are common constituents of junkyard and roadway runoff. Agricultural fields to the north and west of the Refuge contribute surface runoff that may contain residual herbicides, insecticides, and fungicides.

Our study (Ryan *et al.* 1992) included analyses for contaminant residues in the short-tailed shrew (*Blarina brevicauda*). Short-tailed shrews trapped near the East Ditch displayed elevated levels of lead, mercury, and several organochlorine pesticides. The lead levels for short-tailed shrews exceeded normal ranges and fell within the range for lead toxicosis according to Ma (1996). Small mammal lead toxicosis symptoms may include neurological dysfunction, reproductive disorders (including stillbirths), liver and kidney failure, etc. Apart from overt symptoms, asymptomatic effects may occur at lower levels and have significant effects on animal behavior, yet be difficult to evaluate and/or document. Ryan *et al.* (1992) found that mercury levels for short-tailed shrews collected at East Ditch, Badger Ditch, Railroad Ditch, and Pocosin Swamp were elevated in comparison to levels for short-tailed shrews collected from the study reference location and other sites within the Refuge. The mercury levels reported for short-tailed shrews, although elevated when compared within study area sites, were below those levels reported in the literature as causing observed adverse effects. Organochlorine pesticide levels of short-tailed shrews from the East Ditch were higher than those reported from all other study sites. However, the levels were below those documented in the literature for observed adverse effects. In summary, there may be a contaminant concern for the Dismal Swamp southeastern shrew near the East Ditch of the Refuge. However, no contaminant analysis has been conducted on Dismal Swamp southeastern shrews, although we have recommended further monitoring related to this issue.

Small mammals tend to have limited ranges, and, therefore, elevated levels of contaminants found in shrews from one location cannot be interpreted as a condition for shrews throughout the Refuge or range. Land uses such as agriculture, transportation, and urbanization with increased impervious surfaces contribute measurable levels of contaminants to the environment, and many persistent contaminants are passed through the food web. However, we do not have any information indicating that contaminants pose a significant threat to the continued existence of the Dismal Swamp southeastern shrew.

Regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original data for classification were in error. We have determined that the original data for classification of the Dismal Swamp southeastern shrew as a threatened species were in error. However, it is important to note that the original data for classification constituted the best available scientific and commercial information available at the time and were in error only in the sense that they were incomplete. Because *Sorex longirostris* from the Dismal Swamp were originally classified as *S. l. fisheri* based on morphological measurements from a limited number of specimens, and because specimens from areas bordering the Dismal Swamp did not have similar morphological measurements, taxonomists logically concluded that only the largest specimens were *S. l. fisheri.* Since the early 1900s, scientists have assumed that small-sized shrews were *S. l. longirostris,* resulting in erroneous classification of shrews found outside, and sometimes within, the historical Dismal Swamp boundaries. Therefore, the perception of a restricted range for *S. l. fisheri* was not a misinterpretation on the part of the Service, but a longstanding scientific assumption. At the time of listing, no other interpretation could be reasonably construed from the available data. We conclude that the data supporting the original classification were incomplete and that removal of *S. l. fisheri* from the List of Endangered and Threatened Wildlife is warranted.

The listing of the Dismal Swamp southeastern shrew as a threatened species was based on the best information available and was therefore a valid decision at the time. The data leading to a better understanding of *S. longirostris* taxonomy were derived incrementally as a direct result of the recovery program, and no preceding shrew research anticipated the outcome of the final morphometric and genetic analyses. The dual effort to increase the base of available information while addressing the perceived threats to this subspecies was thus both legally and scientifically justified up to the point when new information yielded a significant change in the knowledge of the Dismal Swamp southeastern shrew's status.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to remove the Dismal Swamp southeastern shrew from the List of Endangered and Threatened Wildlife because the shrew no longer meets the definition of ''threatened'' under section 3 of the Act and, therefore no longer requires the protection afforded by the Act.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make this rule effective immediately. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting section 7 consultation on actions that may affect a species no longer in need of protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the Dismal Swamp southeastern shrew.

Effects of the Rule

This action results in the removal of the Dismal Swamp southeastern shrew from the List of Endangered and Threatened Wildlife. Federal agencies are no longer required to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species. There is no designated critical habitat for this species. Federal restrictions on taking no longer apply. The 1988 amendments to the Act require that all species that have been delisted due to recovery be monitored for at least 5 years following delisting. The Dismal Swamp southeastern shrew is being delisted due to new information. Therefore we do not intend to monitor the species. We believe that sufficient habitat will remain over the long term to allow for the continued viability of this species. Within the Refuge and the Great Dismal Swamp State Park in North Carolina, management will continue to focus on restoring the hydrological regime to as close to historical conditions as possible, and efforts are being made to restore or maintain the habitat mosaic through forestry practices, all of which will benefit the shrew.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. Implementation of this rule will not involve any information collection requiring OMB approval under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866

This rule is not subject to review by the OMB under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Virginia Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Cynthia A. Schulz (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter 1, title 50 Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entry for ''Shrew, Dismal Swamp southeastern, *Sorex longirostris fisheri*'' under ''MAMMALS'' from the List of Endangered and Threatened Wildlife.

Dated: January 18, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–4531 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 00119015–0015–01; I.D. 022200C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Not Participating in Cooperatives that are Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels not participating in cooperatives that are catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the interim A/B season allocation of pollock total allowable catch (TAC) specified for vessels not participating in cooperatives that are catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2000, until 1200 hrs, A.l.t., June 10, 2000.

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

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

In accordance with § 679.20(a)(5)(i)(D)(3) and the 2000 TAC amounts for pollock in the Bering Sea subarea (65 FR 4220, January 28, 2000), the A/B season allocation of pollock TAC specified to the vessels not participating in cooperatives catching pollock for processing by the inshore component in the Bering Sea subarea is 11,968 metric tons.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A/B season allocation of pollock TAC specified to the vessels not participating in cooperatives that are catching pollock for processing by the inshore component in the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing the A/B season allocation of pollock TAC as the directed fishing allowance (§ 679.20(a)(5)(i)(D)(2)). In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels not participating in cooperatives that are catching pollock for processing by the inshore component in the Bering Sea subarea.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the A/B season

allocation of pollock TAC specified to the vessels not participating in cooperatives catching pollock for processing by the inshore component in the Bering Sea subarea. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

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

Dated: February 22, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–4530 Filed 2–22–00; 4:41 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 022200D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in Western and Central Regulatory Area in the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels that are non-exempt under the American Fisheries Act (AFA) in the Western and Central Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to allow non-exempt catcher vessels to participate in the Pacific cod fishery in these areas consistent with regulations implementing the AFA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

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

The amount of the 2000 GOA AFA catcher vessel sideboard in the Western and Central Regulatory Areas was established by the Emergency Interim Rule to Implement Major Provisions of the American Fisheries Act (65 FR 4520, January 28, 2000) as 1,945 metric tons (mt) and 1,330 mt respectively in accordance with § 679.20(c)(2)(i).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a Pacific cod directed fishing allowance of 1,745 mt, and set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries for this component of the fishery in the Western Regulatory Area. He also has established a directed fishing allowance of 1,130 mt, and set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries for this component of the fishery in the Central Regulatory Area. These areas of the GOA were closed to directed fishing for Pacific cod by non-exempt AFA vessels on January 21, 2000 (65 FR 4520, January 28, 2000).

NMFS has determined that as of February 18, 2000, 1,745 mt remain in the directed fishing allowance for the Western Regulatory Area and 1,130 mt remain in the directed fishing allowance for the Central Regulatory Area. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels that are non-exempt under the AFA in the Western and Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow participation of catcher vessels that are non-exempt under the AFA. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: February 22, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–4597 Filed 2–23–00; 3:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 65, No. 39

Monday, February 28, 2000

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.

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Rule review, request for public comments, and announcement of public forums.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') is requesting public comment on the Commission's Telemarketing Sales Rule (''TSR'' or ''the Rule''). The Telemarketing and Consumer Fraud and Abuse Prevention Act (''the Telemarketing Act'' or ''the Act'') directed the Commission to promulgate rules to protect consumers from deceptive telemarketing practices and other abusive telemarketing activities. In response to this directive, the Commission adopted the TSR, which requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

The Act requires that no later than five years after its effective date of December 31, 1995, the Commission initiate a rule review to evaluate the Rule's operation and report the results of that review to Congress. Pursuant to this mandatory rule review requirement, the Commission now hereby seeks comment about the overall costs and benefits of the TSR, and its overall regulatory and economic impact since its adoption in 1995.

In addition to reviewing the Rule and its effect on deceptive and abusive telemarketing practices, the Commission intends to use this rule review to examine telemarketing generally over the past two decades, and to determine its impact on consumers. This broader review will result in a report addressing issues such as changes in technology, composition of the industry, telemarketers' efforts at self-regulation, the effectiveness of law enforcement and legislation, trends in telemarketing, and current consumer issues related to telemarketing. In order to initiate discussion of these and other issues, the Request for Comment invites written responses to the series of questions in Sections F and G, infra, which set forth with more specificity the type of information the Commission particularly desires related to the Rule and about telemarketing generally.

In addition, this document contains an invitation to participate in a series of public forums to be held in the future to afford the Commission staff and interested parties an opportunity to explore and discuss the issues underlying the list of questions and any other topics that emerge from the comments we receive in response to this notice.

DATES: Papers and written comments responding to the Request for Comment will be accepted until April 27, 2000. A public forum to discuss provisions of the TSR, other than the ''do-not-call'' provision, will be held on July 27–28, 2000, in Washington, DC, from 8:30 a.m. until 5:30 p.m.[1] Notification of interest in participating in this forum must be submitted in writing on or before June 16, 2000. The exact dates, location, and information about participation in future FTC forums held in connection with the TSR review will be announced later by **Federal Register** notice.

ADDRESSES: Six paper copies of each paper and/or written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Alternatively, the Commission will accept papers and comments submitted to the following email address: tsr@ftc.gov, provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All submissions should be identified as ''Telemarketing Review—Comment. FTC File No. P994414.'' Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 238, Washington, DC 20580. The public forum will be held at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 432, Washington, DC 20580.

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at the following address: www.ftc.gov.

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

SUPPLEMENTARY INFORMATION:

Section A. Background

1. Telemarketing Consumer Fraud and Abuse Act

On August 16, 1994, President Clinton signed into law the Telemarketing Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''the Act'').[2] The Telemarketing Act was the culmination of Congressional efforts during the early 1990's to protect consumers against telemarketing fraud.[3] The purpose of the Act was to combat telemarketing fraud

[1] An initial public forum to discuss issues relating to the ''do-not-call'' provisions of the TSR was held on January 11, 2000. Information about that forum appeared in a separate **Federal Register** notice on November 24, 1999. 64 FR 66124 (November 24, 1999).

[2] 15 U.S.C. 6101 *et seq.*

[3] Other statutes enacted by Congress to address telemarketing fraud during the early 1990's include the Telephone Consumer Protection Act of 1991 (''TCPA''), 47 U.S.C. 64.1200 *et seq.*, which restricts the use of automatic dialers, bans the sending of unsolicited commercial facsimiles, and directs the Federal Communications Commission to explore ways to protect residential telephone subscribers' privacy rights; and the Senior Citizens Against Marketing Scams Act of 1994, 18 U.S.C. 2325 *et seq.*, which provides for enhanced prison sentences for certain telemarketing-related crimes.

by providing law enforcement agencies with powerful new tools, and to give consumers new protections. The Act directed the Commission, within 365 days of enactment of the Act, to issue a rule prohibiting deceptive and abusive telemarketing acts or practices.[4]

Among other things, the Telemarketing Act specifies certain acts or practices the FTC's rule must address.[5] The Act also required the Commission to include provisions relating to three specific ''abusive telemarketing acts or practices:'' (1) A requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which a reasonable consumer would consider coercive or abusive of such consumer's right to privacy; (2) A restriction on the time of day and night telemarketers may make unsolicited calls to consumers; and (3) A requirement that telemarketers promptly and clearly disclose in all sales calls to consumers that the purpose of the call is to sell goods or services, and to make other disclosures the Commission deems appropriate, including the nature and price of the goods or services sold.[6] Section 6102(a) of the Act not only required the Commission to define and prohibit deceptive telemarketing acts or practices, but it also authorized the FTC to define and prohibit acts or practices that ''assist or facilitate'' deceptive telemarketing.[7] The Act further required the Commission to consider and include recordkeeping requirements in the rule.[8] Finally, the Act authorizes state attorneys general, other appropriate state officials, and private persons to bring civil actions in federal district court to enforce compliance with the FTC's rule.[9]

2. Telemarketing Sales Rule

Pursuant to the Telemarketing Act, the FTC adopted the TSR, 16 CFR Part 310, on August 16, 1995.[10] The Rule, which became effective on December 31, 1995, contains the following key requirements and prohibitions. Under the Rule, telemarketers must promptly tell each consumer they call several key pieces of information: (1) The fact that the purpose of the call is to sell goods or services, (2) The nature of the goods or services being offered, and (3) In the case of prize promotions, that no purchase is necessary to win.[11] Telemarketers must also disclose cost and other material information before consumers pay. In addition, telemarketers must have consumers' express, verifiable authorization before debiting their checking accounts.[12] The Rule prohibits telemarketers from calling before 8 a.m. or after 9 p.m. (in the time zone where the consumer is located), and from calling consumers who have said they do not want to be called.[13] The Rule also prohibits misrepresentations about the cost, quantity, and other material aspects of the offered goods or services.[14] Finally, the Rule bans telemarketers who offer to arrange loans, provide credit repair services, or recover money consumers lost in a prior telemarketing scam from seeking payment before rendering the promised services,[15] and prohibits credit card laundering and other forms of knowing assistance to deceptive telemarketers.[16]

The Rule provides a number of exemptions, including calls where the transaction is completed after a face-to-face sales presentation, calls subject to extensive requirements under other FTC rules (*e.g.*, the 900-Number Rule, or the Franchise Rule),[17] and calls initiated in response to advertisements in general media such as newspapers or television.[18] Lastly, catalog sales are exempt, as are most business-to-business calls, except those involving the sale of office or cleaning supplies.[19]

3. Telemarketing and Changes in the Marketplace.

In the years since the Rule was promulgated, the marketplace for telemarketing has changed in significant ways. Technologies which were new or non-existent at the time the Rule was adopted now have become standard equipment for many telemarketing firms. Similarly, refinements in market research allow sellers to pinpoint with greater precision which consumers are most likely to be potential customers. The increased use of ''frequent customer cards,'' which enable sellers to collect purchasing data electronically when consumers buy goods such as groceries and gasoline, allows more extensive and more accurate customer targeting. ''Cookie'' technology[20] enables marketers to learn the specific habits and preferences of online consumers, including information about consumers and their computers, the kinds of Web sites they visit, and the frequency with which they purchase online. These enhancements in data collection have obvious uses to make telemarketing more sophisticated.

Finally, another significant change in the marketplace is that telemarketing is facing competition from new marketing and sales methodologies, especially the Internet. More and more sellers are turning to the Internet as a means not only to market their products and services to consumers, but to finalize sales.[21] Additionally, some companies link their call centers to the Internet. Thus, consumers not only can receive email replies to questions, but can place a call to a customer service representative either through the Internet or on a separate phone line without leaving the company's Web site. Technology now is available that allows a consumer to view the same Web page as the customer service representative with whom they are talking, and have the representative ''push'' Web pages with other information to the consumer. The potential impact of increased use of interactive sales media on telemarketing is unknown, but the question merits examination in light of the projected growth of such interactive electronic media.

Another change that has occurred since the Rule was promulgated is the increase in cross-border telemarketing. The incidence of telemarketers operating outside the U.S., but selling to U.S. citizens, is rising. Some of this cross-border activity is fraudulent. The experience of the FTC and other law enforcement agencies over the past five

[4] 15 U.S.C. 6102(a) and (b).

[5] 15 U.S.C. 6102(a).

[6] 15 U.S.C. 6102(a)(3)(A)–(C).

[7] 15 U.S.C. 6102(a)(2). Examples of practices that would ''assist or facilitate'' fraudulent telemarketing under the Rule include: credit card laundering, providing contact lists to sellers or telemarketers, and providing promotional materials to sellers or telemarketers. *See* Telemarketing Sales Rule, Statement of Basis and Purpose, 60 FR 43853 (August 23, 1995).

[8] 15 U.S.C. 6102(a)(3).

[9] 15 U.S.C. 6103.

[10] 60 FR 43843 (August 23, 1995).

[11] 16 CFR § 310.4(d)(4).

[12] 16 CFR § 310.3(a)(3).

[13] 16 CFR §§ 310.4(c), and 310.4(b)(1)(ii).

[14] 16 CFR § 310.3(a)(2).

[15] 16 CFR §§ 310.4(a)(3) and (4).

[16] 16 CFR §§ 310.3(b) and (c).

[17] 16 CFR §§ 310.6(a)–(c).

[18] 16 CFR § 310.6(e).

[19] 16 CFR § 310.2(u) (catalog sales); 16 CFR § 310.6(g) (business-to-business). Also, the Telemarketing Act specifically exempts catalog sales from its definition of ''telemarketing.'' 15 U.S.C. 6106(4).

[20] In Internet terminology, a ''cookie'' is a piece of information about a computer, its user, or something the user ''clicked'' on, that is stored on the computer user's hard drive. *See* www.netlingo.com. That information can be accessed by a Web server when the user connects to a Web page. ''Cookies'' also can be ''mined'' by marketers looking to learn more about the online shopping behavior of consumers who have accessed their Web sites.

[21] In 1998, nearly 37,000 people were employed in Internet direct marketing advertising, more than double the figure for the previous year. Growth rates for employment in Internet marketing are expected to be in excess of 50% annually through 2003. *See* Direct Marketing Association, *Direct Marketing Association's Statistical Fact Book '99,* 299 (1999).

years confirms that telemarketing fraud is becoming increasingly global in scope. Fraudulent telemarketers operating from other countries often do so to seek the advantages of less stringent telemarketing laws; they also benefit from the complex jurisdictional issues implicated in cross-border sales.

Because of these and other significant, rapid changes in the marketplace, the Commission has determined to combine its review of the TSR with a study of telemarketing generally: what the nature of telemarketing has been historically, what it is now, and how it is changing to meet the future. The goal of this study is to document the historical trends that have shaped the practice of telemarketing, and to better understand and document factors likely to shape its future, including technological innovations, shifting markets, consumer attitudes about choice, regulatory and law enforcement efforts at the state and federal levels, and telemarketers' self-regulatory efforts. To facilitate its rule review and the completion of the study, the Commission will invite the comments of all interested parties and will hold a series of public forums to discuss relevant issues.

Section B. Request for Comment

Interested parties, including, but not limited to, academics, telemarketers, consumer advocates, and government representatives, are requested to submit academic papers or written comments on any issue of fact, law, or policy that may inform the Commission's examination of the TSR and/or the practice of telemarketing generally, its history as well as current practice and emerging trends. Sections F and G, infra, set forth questions about which the Commission particularly desires input. Because telemarketing often occurs across international boundaries, comments need not be limited to examinations of domestic laws or policies. Please provide copies of any studies, surveys, research, or other empirical data referenced in submissions.

Form of Comments: To encourage prompt and efficient review and dissemination of the comments to the public, all papers and comments should also be submitted, if possible, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenting party and the name and version of the word processing program used to create the document, as well as the identification ''Telemarketing Review—Comment. FTC File No. P994414.'' (Programs based on DOS are preferred. Files from other operating systems must be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

Section C. Public Forums

The FTC staff will conduct public forums to discuss issues raised by the questions in this **Federal Register** notice. One series of forums will focus on issues relating to the implementation and effectiveness of the TSR. These forums are not intended to achieve consensus among participants or between participants and FTC staff with respect to any issue raised. Commission staff will consider the views and suggestions made during the forums, in conjunction with the papers and written comments, in formulating its final recommendation to the Commission concerning amendments to the current structure and content of the TSR and in preparing its report on telemarketing. A second series of forums will involve members of the telemarketing industry, consumer groups, and law enforcement agencies in a discussion of the evolution of telemarketing over the past two decades and its impact on consumers. The FTC invites members of the public, telemarketers, and other interested parties to participate in both sets of forums.

The initial forum, part of the first series dedicated to evaluation of the TSR, was held on January 11, 2000. This forum focused on the efficacy of the do-not-call provision of the Rule and other similar initiatives, such as the do-not-call provision of the TCPA, telemarketer-implemented do-not-call plans, and state legislation creating centralized do-not-call lists. Information on that forum was published in a separate **Federal Register** notice on November 24, 1999.[22] A public forum to discuss other provisions of the TSR will be held on July 27–28, 2000, in Washington, DC. The exact dates, location, and information about participation in future FTC forums will be announced later by **Federal Register** notice.

Section D. Request to Participate

The FTC invites members of the public, industry, and other interested parties to participate in the public forum scheduled for July 27–28, 2000. To be eligible to participate, you must file a request to participate on or before June 16, 2000. If the number of parties who request to participate in the forum is so large that including all requesters would inhibit effective discussion among participants, FTC staff will select as participants a limited number of parties to represent the relevant interests. Selection will be based on the following criteria:

1. The party submitted a request to participate by June 16, 2000.
2. The party's participation would promote the representation of a balance of interests at the forum.
3. The party's participation would promote the consideration and discussion of the issues to be presented in the forum.
4. The party has expertise in issues to be raised in the forum.
5. The party adequately reflects the views of the affected interest(s) which it purports to represent.

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

Requesters will be notified as soon as possible after June 16, 2000, whether they have been selected to participate.

Section E. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[23] provides for an initial and final regulatory analysis of the potential impact on small businesses of rules proposed by federal agencies.[24] The Commission conducted such an analysis when the TSR was promulgated in 1995. In publishing the proposed regulations, the Commission certified, subject to public comment, that the proposed regulations would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the RFA requiring the initial regulatory analysis did not apply.[25] The Commission noted that any economic costs imposed on small business entities were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burdens on small business entities by making the Rule's requirements flexible and by limiting the scope of the regulations through a number of exemptions. In publishing the final Rule, the Commission noted in the Rule's Statement of Basis and Purpose that public comments and information that had been received during the

[22] 64 FR 66124 (November 24, 1999).

[23] 5 U.S.C. § 603 et seq.

[24] 5 U.S.C. § 605(b).

[25] 60 FR 8313, 8322 (February 14, 1995).

rulemaking did not alter that conclusion.[26]

No analysis is required in connection with this notice because no new rule or amendment is being proposed. Nonetheless, the Commission wishes to ensure that no substantial economic impact is being overlooked that would warrant an initial and final regulatory flexibility analysis. Therefore, this notice also requests public comment regarding the effect of the Rule on the profitability and competitiveness of, and employment in, small entities. The Commission will revisit this issue in connection with any Notice of Proposed Rulemaking that may result from this notice.

Section F. Questions and Issues for Comment Pursuant to Regulatory Review of the Rule

The Commission is seeking comment on various aspects of the TSR in conjunction with its review of the Rule. Without limiting the scope of issues on which it is seeking comment, the Commission is particularly interested in receiving comments on the questions that follow. These questions are intended only as examples of the issues relevant to the Commission's examination. Interested parties are invited to comment on any relevant issue, regardless of whether it is identified below.

Where comments advocate changes to the Rule, please be specific in describing suggested changes. With respect to suggested changes to the Rule, please describe any potential costs and/or benefits such changes might have on industry and consumers.

I. General Questions for Comment

1. Is there a continuing need for the TSR?

(a) Since the Rule was issued, have changes in technology, industry structure, or economic conditions affected the need for or effectiveness of the Rule?

(b) Does the Rule include provisions that are unnecessary? If so, which ones?

(c) What are the aggregate costs and benefits of the Rule?

(d) Have the costs or benefits of the Rule dissipated over time?

(e) Does the Rule contain provisions that have imposed costs not outweighed by benefits?

2. What effect, if any, has the Rule had on consumers?

(a) What economic or other costs has the Rule imposed on consumers?

(b) How has the Rule benefitted consumers?

(c) What changes, if any, should be made to the Rule to increase the benefits to consumers? How would these changes affect the compliance costs the Rule imposes on industry?

(d) Is the incidence of telemarketing fraud greater today than five years ago? Less than five years ago? Has consumer awareness of telemarketing fraud increased since the adoption of the Rule? If so, what are the sources of information on this issue for consumers? What effect, if any, has increased consumer awareness had on law enforcement? On telemarketers?

3. What impact, if any, has the Rule had on entities that must comply with it?

(a) What economic or other costs has the Rule imposed on industry or individual firms?

(b) How has the Rule benefitted industry or individual firms?

(c) What changes, if any, should be made to the Rule to minimize any burden or cost imposed on industry or individual firms? How would these changes affect the benefits provided by the Rule to consumers or industry?

(d) Are there regulatory alternatives to the Rule that might reduce any adverse economic effect of the Rule, yet comply with the mandate of the Telemarketing Act to provide consumers with necessary protection from telemarketing deception and abuse?

4. How has this Rule affected sellers or telemarketers that are small businesses with respect to costs, profitability, and competitiveness? Have the costs or benefits of the Rule dissipated over time with respect to small business sellers or telemarketers?

5. Does the Rule overlap or conflict with other federal, state, or local government laws or regulations?

(a) What is the impact on the industry of state-by-state regulation of telemarketing?

(b) Are there any conflicting laws or regulations governing telemarketers, and if so, what are they? If conflicts exist, how do telemarketers address them?

(c) To what extent have private parties and state attorneys general brought actions under the TSR? Under other statutes/regulations?

(d) Are there any unnecessary regulatory burdens created by overlapping jurisdiction? What can be done to ease these burdens?

(e) Are there any gaps where no federal, state, or local government law or regulation has addressed a particular abuse?

6. Has the mingling of Internet and telemarketing technology had an impact on the effectiveness of the TSR? If so, how? Should the TSR be amended to address this issue, and if so, how?

II. Definitions

7. Are the definitions set forth in Section 310.2 of the Rule effective to accomplish the goal of curbing deceptive and abusive telemarketing practices?

8. Are they clear, meaningful, comprehensive, and appropriate? If not, how have the definitions been inadequate? How can they be improved?

9. Are there additional definitions that should be added to the Rule? Explain.

III. Deceptive Telemarketing Acts or Practices

10. Section 310.3(a)(1) requires sellers and telemarketers to disclose certain information before the customer pays for goods or services offered.

(a) Has this section been effective in curbing deceptive telemarketing practices? If so, why? If not, what changes, if any, should be made to the required disclosures? Explain.

(b) Are there additional disclosures that should be required? Explain.

(c) What changes, if any, should be made to the disclosure requirements to increase consumer protections or to minimize industry costs? Explain.

(d) Has the disclosure requirement of Section 310.3(a)(1)(iii) regarding refund/cancellation policies been effective from the perspective of consumers and law enforcement authorities?

(e) Are disclosures being made in a timely fashion? Is there sufficient understanding of what is meant by ''before the consumer pays''?

(f) What burdens, if any, have disclosure requirements placed on sellers and telemarketers? If they exist, do these burdens outweigh the benefits to consumers? Explain.

11. Section 310.3(a)(2) prohibits misrepresentations of material information.

(a) Has this section been effective in accomplishing the goal of curbing deceptive and abusive telemarketing practices? If so, why? If not, why not, and how should the section be changed?

(b) Are there additional specific misrepresentations that should be prohibited?

(c) What changes, if any, should be made to the prohibitions to increase consumer protections or to minimize industry costs? Explain.

12. Section 310.3(a)(3) requires sellers and telemarketers to obtain the consumer's express verifiable authorization before submitting a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account.

[26] See 60 FR 43863 (August 23, 1995).

(a) Has this section been effective in curbing unauthorized draft debits? If so, why? If not, why not, and how should the section be changed? Explain.

(b) Is there any potential conflict between the TSR and the Electronic Funds Transfer Act (''EFTA'')? Are there any gaps in these two laws that affect the protections afforded by the TSR?

(c) What burdens, if any, have authorization requirements placed on sellers and telemarketers? If they exist, do these burdens outweigh the benefits to consumers? Explain.

(d) Have there been changes in consumer awareness about the practice of using unsigned drafts drawn on a consumer's checking account since the Rule was enacted? If so, are changes in the Rule warranted by any such changes in consumer awareness? Explain.

(e) Since the TSR was enacted in 1995, have industry or regulatory authorities developed new alternative methods of ensuring that consumers understand and approve of any debits being made to their checking accounts? If so, what are these procedures? If such new procedures exist, do they necessitate changes in the Rule? Explain.

13. Section 310.3(a)(4) prohibits any false or misleading statement to induce a person to pay for goods or services regardless of the type of payment system used.

(a) Has this section been effective in curbing deceptive telemarketing practices? If so, why? If not, why not, and how should the section be changed? Explain.

(b) Have payment systems evolved significantly enough since the Rule was promulgated to warrant changes in the Rule? If so, how should it be changed? Explain.

14. Section 310.3(b) specifies that it is a deceptive telemarketing act or practice for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaging in deceptive or abusive acts or practices in violation of the Rule.

(a) Has this section been effective in curbing deceptive telemarketing practices? If so, why? If not, how has the section been inadequate?

(b) What changes, if any, should be made to this section? Explain.

(c) How has Section 310.3(b), prohibiting assisting or facilitating conduct that violates the Rule, worked from a law enforcement standpoint? Against whom have cases been brought?

(d) Has the potential liability faced by industry as a result of this section of the Rule caused firms to make changes in the way they do business? If so, how? Have these changes, if they have occurred, increased the cost of doing business? Are there ways in which this Rule provision could be changed to reduce the burden placed on business without negatively impacting consumers?

(e) How has the ''conscious avoidance'' standard worked from a law enforcement standpoint? Is this standard too difficult for law enforcement authorities to meet in proving their cases? If so, how should the standard be changed? How has the standard worked from an industry standpoint? Have industry practices changed in response to this potential liability?

15. Section 310.3(c) prohibits merchants from laundering credit card charges.

(a) Have the provisions in Section 310.3(c) been effective in curbing the incidence of credit card laundering in fraudulent telemarketing transactions? If so, why? If not, how has the section been inadequate?

(b) What changes, if any, should be made to this section? Explain.

(c) Have the provisions of this section significantly increased the cost of doing business? If so, how? What changes could be to the Rule to reduce the cost of these provisions without negatively impacting consumers.

IV. Abusive Acts or Practice

16. Section 310.4(a) specifies that four listed activities (i.e., threats, intimidation or profane or obscene language, and requesting or receiving payment for credit repair, advance fee loan, or recovery room services before the consumer has received the services) are abusive telemarketing acts or practices, in violation of the Rule.

(a) Have these Rule provisions been effective weapons in combating credit repair, advance fee loan, and recovery room scams? If so, why? If not, why not, and how should they be changed? Explain.

(b) Should this section be extended to cover other specific types of practices? If so, which ones?

(c) Have these provisions increased the cost of doing business in areas other than credit repair, the granting of advance fee loans, or the operation of recovery rooms? Explain. What changes in the Rule provisions would eliminate or reduce these effects?

(d) Has the prohibition on threats, intimidation, and use of profane and obscene language been effective in curbing abusive telemarketing practices? If so, why? If not, why not, and how should the provision be changed?

17. Section 310.4(b)(1)(i) prohibits telemarketers or sellers from causing the telephone to ring, or engaging a person in telephone conversation, repeatedly with intent to annoy, abuse, or harass.

(a) Has this provision been effective? If so, why? If not, why not, and how should it be changed?

(b) Does the use of technology create new means for abuse under this provision?

18. Section 310.4(b)(1)(ii) prohibits calls to a person who has stated that he or she does not wish to receive calls made by or on behalf of the seller.

(a) Has this provision been effective in limiting the number of unwanted telemarketing calls that consumers receive? If so, why? If not, why not, and how should it be changed?

(b) Have law enforcement authorities used this provision to take action against telemarketers that place unwanted telemarketing calls? If not, why not, and how should the provision be changed to make it more useful as an enforcement tool? Explain.

(c) What effect, if any, has the use of computerized telemarketing messages, or other technology, had on consumers' ability to invoke their rights under the TSR's ''do-not-call'' provisions?

19. Section 310.4(b)(2) limits the liability of the seller or telemarketer for violating the ''do-not-call'' provision in the Rule as long as the seller or telemarketer has instituted certain procedures designed to prevent calls to consumers who have asked not to be called.

(a) What have been the advantages and disadvantages of this provision to industry? to law enforcement?

(b) What changes, if any should be made to this provision? Explain.

(c) Has this limitation of liability been too lenient? If so, what changes should be made to strengthen the provision? How would those proposed changes affect industry costs?

20. Section 310.4(c) prohibits telemarketers from calling consumers at any time except between 8 a.m. and 9 p.m. Has this provision been effective in preventing telemarketing calls outside the permitted time frame? If not, why not, and how should it be changed.

21. Section 310.4(d) requires telemarketers to make certain oral disclosures—i.e., identity of the seller, that the purpose of the call is to sell goods or services, the nature of the goods and services, and, in the case of a prize promotion, that no purchase or payment is necessary.

(a) Has this section been effective in curbing abusive telemarketing practices? If not, why not, and how should it be changed?

(b) Are the required disclosures being made ''promptly'' and in ''a clear and conspicuous manner?''

(c) Are there additional oral disclosures that should be required?

V. Recordkeeping

22. Have the recordkeeping provisions for telemarketers been burdensome to sellers and telemarketers? On the ability of law enforcement authorities to take action against telemarketers and sellers that violate substantive provisions of the Rule? What changes, if any should be made to the recordkeeping provisions? Explain.

23. What have been the costs and benefits to industry of the recordkeeping provisions?

VI. Exemptions

24. Section 310.6 lists acts or practices that are exempt from the Rule, including pay-per-call-services and the sale of franchises already subject to Commission Rules.

(a) Have the exemptions been effective at minimizing the burden to industry while affording consumers sufficient protections under the Rule? If so, why? If not, why not, and how should this section be changed?

(b) How should sales to home-based businesses be treated under the Rule? Should sales to home-based businesses be considered business-to-business sales? If so, how are telemarketers able to differentiate between a residential telephone number and a home-based business telephone number? If not, why not?

(c) Is the exemption for ''face-to-face'' transactions still appropriate? If not, why not, and how should this exemption be changed?

(d) Is the exemption for ''general media'' advertising still appropriate? If not, why not? If the exemption continues to be appropriate, how should the Rule treat solicitations such as classified advertisement, ''spam'' faxes, and email ''spam''?

(e) Are there additional business-to-business products or services that should not be exempted from the TSR (e.g., Internet-related services, professional directories, advertising specialties)? Explain.

(f) Are there additional exemptions that would be appropriate? Explain.

Section G. Questions and Comments Regarding the Past and Future of the Telemarketing Industry

The Commission also is seeking comment on the telemarketing industry generally to develop an understanding of the history of telemarketing over the past twenty years and, in particular, over the past five years, as well as factors currently shaping and likely to continue to shape the industry. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. The questions set forth below are intended only as examples of the issues relevant to the Commission's examination. The public is invited to comment on any relevant issue, regardless of whether it is identified below.

I. Industry Background

1. What is the dollar volume of goods and services that are sold through telemarketing today?

2. How has that volume changed over the last twenty years? Over the past five years?

3. How many U.S. firms sell their products domestically, either in whole or in part, through telemarketing? How has that number changed over the past twenty years? Over the past five years?

4. How many of these firms engage in telemarketing on their own behalf? How many employ others to engage in telemarketing for them? How have these numbers changed over time?

5. How many U.S. entities sell their products, either in whole or in part, internationally through telemarketing?

6. How many foreign entities sell their products, either in whole or in part, internationally through telemarketing?

7. How has the market for selling goods or services internationally by telemarketing changed, if at all, over the past twenty years? Over the past five years?

8. How many outbound calls are made each year? How many inbound calls are received each year? How have these numbers changed over the past twenty years? Over the past five years?

9. In addition to sellers and telemarketers, as defined by the TSR, what other third-parties currently serve the industry? How have these parties changed over the past twenty years? Over the past five years?

10. How do the costs of selling through telemarketing compare to those of other methods of marketing, e.g., selling online or in a ''brick-and-mortar'' face-to-face setting?

II. Technology

11. What technological innovations have been implemented by telemarketers over the past twenty years, and what impact have these innovations had on:

(a) The growth of the telemarketing industry?

(b) The number of consumers a telemarketer can contact in a given time period?

(c) The manner in which call lists are developed by list brokers and others?

(d) The costs of selling through telemarketing?

(e) The response/general attitude of consumers toward the industry?

What technological changes have occurred over the past five years?

12. What impact have these technological innovations had on consumers? How have consumers benefitted? How have they been harmed? Explain.

13. How have the following technological developments impacted telemarketing? How have they impacted consumers?

(a) The use of computer databases of consumer information?

(b) Predictive dialers?

(c) The integration of telephone and computer technology?

14. What technology is available to consumers to screen or deflect unwanted calls from telemarketers (e.g., answering machines, caller i.d., anonymous call rejection, privacy managers). Are interception technologies available and affordable? What impact are such innovations having on telemarketing/ers? How will these technologies that intercept calls shape the future of telemarketing? What consumer habits or concerns (such as the concern about security if an unanswered call may make it appear that the house is empty) may reduce the willingness of consumers to rely on this technology?

15. How has the growth of the Internet as a marketing medium affected traditional telemarketing? What trends are likely over the next five to ten years?

III. Self-Regulatory Efforts

16. What steps, if any, have industry associations taken to self-regulate? What perceived problems have these steps sought to address? How effective have industry efforts at self-regulation been? Explain.

17. Are industry-sponsored ethical codes effective? How many companies engaged in telemarketing belong to industry associations sponsoring self-regulatory efforts, as compared to the total number of companies engaged in telemarketing? Is compliance with these codes measurable? If so, what do these measurements show?

18. Have industry-sponsored do-not-call lists benefitted consumers? How many consumers have requested to be placed on such lists? Have these lists been effective in stopping unwanted

calls to consumers? Have they benefitted industry?

19. Has the industry undertaken efforts to educate members and/or the public about telemarketing fraud? Describe any such efforts and discuss how effective they have been.

IV. Government Regulation

20. Excluding the TSR, what steps, if any, have federal, state, and local governments taken to regulate telemarketing? What perceived problems have these steps sought to address? How effective have these regulatory efforts been? Explain.

21. Have state-sponsored do-not-call lists benefitted consumers? How many consumers have requested to be placed on such lists? Have these lists been effective in stopping unwanted calls to consumers? What have been the costs and benefits to regulators? What have been the costs or benefits to industry?

22. What efforts have federal, state, and local governments taken to educate industry and/or the public about telemarketing fraud? Describe any such efforts and discuss how effective have they have been. What problems have been encountered?

V. Consumer Issues

23. What are consumer perceptions of telemarketing today? How have they changed over the past twenty years?

24. How much money do consumers lose as a result of telemarketing fraud each year? Has the amount of telemarketing fraud increased or decreased in the last five years? In the past two decades? How much has it changed?

25. Are consumers more aware of telemarketing fraud than in the past? Are consumers less susceptible to telemarketing fraud now than in times past? What are the most effective ways to educate the public about fraudulent telemarketing practices?

26. Are there particular groups of consumers that are especially susceptible to telemarketing and has this changed over the past two decades?

27. How can consumers be given greater control over contacts by telemarketers? How are they exercising control now and how has that evolved?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–4430 Filed 2–25–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 892; Re: Notice No. 884]

RIN 1512–AB97

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P); Public Hearing

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

ACTION: Notice of public hearings on a proposed rule.

SUMMARY: ATF is announcing the dates and locations of five public hearings that it will hold concerning health claims and other health-related statements in the labeling and advertising of alcohol beverages. In an earlier notice published in the **Federal Register**, we detailed a proposal to, among other things, prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects. In consideration of the comments received, ATF has determined that the public interest would be best served by the holding of public hearings on this matter. One purpose of the hearings is to gather additional information to determine whether the negative consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements.

DATES: See **SUPPLEMENTARY INFORMATION** section for hearings dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for hearings addresses.

Letter notifications and written comments are to be submitted to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 892*. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″x11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Participation section of this notice for alternative means of providing letter notifications and written comments.

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

SUPPLEMENTARY INFORMATION:

Background

In February 1999, ATF approved two directional statements on wine labels. One directed consumers to their family doctors for information regarding the ''health effects of wine consumption.'' The second referred consumers to the Federal Government's ''Dietary Guidelines for Americans'' for such information. Based on the evidence before us, including a consumer survey conducted by the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention (CSAP), we concluded that we had an insufficient record to disapprove the labels. The CSAP survey concluded that the drinking patterns of most of those who participated in the study would not be influenced by these messages.

The approval of these labels generated considerable interest from Federal health officials, members of Congress, and public advocacy groups, who expressed concern about consumer perception of the label statements. Surgeon General David Satcher, in particular, stated that people might draw an incorrect message from these labels. Moreover, we have become aware of a number of press accounts interpreting the directional statements as actual health claims about the benefits of alcohol consumption and the government's approval of the labels as an endorsement of drinking.

On October 25, 1999, we invited comments on our current policy on health claims and health-related statements by publishing the policy as a proposed regulation in the **Federal Register** (Notice No. 884; 64 FR 57413). The regulation would specifically prohibit the use of any health claim in the labeling or advertising of alcohol beverages unless it is balanced, properly qualified, sufficiently detailed and specific, and outlines the categories of persons for whom any positive effects would be outweighed by the numerous negative health effects.

We also sought comments on whether even such balanced and qualified

statements should be prohibited because the negative consequences of alcohol consumption are so serious as to make any health-related statement on labels or in advertisements inherently misleading. In addition, we sought comments on whether directional health statements such as those approved in February 1999, tend to mislead consumers about the health consequences of alcohol consumption.

The comment period for Notice No. 884 was scheduled to close on February 22, 2000.

Hearings

On December 9, 1999, we announced in a press release that after the close of the comment period we would hold public hearings in cities and dates to be announced. The hearings would provide us with a comprehensive record on which to base final regulations on health claims.

Due to the adverse consequences of alcohol abuse, ATF is concerned about any risk of misperception resulting from the two approved label statements. Because we are seeking public comments on this very issue, we also announced that we would suspend action on any new applications for label approval bearing similar ''directional'' health-related statements pending the completion of the rulemaking proceedings.

The schedules of dates and locations of the five public hearings have been set as follows:

Cities	Dates	Locations
Washington, DC	April 25–April 27	Washington Convention Center, 900 Ninth St., NW., Washington, DC.
San Francisco, CA	May 23–May 25	Embassy Suites San Francisco Airport, 150 Anza Blvd., Burlingame, CA.
Atlanta, GA	June 27–June 29	Embassy Suites Hotel at Centennial Olympic Park, 311 Marietta St., NW., Atlanta, GA.
Chicago, IL	July 25–July 27	Radisson Hotel & Suites Chicago, 160 East Huron St., Chicago, IL.
Dallas, TX	August 22–24	Radisson Hotel & Suites, 2330 West Northwest Highway, Dallas, TX.

The number of days for each hearing may change depending on the volume of requests to testify. The hearing schedule for each site will be as follows: 9:30 a.m.–12 noon and 1:30 p.m.–5 p.m. (an evening session(s) may be held if necessary)

Persons desiring to make oral comments at the hearings should submit a letter, on or before April 7, 2000, notifying ATF of their intent to comment. Any person unable to attend the hearings or who prefers not to present oral comments may submit written (or e-mail) comments before or after the hearings. ATF will accept written (or e-mail) comments until September 29, 2000. Written (or e-mail) comments, including comments addressing Notice No. 884, must be received on or before September 29, 2000.

Participation

Any person desiring to testify at the hearings should notify ATF by submitting a letter. Such letter must contain the name of the person who will testify, the company/organization represented (if any), address, and daytime telephone number where such person can be contacted. Persons requesting to testify will also indicate in the letter a preference for the date and time (morning or afternoon) they wish to testify. To the extent possible, we will honor these preferences. The letter must be accompanied by an outline which briefly summarizes the topics the commenter will discuss and the information to be presented. Each topic to be discussed should be separately numbered and each numbered topic should specify the information to be presented.

You may submit letter notifications and written comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½″x11″ in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Any person unable to attend the hearings or who prefers not to present oral comments may submit written (or e-mail) comments before or after the hearings. ATF will accept written (or e-mail) comments until September 29, 2000. In written (or e-mail) comments, each topic to be discussed should be separately numbered and each numbered topic should specify the factual basis supporting the views, data, or arguments presented. Written (or e-mail) comments addressing Notice No. 884 will also be accepted until September 29, 2000. All written (or e-mail) comments received on or before September 29, 2000, will be considered in the development of a decision on this matter.

Special Accommodations

The hearing rooms are physically accessible to people with disabilities. A sign language interpreter will be present at all hearings. Requests for other auxiliary aids should be directed to Nancy Kern at (202) 927–8210 at least 10 days prior to the hearing date.

General Information on Hearing Procedure

The hearings will be conducted under the procedural rules contained in 27 CFR 70.701(a)(3) and will be open to the public, subject to the limitations of space. In the event attendance exceeds available seating space, persons scheduled to present oral comments will be given preference in respect to admission. Time limitations make it necessary to limit the length of oral presentations to five (5) minutes; however, the actual time available will be determined in part by the number of registered speakers. While it is anticipated that all persons who desire to comment will have an opportunity to speak, time limits may not allow this to occur. For this reason, we encourage organizations to have one representative comment rather than individual members. Commenters will not be permitted to trade their time to obtain a longer presentation period. However, the hearing officer may allow any person additional time after all other commenters have been heard. To the extent that time is available after presentation of oral comments by those who are scheduled to comment, others will be given an opportunity to be heard.

In order to ensure that ATF will have the full benefit of their views, even if time constraints limit an oral presentation, persons presenting oral comments are urged to supplement their oral statement with a more complete written statement. A written statement submitted to ATF at the time of presentation of the oral comment will be considered part of the hearing record.

After making an oral presentation, a person should be prepared to answer questions from the hearing panel on not only the topics presented but also on matters relating to any written comments which he or she has submitted. Other persons will not be permitted to question a commenter. However, questions may be submitted, in writing, to the hearing officer who will evaluate their relevance. If the hearing officer determines that elicitation of further discussion would be beneficial, they may be presented to a commenter for a response.

Persons will be scheduled, if possible, according to the date and time preferences mentioned in their letter notification to us. We will confirm by telephone the date and time a person is scheduled to present oral comments. Letter notifications received after the cutoff date, and up to two (2) working days preceding a scheduled hearing, will be honored to the extent practicable on a first-come-first-serve basis. Any scheduled commenter not present at a particular hearing when called will lose his or her place in the scheduled order, but could be recalled after all other scheduled commenters have been heard.

We will prepare an agenda listing the persons scheduled to comment at a particular hearing and copies will be available at the hearing. In addition, copies of the notice of proposed rulemaking and all received written comments in response to the notice will be available at each hearing for public inspection.

Other formats for holding the hearings are being considered. For example, the hearing officer would oversee testimony presented by a panel of several persons during a specified time period (*e.g.,* morning session) who share or represent similar views, *e.g.,* members of the medical profession, representatives from health care organizations, representatives of various industry trade organizations, and representatives from consumer advocacy organizations. We will determine the format for the hearings once we know the number of people interested in presenting oral testimony and the content of their testimony.

Comments

Any person participating in the hearings or submitting written comments may present such data, views, or arguments as they desire. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter. However, comments consisting of mere allegations or denials are counterproductive to the rulemaking process. We specifically request that commenters consider making comments on the following questions:

1. How do consumers perceive the two ''directional'' health-related statements approved by ATF?
2. Do consumers interpret the approved directional statements as actual substantive health claims about the benefits of alcohol consumption? Explain.
3. Do consumers interpret the Government's approval of the directional statements on labels as an endorsement of drinking? Explain.
4. Do directional health-related statements such as those approved by ATF tend to mislead consumers about the health consequences of alcohol consumption? Explain.
5. Do the negative consequences of alcohol consumption or abuse disqualify, as inherently misleading, any health-related statements on alcohol beverage labels, including directional statements? Explain.
6. The proposed regulations would prohibit any health claim in the labeling or advertising of alcohol beverages unless it is balanced, properly qualified, sufficiently detailed and specific, and outlines the categories of persons for whom any positive effects would be outweighed by the numerous negative health effects. Given the space limitations of an alcohol beverage label, what types of health claims would meet this standard? Explain.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

This notice of hearing is issued under the authority of 27 U.S.C. 205.

Signed: February 22, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–4572 Filed 2–25–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service hereby gives notice that it is extending the public comment period on a supplementary proposed rule, which was published in the **Federal Register** on January 5, 2000, (65 FR 403). The proposed rule amends the royalty valuation regulations for crude oil produced from Indian leases. MMS will grant a 14-day extension until March 20, 2000.

DATES: Comments must be submitted on or before March 20, 2000.

ADDRESSES: Mail comments, suggestions, or objections about this supplementary proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone number (303) 231–3432, fax number (303) 231–3385, e-mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: In a February 18, 2000, **Federal Register** notice (65 FR 8442), we asked for comments concerning additional

information requirements identified in the January 5, 2000, supplementary proposed rule (65 FR 403) and the proposed rule, which MMS published on February 12, 1998 (63 FR 7089). We requested that written comments must be received by March 20, 2000, regarding these newly identified information requirements.

We are granting an extension of 14 days to receive comments on the supplementary proposed rule to match the March 20, 2000, closing date for comments on new information collection requirements. Furthermore, we received a number of requests to extend the comment period beyond March 6, 2000, the closing date of the current comment period.

MMS believes this extension of time until March 20, 2000, will allow the public sufficient time to make additional comments on all aspects of the supplementary proposed rule, including any comments regarding information collection requirements.

We will review and carefully consider all comments received on the final Indian oil rule.

Dated: February 22, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–4561 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–MR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1260

RIN 3095–AA67

Records Declassification; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule; correction.

SUMMARY: NARA published in the **Federal Register** of February 17, 2000, a proposed revision to our rules concerning records declassification. The zip code in the **ADDRESSES** section contained a typographical error. This document provides the correct zip code.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to (301) 713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: NARA published in the **Federal Register** of February 17, 2000, a proposed revision to 36 CFR 1260—Declassification. The zip code in the **ADDRESSES** section contained a typographical error. This document provides the correct zip code.

In the document FR 00–3358, published on February 17, 2000 (65 FR 8077), make the following change. On page 8077, in the second column, change the zip code in the **ADDRESS** section from ''10740'' to ''20740.''

Dated: February 23, 2000.

Nancy Y. Allard,

Federal Register Liaison.

[FR Doc. 00–4683 Filed 2–25–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM39–2–7452; FRL–6542–7]

Approval and Promulgation of Implementation Plans; State of New Mexico; Approval of Motor Vehicle Emissions Budget; Albuquerque/ Bernalillo County, New Mexico; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of a revision to the Albuquerque/ Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP). The Governor of New Mexico requested EPA approval of the revision on February 4, 1999. The Governor requested approval of a CO motor vehicle emissions budget for the year 2010. This action proposes to approve only the CO Motor Vehicle Emissions Budget for 2010. This CO Motor Vehicle Emissions Budget is for transportation conformity purposes.

DATES: Comments must be received on or before March 29, 2000.

ADDRESSES: You should address comments on this action to Mr. Thomas Diggs, EPA Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rule making, including the technical support document may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and the Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza Room 3023, Albuquerque, New Mexico 87102. If you plan to view the documents at either location, please call 48 hours ahead of the time you plan to arrive.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky of the EPA Region 6 Air Planning Section, at (214) 665–7214, or WITOSKY.MATTHEW@EPA.GOV,

SUPPLEMENTARY INFORMATION:

Overview

The information in this section is organized as follows:

1. What action is the EPA taking today?
2. Why must the EPA approve an additional MVEB?
3. Why is Albuquerque setting a budget for a year beyond the current maintenance plan?
4. Do other emissions grow in the same time period? a. Why are projected highway mobile emissions in Table 2 different than the MVEB in Table 1?
5. How is Albuquerque protecting air quality, if they are increasing the amount of mobile emissions allowed in the region?
6. Under what authority does Albuquerque revise the plan?
7. How is this action related to the direct final rule, published December 20, 1999, revising the MVEB and CO maintenance plan?

1. What Action Is the EPA Taking Today?

The EPA proposes approval of a revision to the Albuquerque and Bernalillo County CO SIP. Hereafter, Albuquerque and Bernalillo County will be referred to as ''Albuquerque.'' Albuquerque requested approval of a motor vehicle emissions budget (MVEB) for the year 2010. The EPA proposes approval of this budget of 222.46 tpd. This budget is applicable for 2010, four years beyond the end of the current maintenance plan. This budget is an addition to the MVEB's approved in the maintenance plan.

TABLE 1—ALBUQUERQUE APPROVED CO MOTOR VEHICLE Emissions Budget (MVEB)

[In tons per day]

Year	2010
MVEB	222.46

2. Why Must the EPA Approve an Additional MVEB?

The Federal Clean Air Act as Amended in 1990 (the Act), and the conformity rules, provide that the EPA must approve MVEB's for areas in maintenance. Albuquerque received redesignation to attainment and entered the maintenance period in 1996. Their

initial maintenance plan, from 1996 to 2006, was approved at 61 FR 29970, and revised at 64 FR 71027, December 20, 1999. The MVEB for each year before 2010 was approved in the December 20, 1999, notice approving the maintenance plan revision. It should be noted that the 2006 budget and this budget for 2010 could be revised again in 2004, when Albuquerque is required to revise the 10 year maintenance plan.

3. Why Is Albuquerque Setting a Budget for a Year Beyond the Current Maintenance Plan?

The Metropolitan Planning Organization for the Albuquerque area must develop transportation improvement plans covering 20 years, to receive federal funding for projects. Since the budget set for 2006 is the last budget approved by the EPA, it is the applicable budget for plans that contemplate projects from 2006 and later. Albuquerque indicated that growth in vehicle emissions will grow beyond the budget set for 2006, totaling 214.48 tons per day, by 2010. This additional budget will set the budget for 2010 and later, making it the applicable budget for transportation conformity determinations for 2010 and later.

4. Do Other Emissions Grow in the Same Time Period?

Albuquerque provided emission projections for all four emissions categories, to 2010. The figures for 2010 were estimated by applying growth factors to the totals established in 2006. Albuquerque used the same technique to calculate the figures for 2010, as were used in the maintenance plan. Table 2 below is a summary of these projections, provided to show how the emissions are added up, to project area-wide emissions.

TABLE 2—ALBUQUERQUE CARBON MONOXIDE EMISSIONS IN TONS PER DAY (tpd): MAINTENANCE PLAN AND 2010 PROJECTIONS

Category	Stationary	Highway mobile	Off-road mobile	Area	Total
Maintenance Plan 1996	3.92	266.99	50.90	67.19	389.00
Maintenance Plan 200	627.72	205.86	56.84	76.09	366.51
Projections 2010	27.91	214.48	59.22	79.41	381.02

a. Why Are Projected Highway Mobile Emissions in Table 2 Different Than the MVEB in Table 1?

The projections in Table 2 for 2010 are a projected inventory. Albuquerque calculated that on-road emissions will grow to 214.48 tpd, and all other emissions will grow to 166.4 tpd. Table 1 is a budget. Albuquerque has elected to allocate a margin for additional growth, making the MVEB 222.46 tpd.

5. How Is Albuquerque Protecting Air Quality, if They Are Increasing the Amount of Mobile Emissions Allowed in the Region?

Table 2 above illustrates that overall emissions will remain at or below the attainment-year level of 389 tpd in 1996, even if highway emissions grow faster than projected. In addition, Albuquerque's maintenance plan requires the Air Board to consider implementing the maintenance plan contingency measures if Albuquerque projects that emissions will breach 389 tpd. In the event that monitored CO levels violated the standard, these contingency measures would be implemented without further action from the Air Board. These contingency measures are intended to bring the area back into attainment.

6. Under What Authority Does Albuquerque Revise the Plan?

The Act allows Albuquerque to change the approved MVEB in the SIP, provided that the budget continues to provide for attainment. In this case, emissions must remain at or below the estimated emissions in the year the area attained the standard, 389 tpd in 1996. As shown in Table 2, emissions are projected to remain below 389 tpd. Even if highway mobile emissions reached the budget level of 222.46, total emissions would remain equal to 389, allowing the area to remain in attainment. It is noted that if the area later determines that emissions will surpass 389 tpd through 2016, Albuquerque will be required to demonstrate with air quality modeling and monitoring data, that this increase will not result in a failure to maintain the standard.

7. How Is This Action Related to the Direct Final Rule, Published December 20, 1999, Revising the MVEB and CO Maintenance Plan?

The EPA published a direct final rule approving a revision to the CO maintenance plan, and MVEB's up to 2006. That action was published December 20, 1999, at 64 FR 71027. The EPA used a direct final action, because we anticipated no adverse comments. A proposed rule, 64 FR 71086, was published the same day in the same issue of the **Federal Register**, stating that if EPA received adverse comments we would address them in a subsequent final rule, after a withdrawal of the direct final rule. The EPA received adverse comments, and issued a withdrawal notice. The withdrawal notice stated that EPA would address comments in a subsequent final rule based on the December 20, 1999, proposed rule.

Hence, comments submitted on the proposed rule, issed December 20, 1999 (64 FR 71086), and this proposed rule will be addressed together in a subsequent final rule. The EPA has elected to combine responses to the rules because the revision to the maintenance plan, MVEB's from 1996 to 2006, and the out-year MVEB for 2010 were submitted at the same time, and involve substantially the same analysis.

Proposed Action

The EPA is proposing to approve a CO motor vehicle emissions budget for 2010. This budget will be used for conformity purposes.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Executive 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, ''Federalism,'' and Executive Order 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. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''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.

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 proposed rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the 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 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 Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 15, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 00–4655 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6543–6]

Missouri: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Missouri has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Missouri. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect opposing comments. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Written comments must be received on or before March 29, 2000.

ADDRESSES: Send written comments to Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 901 N. 5th Street, Kansas City, Kansas 66101; (913) 551–7039. Copies of the Missouri program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying during normal business hours at the following address: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176; (573) 751–3176.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 901 N. 5th Street, Kansas City, Kansas 66101; (913) 551–7039.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: February 17, 2000.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 00–4651 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6543–2]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' in this preamble) proposes to grant final authorization to the hazardous waste program revisions submitted by the State of Louisiana Department of Environmental Quality (LDEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA) Cluster VIII, and Waste Minimization rules which contains Federal rules promulgated between July 15, 1985 and July 1, 1997 to June 30, 1998. In the ''Rules and Regulations'' section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule.

If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before March 29, 2000.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (225) 765-0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: February 9, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 00–4649 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–40 and 102–117

[FPMR Amendment G–]

RIN 3090–AH16

Transportation Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on transportation and traffic management into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Send your written comments by April 28, 2000.

ADDRESSES: Send your written comments to Ms. Sharon A. Kiser, Regulatory Secretariat (MVRS), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Room 4035, Washington, DC 20405.

Send e-mail comments to: *RIN.3090–AH16@gsa.gov*

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Allison, Program Analyst,

Transportation Management Policy, Office of Governmentwide Policy, General Services Administration, at 202–219–1729, or Internet e-mail at elizabeth.allison@gsa.gov

SUPPLEMENTARY INFORMATION:

A. Background

In response to President Clinton's mandate to Federal agencies to make communication with the public more understandable, General Services Administration (GSA) is issuing this Federal Management Regulation (FMR) in which it proposes to revise and clarify the transportation management policies by putting them into plain language and making substantial changes. The proposed rule creates a new part that will phase in the use of commercial transportation documents, such as bills of lading, and retires the corresponding Government transportation documents whenever possible.

The FMR is in the question and answer format. Question and answer format is an effective way to engage the reader and to break the information into manageable pieces. The FMR asks questions in the first person, as the user would. It then answers the questions in the second and third person. The FMR addresses the agency in the singular.

B. Proposed Changes

The Treasury, Postal and General Government Appropriations Act of 1994 (*see* Public Law 103–123; 107 Stat. 1226, 1247) changed the General Services Administration (GSA) to a nonmandatory source of transportation services. Therefore, we propose to shift the focus of the transportation regulations away from how agencies should use GSA's household goods and freight shipment programs as mandatory sources of these services. Our proposed changes are:

(a) To provide broad policy for agencies to develop transportation programs that best suit their needs.

(b) To require all contracts and rate tenders include the terms and conditions formerly annotated on the Government bills of lading. All transportation documents must reference the applicable contract or rate tender.

(c) To include general business rules a transportation manager will consider before buying transportation services. These rules give a broad range of guidelines to ensure compliance with other governmental directives and compliance with all Federal, State and local laws.

(d) To retire the use of the Standard Forms 1103 and 1203, Government Bill of Lading, for domestic freight and household goods shipments by September 30, 2001.

(e) To expand the information on choices for acquiring transportation and transportation related services and incorporate the terms and conditions previously noted on the paper GBL in all contracts and agreements.

(f) To expand the use of charge cards as an alternative payment for transportation services. Through discretionary authority, agencies must set up their own administrative rules covering accountability, exceptions and limits of the charge card.

(g) To introduce performance measures to help agencies in deciding how well they perform the transportation function and support the agency mission.

(h) To introduce a section on transportation service provider's performance defining what transportation managers should expect in the contractual agreement and what recourse is available for nonperformance.

(i) To add a requirement for reports, which will promote the use of electronic data and other information technologies. Reporting transportation costs will help agencies in collecting information for forecasting and planning. Agencies will have the data to substantiate and promote how transportation is interwoven throughout the agency and contributes to the strategic goals and mission as required by the Government Performance and Results Act (GPRA) of 1993 (Public Law 103–62, 31 U.S.C. 1115).

(j) To make a separate section on representation before regulatory bodies to clarify the authority granted to GSA and how an agency may request help.

C. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Regulatory Flexibility Act

The Associate Administrator for Governmentwide Policy hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to internal agency management and will not have a significant affect on the public. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments invited from small entities concerning the affected FMR subparts will be considered in accordance with 5 U.S.C. 601. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501–517.

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–40 and 102–117

Freight, Government property management, Moving of household goods, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101–40 is revised to read as follows:

PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 101–40.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on transportation management previously contained in this part, see FMR part 117 (41 CFR 102–117).

CHAPTER 102—[AMENDED]

2. Part 102–117 is added to subchapter D to read as follows:

PART 102–117—TRANSPORTATION MANAGEMENT

Sec.

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102–117.10 What is the scope of this part?
102–117.15 To whom does this part apply?
102–117.20 Are any agencies exempt from this part?
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102–117.40 When is it advantageous for me to use another agency's contractor rate tender for transportation services?
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102–117.95 May I use the Standard Forms 1103 and 1203, GBLs, to acquire freight, household goods or other related transportation services?
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Subpart K—Governmentwide Transportation Policy Council (GTPC)

102–117.390 Is there a Government forum where I can share my concerns and receive information on the challenges of transporting freight and household goods?
102–117.395 Where can I get more information about the GTPC?

Authority: 31 U.S.C. 3726; 40 U.S.C. 481, *et seq.*

§ 102–117.5 What is transportation management?

Transportation management is the oversight, by an agency, of the physical movement of products, household goods (HHG) and other objects from one location to another by a transportation service provider (TSP).

§ 102–117.10 What is the scope of this part?

This part addresses the shipment of freight and household goods worldwide. Freight is Government property. Household goods are unique because they are employees' personal property entrusted to the Government for shipment.

§ 102–117.15 To whom does this part apply?

This part applies to all agencies and wholly owned Government corporations as defined in 5 U.S.C. 101 *et seq.* and 31 U.S.C. 9101(3).

§ 102–117.20 Are any agencies exempt from this part?

Yes, the following agencies are exempt from this part:

(a) The Department of Defense is exempted from this part by an agreement under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 *et seq.*), except for the rules to debar or suspend a TSP under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4).

(b) In addition, subpart C of this part, covering household goods, does not apply to the uniform service members, under title 37 of the United States Code, ''Pay and Allowances of the Uniformed Services,'' such as, the uniformed service members serving in the U.S. Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service.

§ 102–117.25 What definitions apply to this part?

The following definitions apply to this part:

Accessorial charges are charges for services other than freight charges such as inside delivery, redelivery, reconsignment, and demurrage or detention for freight; and packing, unpacking, appliance servicing, blocking and bracing, weekend delivery and special handling for household goods.

Agency is any executive agency or wholly owned Government corporation (5 U.S.C. 101 *et seq.* and 31 U.S.C. 9101(3)).

Bill of lading, sometimes referred to as a commercial bill of lading, is the document used as a receipt of goods and documentary evidence of title. It also is a contract of carriage except when movement is under any other authority than 49 U.S.C. 10721 and 49 U.S.C. 13712.

Cargo preference is the legal requirement that all, or a portion of all, ocean-borne cargo are transported on U.S. flag vessels.

Commuted rate system is the system under which an agency may allow its employees to make their own shipping arrangements, and apply for reimbursement.

Consignee is a person or agent to whom freight or household goods are delivered.

Consignor is a person or firm that delivers freight or household goods to a consignee.

Contract of carriage is a contract between the TSP and the agency to transport freight or household goods outside a rate schedule or a household goods tariff rate.

Debarment is an action to exclude a TSP, for a period of time, from providing services under a rate tender or any contract under the Federal Acquisition Regulation (48 CFR 9.406).

Demurrage is the penalty charge for delaying rail transportation service beyond the allowed time to load or unload.

Detention is the penalty charge for delaying truck transportation service beyond the allowed time to load or unload.

Electronic commerce is an electronic technique for carrying out business transactions (ordering and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, credit cards, electronic funds transfers, and electronic data interchange.

Foreign flag vessel is any vessel of foreign registry including vessels owned by U.S. citizens but registered in a foreign country.

Freight consists of supplies, goods, and transportable Government property.

Government bill of lading (GBL) is the Standard Form 1103 or 1203 used as a receipt of goods, evidence of title, and a contract of carriage.

Governmentwide Transportation Policy Council (GTPC) is an interagency forum to help GSA determine policy. It provides agencies managing transportation programs a forum to exchange information and ideas to solve common problems. For further information, see web site: http://policyworks.gov/transportation.

Hazardous material is a substance or material the Secretary of Transportation labels as hazardous and determines to be an unreasonable risk to health, safety, and property when transported in commerce, and labels as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103 *et seq.*).

Household goods (HHG) are the personal effects of Government employees and their dependents. For information on exceptions or exclusions from the definition, see the Federal Travel Regulation (41 CFR 302–1.4(j)).

Mode is a method of transportation, such as rail, motor, air, water, or pipeline.

Rate schedule is a non-binding list of freight rates and charges.

Rate tender is an offer TSPs send to an agency, which contain rates and charges for services.

Receipt is a written or electronic acknowledgment about the consignee or TSP as to when and where a shipment was received.

Release/declared value is stated in dollars and would be the maximum amount that could be recovered by the shipper in the event of loss or damage. The TSP offers a rate lower than other rates for shipping cargo at full value. The statement of released value may be shown in any applicable tariff, tender, contract or document covering the shipment of freight.

Reparation is the payment involving a TSP to or from an agency of an improper transportation billing. Improper routing, overcharges or duplicate payments may cause such improper billing. This is different from payments to settle a claim for loss and damage to items shipped under those rates.

Suspension is an action taken by an agency to disqualify a TSP from receiving orders for certain services under a contract or rate tender. A suspension is binding on the agency that initiates it, but voluntary on other agencies using the affected contract or rate tenders (48 CFR 9.407).

Transportation document is any executed agreement for transportation service, such as bill of lading, Government bill of lading (GBL), Government travel request (GTR) or transportation ticket.

Transportation service provider (TSP) is any party, person, agent or carrier that undertakes by contract or rate agreement to provide transportation and related services to an agency.

U.S. flag air carrier is an air carrier holding a certificate issued by the United States under 49 U.S.C. 41102 (49 U.S.C. 40118, 48 CFR part 47, subpart 47.4).

U.S. flag vessel is a Government vessel or a privately owned commercial vessel registered and operated under the laws of the U.S., used in commercial trade of the U.S., and owned and operated by U.S. citizens.

Subpart A—Acquiring Transportation or Related Services

§ 102–117.30 Are there mandatory services I must use when acquiring transportation or transportation related services?

No, it is your decision on what services you use when acquiring transportation or transportation related services. This part implements the Treasury, Postal and General Government Appropriations Act of 1994 (see Public Law 103–102; 107 Stat. 1226, 1247) that changed GSA to a nonmandatory source.

§ 102–117.35 What choices do I have when acquiring transportation and related services?

Your choices when acquiring transportation and related services are:

(a) Use the GSA tender of service;

(b) Use another agency's contract or rate tender with a TSP only if permitted by the terms of that agreement or if the Administrator of General Services delegates authority to another agency to enter into an agreement available to other Executive agencies;

(c) Contract directly with a TSP using the acquisition procedures under the Federal Acquisition Regulation (FAR) (48 CFR chapter 1); or

(d) Use a rate tender under the Federal transportation procurement statute, 49 U.S.C. 10721 or 13712.

§ 102–117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?

It is advantageous to use another agency's contract or rate tender for transportation services when:

(a) Another agency's contract or rate tender offers better or equal value than otherwise available to you; or

(b) Your agency does not have experienced transportation officers.

§ 102–117.45 What other factors must I consider when using another agency's contract or rate tender?

When using another agency's contract or rate tender, you must:

(a) Include any special requirements unique to your agency; or

(b) Budget for any charges that may occur when you use another agency contract or rate tender.

§ 102–117.50 What are the advantages and disadvantages for me to contract directly with a TSP under the FAR?

(a) Generally, the FAR is an advantage to use when:

(1) You know what is shipped, to where, and when.

(2) You have sufficient time to follow the FAR procedures for a contract.

(3) Your contract office is able to handle this requirement.

(b) Using the FAR may be a disadvantage when:

(1) You do not have the time to prepare and execute a FAR contract within your particular time frame.

(2) You have shipments recurring between designated places, but do not expect sufficient volume.

(3) You prefer to use a bill of lading, transportation request or other transportation form, in which case you must use the rate tender procedures. (See § 102–117.60.)

§ 102–117.55 What are the advantages and disadvantages for me to use a rate tender?

(a) Using a rate tender is an advantage when:

(1) You have a shipment that has a short time frame requirement.

(2) You have shipments recurring between designated places, but a volume movement is not expected.

(b) Using a rate tender may be a disadvantage when you have sufficient time to use the FAR or when you require transportation service for which no rate tender currently exists.

§ 102–117.60 What are rate tenders?

(a) Rate tenders are offers the TSP sends to your agency, that contain rates and/or charges for services that are equal to or lower than those published in filed tariffs for household goods, or rate schedules for freight, which are applicable to the public (49 U.S.C. 10721 and 13712).

(b) Transportation service providers subject to the jurisdiction of the Surface Transportation Board may offer rates published in rate tenders under the Federal transportation procurement statute (49 U.S.C. 13712).

(c) Rate tenders must contain explicit terms and conditions to define the services to be performed and protect the interest of the agency and a TSP. (See § 102–117.70.)

(d) The General Services Administration maintains a collection of rate tenders for use by other agencies. For more information on GSA's rate tenders contact:

General Services Administration, Mid-Atlantic Region, 470 L'Enfant Plaza, SW., Washington, DC 20407.
Web site: http://www.midatlantic.gsa.gov/fss

§ 102–117.65 What is the importance of the terms and conditions in a rate tender or other transportation document?

(a) Terms and conditions are important to protect the Government's interest and establish the performance and standards expected of the TSP.

(b) Terms and conditions list the services the TSP is offering to perform at the cost presented in the rate tender or other transportation document.

(c) These terms and conditions are negotiated between the agency and the TSP before movement of any item in all contracts, rate tenders, or other negotiated agreements. You must reference these negotiated agreements on all transportation documents. For further information, see § 102–117.75.

(d) All rate tenders and transportation documents must reference the following terms and conditions:

(1) Charges cannot be prepaid.

(2) Charges are not paid at time of delivery.

(3) To qualify for the rates specified in a rate tender filed under the provisions of 49 U.S.C. 10721 or 13712, property must be shipped by or for the Government and the rate tender must indicate that the Government is either the consignor or the consignee and include the following statement: ''Transportation is for the (agency name) and the total charges paid to the transportation service provider by the consignor or consignee are assigned to, and reimbursed by, the Government.'' (Indicate that the Government is the consignor or consignee).

(4) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following statement must be included in the rate tender: ''Transportation is for the (agency name), and the actual total

transportation charges paid to the transportation service provider by the consignor or consignee are to be reimbursed by the Government pursuant to cost reimbursable contract (number). This may be confirmed by contacting the agency representative at (name, address and telephone number).''

(5) Other terms and conditions that may be specific to your agency or the TSP such as specialized packaging requirements or HAZMAT. For further information see the Bill of Lading Handbook.

§ 102–117.70 Where do I find more information on terms and conditions?

You may find information about terms and conditions in part 102–118 of this chapter [1], or the Transportation Bill of Lading Handbook, published by the GSA Audit Division:

General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW., Washington DC 20405.
Web site: http://www.pub.fss.gsa.gov

§ 102–117.75 How do I reference the rate tender on transportation documents?

To ensure proper reference of a rate tender on all shipments, you must show the applicable rate tender number and carrier identification on all transportation documents, such as, section 13712 quotation, ''ABC Transportation Company, Tender I.C.C. No. 143''.

§ 102–117.80 How are rate tenders filed?

(a) The TSP must file rate tenders in writing to your agency.

(b) You should file a copy with the GSA.

(c) The General Services Administration maintains a collection of rate tenders. For more information on GSA's rate tenders contact:

General Services Administration, Mid-Atlantic Region, 470 L'Enfant Plaza, SW., Washington, DC 20407.
Web site: http://www.midatlantic.gsa.gov/fss

§ 102–117.85 Where must I send a copy of a rate tender for audit purposes?

For audit purposes, send two copies of the rate tender to:

General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW., Washington, DC 20405.
Web site: http://www.pub.fss.gsa.gov

§ 102–117.90 What is the difference between a Government bill of lading (GBL) and a bill of lading?

(a) Government Bills of Lading (GBL), Standard Forms 1103 and 1203, are controlled documents that convey specific terms and conditions to protect the Government interest and act as contract documents.

(b) A bill of lading is a commercial document that contains certain information prescribed by the Department of Transportation (49 CFR part 1035). A bill of lading is used for Government shipments if the specific terms and conditions of a GBL are included in any contract or rate tender (see § 102–117.70) and the bill of lading makes reference to that contract or rate tender (see § 102–117.75 and the Bill of Lading Handbook).

§ 102–117.95 May I use the Standard Forms 1103 and 1203, GBLs, to acquire freight, household goods or other related transportation services?

You may use the Standard Forms 1103 and 1203, GBLs, to acquire transportation services offered under a rate tender until September 30, 2001. The GBL will completely phase out for domestic shipments on September 30, 2001, and be replaced where necessary by commercial bills of lading. After September 30, 2001, you may use the GBL on international shipments only.

§ 102–117.100 After the GBLs retire for domestic shipments, what transportation documents may I use to acquire freight, household goods or other transportation services?

Transportation documents you use to acquire freight, household goods and other transportation services after the GBLs retire for domestic shipments include bills of lading and purchase orders but terms and conditions in the Bill of Lading Handbook will still be required. For further information on payment methods, see part 102–118 of this chapter.[2]

Subpart B—Business Rules to Consider Before Shipping Freight and Household Goods

§ 102–117.105 What business rules must I consider before acquiring transportation or related services?

Before you acquire transportation or related services you must:

(a) Route shipments using the mode or individual transportation service provider (TSP) that provides the overall best value to the agency. For more information, see § § 102–117.110 through 102–117.140.

(b) Not give preferential treatment to any TSP when arranging for transportation services.

(c) Ensure that small business concerns receive equal opportunity to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest. (See 48 CFR part 19.)

(d) Encourage minority-owned businesses and women-owned businesses, to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest. (See 48 CFR part 19.)

(e) Review the Government's policy about insurance while the TSP has the property and decide whether or not to insure the shipment or buy insurance. Generally, the Government is self-insured; however, there are instances when the Government may buy insurance coverage for Government property. An example may be cargo insurance for international air cargo shipments to cover losses over those allowed under the International Air Transport Association (IATA) and similarly for ocean freight shipments.

(f) Consider the added requirements on international transportation found in subpart C of this part.

§ 102–117.110 What does best value mean when routing shipments?

Best value to your agency in routing shipments means using the mode, or individual TSP that provides the best combination of satisfactory service, total delivery cost, equally shared services, and most fuel-efficient. Some of these items are explained in § § 102–117.115 through 102–117.140.

§ 102–117.115 What is satisfactory service?

You should consider the following factors to decide satisfactory service of a TSP:

(a) Availability and suitability of the TSP's equipment;

(b) Adequacy of shipping and receiving facilities at origin and destination;

(c) Adequacy of pickup and/or delivery service;

(d) Availability of accessorial and special services;

(e) Estimated time in transit;

(f) Record of past performance of the TSP;

(g) Warehouse equipment and storage capability;

(h) Experience of company, management, and personnel to perform the requirements; and

(i) Accuracy of billing.

§ 102–117.120 How do I calculate total delivery costs?

You calculate total delivery costs for your agency by considering all costs to the shipping or receiving process, such as packing, blocking, bracing, drayage, loading and unloading, and transporting.

[1] Proposed 41 CFR part 102–118 is published in the **Federal Register** of February 22nd, 2000 (65 FR 8818).

[2] See footnote 1 in § 102–117.70.

§ 102–117.125 To what extent must I distribute orders for transportation and related services equally among TSPs?

(a) You must distribute orders for transportation and related services equally among TSPs to the extent that the selected TSPs provide the same level of service, cost, fuel-efficient equipment and other services.

(b) You must assure that socially or economically disadvantaged and women owned TSPs have equal opportunity to provide the transportation or related services.

§ 102–117.130 How detailed must I describe property for shipment?

You must describe property in sufficient detail to clarify for the TSP, what equipment the TSP needs to move the shipment. Details might include weight, volume, measurements, routing, hazardous cargo, special handling, clearance requirements, etc.

§ 102–117.135 What factors must I use to decide the most fuel-efficient TSP?

To decide the most fuel-efficient TSP, you must consider factors such as nearness of the TSP's equipment to the shipping activity and ability of TSPs to provide the most direct service to the destination points.

§ 102–117.140 Must I select TSPs who use alternative fuels?

No; however, you are encouraged to select TSPs that use alternative fuel vehicles and equipment, whenever possible, under policy in the Clean Air Act Amendments of 1990 (42 U.S.C. 7612) or the Energy Policy Act of 1992 (42 U.S.C. 13212).

Subpart C—Restrictions That Affect Transportation of Freight and Household Goods

§ 102–117.145 Are there any specific restrictions for international transportation?

Yes, several statutes mandate the use of U.S. flag carriers. For example, arrangements for air transportation services must follow the Fly America Act (International Fair Competitive Practices Act of 1974) (49 U.S.C. 40118). International movement of property requires the use of U.S. flag carriers when services are available. (See 48 CFR part 47, subparts 47.4 and 47.5.)

§ 102–117.150 What is cargo preference?

Cargo preference is the statutory requirement that all, or a portion of all, ocean-borne cargo that moves internationally be transported on U.S. flag vessels. Deviations or waivers from the cargo preference laws must be approved by:

Department of Transportation, Maritime Administration, Office of Cargo Preference, 400 7th Street, SW. Washington, DC 20590. Web site: http://www.marad.dot.gov/

§ 102–117.155 What are the coastwise laws?

Coastwise laws refers to several laws governing the shipment of freight, household goods and passengers by water. The broad purposes are to assure reliable shipping service and the existence of a maritime capability in times of war or national emergency. (See section 27 of the Merchant Marine Act of 1920, 46 App. U.S.C. 883, 19 CFR 4.80.)

§ 102–117.160 What do I need to know about the coastwise laws?

You need to know that:

(a) Goods transported entirely or partly by water between U.S. points, either directly or via a foreign point, must travel in U.S. Maritime Administration (MARAD) authorized U.S. Flag vessels;

(b) There are exceptions and limits with the U. S. Island territories and possessions in the Atlantic and Pacific Oceans (see § 102–117.150).

(c) The Secretary of the Treasury is empowered to impose monetary penalties against agencies violating the coastwise laws.

§ 102–117.165 Where do I go for further information or exceptions to the coastwise laws?

You may refer to 46 App. U.S.C. 883, 19 CFR 4.80, DOT MARAD, the U.S. Coast Guard or U.S. Customs Service for further information or exceptions to the coastwise laws.

Subpart D—Shipping Freight

§ 102–117.170 What is freight?

Freight includes supplies, goods and any transportable property, other than household goods.

§ 102–117.175 What shipping process must I use for freight?

(a) For domestic shipments you must:

(1) Identify what you are shipping;

(2) Decide if the cargo is HAZMAT, classified, or sensitive which may require special handling or placard requirements;

(3) Decide mode;

(4) Check for applicable contracts or rate tenders;

(5) Select and contract with the most efficient and economical TSP that gives the best value;

(6) Prepare shipping documents; and

(7) Schedule pickup, oversee shipment, declare released value and ensure prompt delivery with a fully executed receipt.

(b) For international shipments you must follow all the domestic procedures and comply with the cargo preference laws for ocean freight. For specific information, see subpart C of this part.

§ 102–117.180 What reference materials are available for shipping freight?

(a) The following handbooks and guides are a partial list of those that may be available from GSA:

(1) How to Prepare Bills of Lading.

(2) Limited Authority to Use Commercial Forms and Procedures.

(3) Submission of Transportation Documents.

(4) Things to be Aware of When Routing or Receiving Freight Shipments.

(b) For these and other reference materials, you should contact either of the following:

General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW, Washington, DC 20405. Web site: http://pub.fss.gsa.gov/ota

General Services Administration, Federal Supply Service, Office of Transportation and Property Management, Transportation Management Division (FBF), Crystal Mall Bldg. #4, Room 814, Washington, DC 20406. Web site: http://www.gsa.gov/fsstt

§ 102–117.185 What determines the mode of transportation?

Your urgency and special shipping requirements determine which mode of transportation you select. Each mode has unique requirements for documentation, liability, size, weight and delivery times. HAZMAT, radioactive, and other specialized cargo may require special permits and may prohibit one or more modes of transportation.

§ 102–117.190 What documents must I use to ship freight?

The documents used to ship freight differ depending on whether the shipment is by land, ocean or air as follows:

(a) By land (domestic shipments), use freight waybills;

(b) By land (international shipments) use the GBL;

(c) By ocean, use ocean bills of lading, when suitable, with the GBL; and

(d) By air, use commercial air waybills.

§ 102–117.195 Where do I send a copy of these documents?

The GSA Audit Division is the repository of all transportation documents for future claims, court actions and audit purposes. You must forward an original copy of all transportation documents to:

General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW., Washington, DC 20405.

Subpart E—Shipping Hazardous Material (HAZMAT)

§ 102–117.200 What is HAZMAT?

HAZMAT is a substance or material the Secretary of Transportation labels as hazardous and determines to be an unreasonable risk to health, safety and property when transported in commerce. Therefore, there are restrictions on transporting HAZMAT (49 U.S.C. 5103 *et seq.*).

§ 102–117.205 What are the restrictions for transporting HAZMAT?

Agencies that ship HAZMAT are subject to regulations of the Environmental Protection Agency and the Department of Transportation.

§ 102–117.210 Where can I get guidance on transporting HAZMAT?

The Secretary of Transportation prescribes regulations for the safe transportation of HAZMAT in intrastate, interstate, and foreign commerce in 49 CFR parts 171 through 180. The Environmental Protection Agency also prescribes regulations on transporting HAZMAT in 40 CFR parts 260 through 266. You may also call the HAZMAT information hotline at 1–800–467–4922 (Washington, DC area, call 202–366–4488).

Subpart F—Shipping Household Goods

§ 102–117.215 What are household goods?

Household goods (HHG) are the personal effects of agency employees and their dependents.

§ 102–117.220 What choices do I have to ship HHG?

(a) You may choose to ship HHG by:

(1) Contracting directly with a TSP (including relocation companies that offer transportation services) using the acquisition procedures under the Federal Acquisition Regulation (FAR) (see § 102–117.35);

(2) Using another agency's contract with a TSP (see § 102–117.55);

(3) Using a rate tender under 49 U.S.C. 10721 or 13712 (see § 102–117.60); or

(4) Using the commuted rate system.

(b) You may request the Department of State to assist with shipments of HHG moving to, from, and between foreign countries or international shipments originating in the continental United States. The nearest U.S. Embassy or Consulate may assist with arrangements of movements originating abroad. For further information contact:

Department of State, Transportation Operations, 2201 C Street, NW., Washington, DC 20520.

§ 102–117.225 What is the difference between a contract, a rate tender and a commuted rate system?

(a) Under a contract and a rate tender, the agency prepares the bill of lading and books the shipment. The agency is the shipper and pays the TSP the applicable charges. If loss or damage occurs, the agency may either file claims on behalf of the employee directly with the TSP, or help the employee in filing claims against the TSP.

(b) The commuted rate system is the system under which an agency allows an employee to make their own arrangements for transporting HHG at agency expense. Use this method only within the continental United States (not Hawaii or Alaska.) The employee receives reimbursement from the agency according to the Commuted Rate Schedule published by the GSA. The Commuted Rate Schedule is available on the Internet at http://www.policyworks.gov or by contacting:

General Services Administration (GSA) National Customer Service Center 1500 Bannister Rd., Kansas City, MO 64131. Web site: http://www.ks.gsa.gov./fsstt

§ 102–117.230 Must I perform a cost comparison between a contract, a rate tender and the commuted rate system before choosing which method to use?

Yes, you must perform a cost comparison between a contract, a rate tender, and the commuted rate system prior to making your decision.

§ 102–117.235 Why is a cost comparison necessary?

A cost comparison is necessary to determine if the commuted rate system is less than if the Government shipped the HHG. While the commuted rate system is an option, it is only an alternative if there is a savings to the Government of $100 or more. For employees who still choose this method, see § § 102–117.245 and 102–117.250.

§ 102–117.240 How do I get a cost comparison?

(a) You may calculate a cost comparison internally (see 41 CFR 302–8.3 for requirements of a cost comparison).

(b) You may request GSA to perform the cost comparisons by sending GSA the following information as far in advance as possible (preferably 30 calendar days):

(1) Name of employee;

(2) Origin city, county and State;

(3) Destination city, county, and State;

(4) Date of household goods pick up;

(5) Estimated weight of shipments;

(6) Number of days storage-in-transit (if applicable); and

(7) Other relevant data.

(c) For more information on cost comparisons contact:

General Services Administration, Federal Supply Service, Office of Transportation and Property Management, Transportation Management Division (FBF), Crystal Mall Bldg. #4, Room 814, Washington, DC 20406. Web site: http://www.ks.gsa.gov/fsstt

§ 102–117.245 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?

(a) Your agency is only responsible for reimbursing the employee what it would cost the Government to ship the employee's HHG.

(b) If the cost of transportation arranged by the employee is less than what it would cost the Government, the Government saves, and reimburses the employee for the actual expenses of the move.

(c) If the cost of transportation arranged by the employee is more than what it would cost the Government, the employee is liable for the additional cost.

Note to § 102–117.245: For more information and how to determine what it would cost the Government to ship HHG, refer to 41 CFR 302–8.3.

§ 102–117.250 What is my responsibility in providing guidance to an employee who wishes to select a more expensive TSP?

You must counsel employees that they may be liable for all costs above the amount reimbursed by the agency if they select a TSP that charges more than provided under the commuted rate schedule.

§ 102–117.255 What are my responsibilities after the household goods are shipped?

(a) You must counsel employees to fill out their portion of the GSA Form 3080, Household Goods Carrier Evaluation Report. This form reports the quality of the TSP's performance.

(b) After completing the appropriate sections of this form, the employee must send it to the bill of lading issuing officer who in turn will complete the form and forward to:

General Services Administration, National Customer Service Center, 1500 Bannister Rd., Kansas City, MO 64131. Web site: http://www.kc.gsa.gov.fss/fsstt

§ 102–117.260 What actions may I take if the TSP's performance is not satisfactory?

If the TSP's performance is not satisfactory, you may place a TSP in temporary nonuse, debarred status, or suspended status. For more information, see subpart H of this part and the FAR (see 48 CFR 9.406–3 and 9.407–3).

§ 102–117.265 What must I do if there is an overage, shortage, loss or damage to the property shipped?

You must prepare a discrepancy report documenting any differences in the quantity or condition of property received.

§ 102–117.270 Where do I go for details on preparing discrepancy reports?

For details, refer to the GSA handbook, ''Discrepancies or Deficiencies in GSA or DOD Shipments, Material or Billings.'' (See 41 CFR part 101–26, subpart 101–26.8.)

§ 102–117.275 Where do I send discrepancy reports?

You must send discrepancy reports to the TSP and:

General Services Administration, National Customer Service Center, 1500 Bannister Road, Kansas City, MO 64131.
Web site: http://www.ks.gsa.gov/fsstt

§ 102–117.280 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?

(a) In general, you must notify employees of their rights and procedures to file claims.

(b) You must advise employees on the limits of the TSP's liability for loss of and damage to their HHG so the employee may evaluate the need for added insurance.

(c) File claims for loss and damage to HHG with the TSP. Depending on agency policy, you must notify employees whether they or the agency will file claims for the repair, replacement, or loss of HHG.

(d) Employees who sustain a loss or damage to their HHG that exceeds the amount recovered from a TSP in settlement of a claim may a claim against the United States for the difference. Agencies may compensate employees up to $40,000 on claims for loss and damage under 31 U.S.C. 3721, 3723 (41 CFR 302–8.2(f)).

(e) When the agency's policy is not to compensate its employees, the agency must advise employees of the options available for insuring their HHG against greater monetary loss.

§ 102–117.285 Can I file a claim for loss or damage to property?

Yes, you may file a claim for loss or damage with the TSP.

§ 102–117.290 Are there time limits affecting the filing of a claim?

Yes, several statutes limit the time for administrative or judicial action against a TSP.

§ 102–117.295 Does each mode have different time limits for administrative claims?

Yes, each mode and type of claim (freight charges, reparations, and loss and damage) have different statutory time limits.

§ 102–117.300 What are the time limits for judicial claims?

The following table lists the time limits on actions taken by an agency, based on mode and type of claim:

TIME LIMITS ON ACTIONS TAKEN BY FEDERAL GOVERNMENT AGAINST TSP

Mode	Freight charges [1]	Reparations	Loss and damage
(a) Rail	3 years 49 U.S.C. 11705(f)	3 years 49 U.S.C. 11705(f)	6 years 28 U.S.C. 2415
(b) Motor	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years 28 U.S.C. 2415
(c) Freight Forwarders Subject to the IC Act.	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years 28 U.S.C. 2415
(d) Water Subject to the IC Act	3 years 49 U.S.C. 14705(f)	3 Years 49 U.S.C. 14705(f)	6 years 28 U.S.C. 2415
(e) Water Not subject to the IC Act	6 years 28 U.S.C. 2415	2 Years 46 U.S.C. apps 1713(e)	1 Year 46 U.S.C. 1303 (6) (if subject to Carriage of Goods by Sea Act, 46 USC 1300–1315
(f) Domestic Air	6 years 28 U.S.C. 2415		6 years 28 U.S.C. 2415
(g) International Air	6 years 28 U.S.C. 2415		2 years 49 U.S.C. 40105

[1] Freight charges refer to the appropriateness of the charge or discriminatory pricing.

Subpart G—Performance Measures

§ 102–117.305 What are performance measures in transportation?

(a) Performance measures are indicators of how you are supporting your customers and doing your job. With this information and data you can provide your management specific accomplishments and explain how your success is supporting the agency mission. Agencies will adapt techniques to better manage mode, service, and cost of transportation. In addition, the Government Performance and Results Act (GPRA) of 1993 (31 U.S.C. 1115), requires agencies to develop business plans and set up program performance measures.

(b) Examples of performance measurements in transportation would include how well you:

(1) Increase the use of electronic commerce and reduce data requirements;

(2) Increase use of commercial products and services to meet your agency requirements;

(3) Use TSPs with a track record of successful past performance or proven superior ability;

(4) Promote competition in moving agency freight and household goods;

(5) Assure that delivery of freight and household goods is on time against measured criteria;

(6) Benchmark existing practices between agencies and industry for the best practices;

(7) Create simplified procedures to be responsive and adaptive to the customer needs and concerns;

(8) Determine customer satisfaction on carrier performance; and

(9) Any specific measure that furthers your agency's mission.

Subpart H—Transportation Service Provider (TSP) Performance

§ 102–117.310 What performance may I expect from a TSP?

You may expect the TSP to provide consistent and satisfactory service to meet your agency transportation needs.

§ 102–117.315 What aspects of the TSP's performance are important to measure?

Important performance measures may include, but are not limited to the:

(a) TSP's percentage of on-time deliveries;

(b) Percentage of shipments that include overcharges or undercharges;

(c) Percentage of claims received in a given period;

(d) Percentage of returns received on-time;

(e) Percentage of shipments rejected;

(f) Percentage of billing improprieties;

(g) Average response time on tracing shipments;

(h) TSP's safety record (accidents, losses, damages or misdirected shipments) as a percentage of all shipments;

(i) TSP's driver record (accidents, traffic tickets and driving complaints) as a percentage of shipments; and

(j) Percentage of customer satisfaction reports on carrier performance.

§ 102–117.320 What are my choices if a TSP's performance is not satisfactory?

You may choose to place a TSP in temporary nonuse, suspension, or debarment.

§ 102–117.325 What is the difference between temporary nonuse, suspension and debarment?

(a) Temporary nonuse is limited to your agency and initiated by the agency transportation officers. A TSP may be placed in temporary nonuse for a period not to exceed 90 days for:

(1) Willful violations of the terms of the rate tender;

(2) Persistent or willful failure to meet requested packing and pickup service;

(3) Failure to meet required delivery dates;

(4) Violation of Department of Transportation hazardous material regulations;

(5) Mishandling of freight, damaged or missing transportation seals, improper loading, blocking, packing or bracing of property;

(6) Improper routing of property;

(7) Failure to pay just debts to ensure shipments are not unlawfully seized or detained;

(8) Operating without legal authority;

(9) Failure to settle claims according to Government regulations; and

(10) Repeated failure to comply with regulations of the Department of Transportation, Surface Transportation Board, State or local Governments or failure to comply with other Government regulations.

(b) Suspension is disqualifying a TSP from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. A suspension is binding on the agency that initiates it, but voluntary on other agencies using the affected contract or rate tender. A TSP may be suspended on adequate evidence of:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State antitrust statutes;

(3) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(4) Any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of the TSP as a transporter of the Government's property or the HHG of its employees relocated in the interest of the Government.

(c) Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The seriousness of the TSP's acts or omissions and the mitigating factors must be considered in making any debarment decisions. A TSP may be debarred for the following reasons:

(1) Failure of a TSP, within the period of temporary nonuse, to correct any of the causes; or

(2) Conviction of or civil judgment for any of the causes for suspension.

§ 102–117.330 Who makes these decisions?

(a) The transportation officer may place a TSP in temporary nonuse for a period not to exceed 90 days.

(b) The serious nature of suspension and debarment requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Only the agency head or his/her designee authorized by the agency may debar or suspend.

§ 102–117.335 Do these decisions go beyond the agency?

(a) Temporary nonuse does not go beyond the agency. Agencies must notify GSA of all suspended or debarred TSPs. (See § 102–117.350.)

(b) GSA compiles and maintains a current list of all suspended or debarred TSPs and periodically distributes the list to all agencies and the General Accounting Office.

§ 102–117.340 Where do I go for additional information on the process for suspending or debarring of a TSP?

Refer to the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4) for policies and procedures governing the suspension and debarment of a TSP.

§ 102–117.345 What records must I keep on temporary nonuse, suspension or debarment of a TSP?

(a) You must set up a program to follow your agency's internal record retention procedures for documentation related to TSPs placed in a nonuse, suspended or debarred status.

(b) For temporary nonuse your records must contain the following information:

(1) Name, address, and Standard Carrier Alpha Code and Taxpayer Identification Number of each TSP placed in temporary nonuse status;

(2) The duration and scope of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts showing the existence of such a cause;

(4) Information and arguments in opposition to the temporary nonuse period sent by the TSP or its representative; and

(5) The reviewing official's determination about keeping or removing temporary nonuse status.

(c) For suspended or debarred TSP's your records must include the same information as paragraph (b) of this section and you must:

(1) Assure your agency does not award contracts to suspend or debarred TSP's.

(2) Notify GSA. (See § 102–117.350.)

§ 102–117.350 Who must I notify on suspension or debarment of a TSP?

Agencies must report any suspension or debarment actions monthly to the:

(a) General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW., Washington, DC 20405, Web site: http://pub.fss.gsa.gov/ota;

(b) General Services Administration, Federal Supply Service, Office of Transportation and Property Management, Transportation Management Division (FBF), Crystal Mall Bldg. #4, Room 814, Washington, DC 20406, Web site: http://www.ks.gsa.gov/fsstt; and

(c) General Services Administration, GSA Board of Contract Appeals, 1800 F Street, NW., Room 4027, Washington, DC 20405, Web site: http://epls.arnet.gov.

Subpart I—Representation Before Regulatory Body Proceedings

§ 102–117.355 What are transportation regulatory body proceedings?

Transportation regulatory body proceedings are hearings before a transportation governing entity, such as

a State Public Utility Commission or the Surface Transportation Board. These proceedings may be at the Federal or State level depending on the activity regulated.

§ 102–117.360 May my agency appear on its own behalf before transportation regulatory body proceedings?

Generally, unless so delegated by the Administrator of General Services, no executive agency may appear on its own behalf in any proceeding before a transportation regulatory body. The statutory authority for the Administrator of General Services to participate in regulatory proceedings is in section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)(4)).

§ 102–117.365 When or under what circumstances would GSA delegate authority to appear before transportation regulatory body proceedings?

GSA will delegate authority to appear before transportation regulatory body proceedings when it does not have the expertise, or when it is out of GSA's scope, to make determinations on issues such as protests of rates, routings or excessive charges.

§ 102–117.370 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?

You must send requests with enough detail to explain the circumstances surrounding the need for delegation of authority for representation to:

General Services Administration, Office of Governmentwide Policy (MT), 1800 F Street, NW., Washington, DC 20405.

§ 102–117.375 What oversight authority does GSA have on transportation?

(a) The GSA has oversight of public utilities used by the Federal Government including transportation. There are specific requirements a TSP must go through on the State level, such as the requirement to obtain a certificate of public convenience and necessity.

(b) Further, a TSP must obtain an affidavit from those agencies that would use the TSP. As an oversight mandate, GSA coordinates this function.

(c) GSA has a list of TSPs, which meet certain criteria regarding insurance and safety, approved by the Department of Transportation. You must furnish GSA with an affidavit to determine if the TSP meets the basic qualification to protect the Government's interest. For further information contact:

General Services Administration, Federal Supply Service, Office of Transportation and Property Management, Transportation Management Division (FBF), Crystal Mall Bldg. #4, Room 814, Washington, DC 20406.

Subpart J—Reports

§ 102–117.380 Is there a requirement for me to report to GSA on my transportation activities?

(a) Yes, GSA will work with your agency and other agencies to develop reporting requirements and procedures. In particular, GSA will develop a Governmentwide transportation reporting system by October 1, 2002.

(b) Preliminary reporting requirements may include an electronic formatted report on the quantity shipped, locations (from and to) and cost of transportation. The following categories are examples:

(1) Dollar amount spent for transportation;

(2) Volume of weight shipped;

(3) Commodities shipped;

(4) HAZMAT shipped;

(5) Mode used for shipment;

(6) Location of items shipped (international or domestic); and

(7) Domestic subdivided by East and West (Interstate 85).

§ 102–117.385 How will GSA use the reporting requirements?

(a) Reporting on transportation and transportation related services will provide GSA:

(1) The ability to assess the magnitude of transportation within the Government;

(2) Information on best practices;

(3) Data to analyze and recommend changes to policies, standards, practices, and procedures to improve Government transportation; and

(4) A better understanding of how your activity relates to other agencies and your influence on the Governmentwide picture of transportation services.

(b) In addition, this information will assist you in showing your management the magnitude of your agency's transportation program and the effectiveness of your efforts to control cost and improve service.

Subpart K—Governmentwide Transportation Policy Council (GTPC)

§ 102–117.390 Is there a Government forum where I can share my concerns and receive information on the challenges of transporting freight and household goods?

Yes, the Office of Governmentwide Policy sponsors a Governmentwide Transportation Policy Council (GTPC) to help agencies in the establishment, improvement and maintenance of effective transportation management policies, practices and procedures. The council:

(a) Collaborates with private and public stakeholders to promote solutions that lead to effective results and develop valid measures of performance; and

(b) Provides assistance in developing the Governmentwide transportation reporting system (see § 102–117.10).

§ 102–117.395 Where can I get more information about the GTPC?

If you or a TSP have questions, comments or suggestions to help increase the effectiveness of Government transportation policy, contact:

General Services Administration, Office of Governmentwide Policy (MT), 1800 F Street, NW., Washington, DC 20405.
Web site: http://policyworks.gov/transportation

Dated: February 15, 2000.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 491

[HCFA–1910–P]

RIN 0938–AJ17

Medicare Program; Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions; and Establishment of a Quality Assessment and Performance Improvement Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend our regulations to revise certification and payment requirements for Rural Health Clinics (RHCs) as required by the Balanced Budget Act of 1997 (BBA 1997). It would include new refinements of what constitutes a qualifying rural shortage area in which a Medicare RHC must be located; establish criteria for identifying RHCs essential to delivery of primary care services that can continue to be approved as Medicare RHCs in areas no longer designated as medically underserved; and limit waivers of certain nonphysician practitioner staffing requirements. It also would impose payment limits on provider-based RHCs and prohibit ''commingling'' the use of the space, equipment, and other resources of an

RHC with another entity. Finally, the rule would require RHCs to establish a quality assessment and performance improvement program that goes beyond current regulations.

This proposed rule would make other revisions for clarity and uniformity and to improve program administration.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 28, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1910–P, P.O. Box 26676, Baltimore, MD 21207–0476.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA1910P@hcfa.gov. For e-mail comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION.** For further information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: David Worgo, (410) 786–5919 or Mary Collins (quality issues) (410) 786–3186.

SUPPLEMENTARY INFORMATION:

E-mail, Comments, Availability of Copies, and Electronic Access

E-mail comments must include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1910–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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I. Background

A. General

The Rural Health Clinic Services Act of 1977, Public Law 95-210, enacted December 13, 1977, amended the Social Security Act (the Act) by enacting section 1861(aa) to extend Medicare and Medicaid entitlement and payment for primary and emergency care services furnished at a rural health clinic (RHC) by physicians and certain nonphysician practitioners, and for services and supplies incidental to their services. ''Nonphysician practitioners'' included nurse practitioners and physician assistants. (Subsequent legislation extended the definition of covered RHC services to include the services of clinical psychologists, clinical social workers, and certified nurse midwives).

According to House Report No. 95–548(I), the purpose of Public Law 95–210 was to address an inadequate supply of physicians to serve Medicare beneficiaries and Medicaid recipients in rural areas. The program addressed this problem by providing qualifying clinics located in rural, medically underserved communities with Medicare beneficiaries and Medicaid recipients with payment on a cost-related basis for outpatient physician and certain nonphysician services. (The Medicare payment provisions for rural health clinics are in sections 1833(a)(3) and 1833(f) of the Act and in our regulations beginning at 42 CFR 405.2462.)

Qualifying clinics, among other criteria, had to be located in a nonurbanized area as defined by the Census Bureau and in a medically underserved area as designated by the Health Resources and Services Administration or (since the Omnibus Budget Reconciliation Act of 1989, section 6213(c)) the chief executive officer of the State. (See section 1861(aa)(2) of the Act, following subparagraph (K).) There are three types of shortage area designations applicable to RHC qualification: health professional shortage areas, medically underserved areas, and governor-designated shortage areas. The clinic's service area must have, in addition to being located in a nonurbanized area, one of these shortage area designations if the clinic is to qualify to receive RHC status.

Qualifying clinics also had to employ a physician assistant or nurse practitioner and, to meet requirements of the Omnibus Budget Reconciliation Act of 1989, had to have a nurse practitioner, a physician assistant, or a certified nurse midwife available to furnish patient care services at least 50 percent of the time the RHC operates.

Growth of RHCs in the Medicare Program

After a slow start, the program has recently grown at a rapid rate—from less than 1,000 Medicare-approved RHCs in 1992 to more than 3,500 in early 1998. While part of this increase has improved access to primary care services in rural areas for Medicare and Medicaid beneficiaries, there are instances in which these additional RHCs have not expanded access.

Continuing Participation

A significant factor in the growth of RHCs stems from the original RHC legislation, which included a ''grandfather clause'' to promote the development of RHCs. (Section 1(e) of Public Law 95–210, 42 U.S.C. 1395x

note. Also see § 491.5(b)(2).) In addition, the third sentence of section 1861(aa)(2) of the Act stated that:

> A facility that is in operation and that qualifies as a rural health clinic * * * [under the Medicare or Medicaid program] and that subsequently fails to satisfy the requirements of clause (i) [in the second sentence of section 1861(aa)(2), pertaining to the rural and underserved location requirement], shall be considered * * * as still satisfying the requirement of such clause.

This provision protected the clinic's RHC status despite any possible changes to the rural or underserved status of its service area. It allowed clinics to remain in the RHC program even though their service areas were no longer considered rural or medically underserved.

The Congress established this protection to encourage clinics to attract needed health care professionals to underserved rural areas and to retain them without being concerned about losing the shortage area designation, which would make the clinics ineligible for RHC status and its reimbursement incentives. In other words, once the clinic successfully attracted the needed health care professionals to the area, the Congress wanted to ensure that the service area did not return to its previous underserved status because we removed the clinic's RHC status and reimbursement incentives.

Although the grandfather provision was based on justifiable policy considerations, we are now confronted with RHC participation in some service areas with extensive health care delivery systems where Medicare and Medicaid beneficiaries are not having difficulty obtaining primary care. Both the General Accounting Office and the Department of Health and Human Services' Inspector General recommended the establishment of a mechanism, under the survey and certification process for Medicare facilities, to discontinue RHC status and its payment incentives in those service areas where they are no longer justified. (See the next paragraph.) In section 4205(d)(3) of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), the Congress responded to these recommendations by amending the grandfather provision to provide protection only to clinics essential to the delivery of primary care.

Government Reports

Both the General Accounting Office and the Department of Health and Human Services' Inspector General concluded, based on recent studies, that the number of RHCs is growing out of proportion to the need and some RHCs remain in the program after the need for payment incentives no longer exists. They also concluded that the payment methodology for provider-based RHCs lacks sufficient cost controls and recommended establishing payment limits and screens on reasonable costs for these providers. (A provider-based RHC is an integral and subordinate part of a Medicare-participating hospital, skilled nursing facility, or home health agency, and is operated with other departments of the provider under common licensure, governance, and professional supervision. All other RHCs are considered to be independent.) For more information on these reports see ''Rural Health Clinics: Rising Program Expenditures Not Focused on Improving Care in Isolated Areas'' (GAO/HEHS–97–24, November 22, 1996), and ''Rural Health Clinics: Growth, Access and Payment'' (OEI–05–94–00040, July 1996).

Medically Underserved Designations

Another reason for the continued growth of the RHC program was that two types of shortage area designations, specifically the Medically Underserved Area (MUA) and Governor's designations, did not have a statutory requirement for regular review and have not been systematically reviewed and updated for some time. As a result, some new RHCs may have been certified in areas that would no longer be designated as underserved if reviewed with current data. In response, as discussed below, the Congress amended the legislation by requiring that only those clinics located in shortage areas that have been recently designated or updated will qualify for purposes of the RHC program.

Commingling

We define the term ''commingling'' to mean the simultaneous operation of an RHC and another physician practice, thereby mixing the two practices. The two practices share hours of operation, staff, space, supplies, and other resources. Commingling occurs in RHCs that are an integral part of another provider, such as a hospital, as well as in RHCs that are independent.

Examples of Commingling. Industry sources have told us that many providers combine provider-based RHCs and non-RHC emergency room staffs and location to furnish services to beneficiaries seeking primary care, emergency services, or both. In such situations, Medicare payment has been made separately on a reasonable cost basis for hospital outpatient department services and for the RHC services. Also, emergency room physician services are payable according to the Part B physician fee schedule.

We also understand that some providers use skeleton emergency room staffs, routinely assign RHC staff members to the emergency room or other parts of the provider, and bill the Medicare program not only for full RHC costs, but also for non-RHC Part B benefits (hospital outpatient department services and physician services). When these situations occur, Medicare pays the RHC's administrative costs, which include the costs for RHC staff salaries (including physician and practitioner salaries) and for any Part B services performed by the RHC staff, whether performed within the clinic setting or in other provider departments. The provider receives two payments for the cost of services furnished by a particular staff member who had simultaneous assignments.

A common approach taken by independent RHCs is to operate a private physician practice in the RHC at the same time the physician is furnishing RHC services to patients. We believe this creates the opportunity for incorrect bills or duplicate payments.

B. Legislation

Refinement of Shortage Area Requirements

Refinement of the shortage area requirements involves two phases.

1. Phase I. Paragraphs(d)(1) and (2) of section 4205 of the BBA concern the requirements in the second sentence of section 1861(aa)(2) of the Act that RHCs must be located in a nonurbanized area as defined by the Bureau of the Census, as well as in a Health Professional Shortage Area, a medically underserved area, or in a shortage area designated by a State governor. The Congress amended those provisions to state that the rural area must also be one in which there are insufficient numbers of needed health care practitioners as determined by the Department. The Congress also amended that sentence to specify that, to be used in RHC certification, shortage area designations made by the Department or by a State governor must have been made within the previous 3-year period.

2. Phase II. In paragraph(d)(3)(A) of section 4205 of the BBA, which amended the third sentence of section 1861(aa)(2) of the Act, the Congress revised the ''grandfather clause'' that permitted an exception to the termination of RHC status for a clinic located in an area that that is no longer a rural area or a shortage area. This revision amended the grandfather clause to specify that an exception is available

only if the RHC is determined to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the RHC. These amendments were made effective upon issuance of implementing regulations that the Congress directed us to issue by January 1, 1999.

Staffing Waiver

Section 4161(b)(2) of the Omnibus Budget Reconciliation Act of 1990 added section 1861(aa)(7) to the Act to provide us with the authority to grant a 1-year waiver of the requirement that an RHC must employ a physician assistant, nurse practitioner, or certified nurse midwife and must furnish their services 50 percent of the time the RHC operates, if the clinic can demonstrate that it has been unable, in the previous 90-day period, to hire one of these nonphysician primary care providers.

In section 4205(c) of the BBA, the Congress amended, effective January 1, 1998, section 1861(aa)(7)(B) of the Act to restrict further our authority to waive the requirement that each RHC must hire a physician assistant, nurse practitioner, or certified nurse midwife. A waiver may now be granted only to a participating RHC. That is, the waiver cannot be granted before the clinic has been determined by us to meet all the requirements for Medicare participation as an RHC and is actually participating as an RHC.

Payment Limits for Provider-Based RHCs

Before the BBA, the payment methodology for an RHC depended on whether it was ''provider-based'' or ''independent.'' Payment to provider-based RHCs for services furnished to Medicare beneficiaries was made on a reasonable cost basis by the provider's fiscal intermediary in accordance with our regulations at part 413. Payment to independent RHCs for services furnished to Medicare beneficiaries was made on the basis of a uniform all-inclusive rate payment methodology in accordance with part 405, subpart X. Payment to independent RHCs was also subject to a maximum payment per visit as set forth in section 1833(f) of the Act.

The BBA, at section 4205(a), amended section 1833(f) of the Act. It now holds provider-based RHCs to the same payment limit and all-inclusive payment methodology as independent RHCs. This provision also provides an exception to the payment limit for those clinics based in small rural hospitals with fewer than 50 beds.

Quality Assessment Program

Currently, quality of RHC care is addressed in § 491.11, which requires a clinic to evaluate its total program annually. The evaluation must include reviewing the utilization of the clinic's services, a representative sample of both active and closed clinical records, and the clinic's health care policies. The purpose of the evaluation is to determine whether the utilization of services was appropriate, the established policies were followed, and any changes are needed. The clinic's staff considers the findings of the evaluation and takes the necessary corrective action. These requirements focus on the meeting and documentation of the clinic's evaluation of its quality care and do not account for the outcome of these activities. Section 4205(b) of the BBA amended section 1861(aa)(2)(I) of the Act to authorize us to require that an RHC have a quality assessment and performance improvement program. A quality assessment and performance improvement program enables the organization to systematically review its operating systems and processes of care to identify and implement opportunities for improvement.

II. Provisions of This Proposed Rule

Definition of Shortage Area for RHC Certification

Section 6213 of OBRA 1989 amended 1861(aa)(2) of the Social Security Act to expand the types of shortage areas eligible for RHC certification. Until then, the eligible areas included only those designated by the Secretary as areas having a shortage of personal health services under section 330(b)(3) of the PHS Act (medically underserved areas), and those designated as geographic health professional shortage areas under section 332(a)(1)(A) of the PHS Act. The OBRA 1989 amendment expanded the eligible areas to also include high impact migrant areas designated under section 329(a)(5) of the PHS Act; areas containing a population group HPSA designated under section 332(a)(1)(B) of the PHS Act; and areas designated by the Governor of a State and certified by the Secretary as having a shortage of personal health services. Later, however, the Health Centers Consolidation Act of 1996 (Public Law 104–299) renumbered section 329 and repealed the requirement for designation of high migrant impact areas. We would amend section 491.2 to conform the regulations to the above statutory changes, by defining shortage areas for RHC purposes to include all four remaining types of designated areas.

Section 330(b)(3) of the PHS Act defines medically underserved populations (MUPs) to include both areas and population groups designated by the Secretary as having a shortage of personal health services. However, Section 1861(aa)(2) of the Social Security Act specifically limits eligibility for the rural health clinic program to areas designated under this statute (known as medically underserved areas, MUAs). Thus, a clinic located in an area which contains only a population group designation under section 330(b)(3) is not eligible for participation in the Medicare or Medicaid programs as an RHC. Accordingly, our amendment of the regulation reflects inclusion of medically underserved areas (MUAs) but exclusion of medically underserved population groups (MUPs) for RHC certification.

Although the expansion of eligible areas by section 6213 of OBRA 1989 and the exclusion of population groups (MUPs) for RHC certification have already been implemented by regional office and State operation manuals, we need to conform the regulations.

A. Refinement of Shortage Area Requirements

As noted above, section 4205(d)(1) of the BBA amended the second sentence of section 1861(aa)(2) of the Act to require the use of shortage areas designated ''within the previous 3-year period.'' We propose to implement this by amending § 491.3(b) to refer to ''a current shortage area whose designation has been made or updated within the current year or the previous 3 years.''

Before the BBA, clinics entering the RHC program were required to be located in a shortage area designated by the Health Resources and Services Administration or by the State. If the clinic's service area was on the Health Resources and Services Administration's or the State's list of designated shortage areas, the clinic satisfied the definition of shortage area for purposes of Medicare participation. Any clinic now applying for Medicare participation as an RHC must be located in a shortage area that has been so designated or updated within the current year or 1 of the previous 3 calendar years.

Although these changes have already been implemented in a memorandum to our regional offices on February 6, 1998, we need to conform the regulations. Therefore, we would include the 3-year provision in § 491.3(b) to provide that all RHCs applying for Medicare

participation must be located in a current shortage area in order to be approved for participation in Medicare as an RHC.

Under the provisions of the BBA, existing RHCs whose locations no longer meet rural and/or shortage area requirements must be disqualified from further participation in the Medicare program as RHCs unless they are deemed essential to the delivery of primary care that would otherwise be unavailable in the geographic area served by the clinic. Under these statutory requirements, we propose to establish, in §§ 491.3 and 491.5, the procedures and standards for granting an exception to clinics essential to the delivery of primary care that would otherwise be unavailable in the geographic area served by the clinic.

Eligibility for an Exception

We would specify, in § 491.3, that an RHC located in a rural area that is no longer designated as medically underserved, is eligible to apply for an exception. Those RHCs located in an area no longer designated as a nonurbanized area as defined by the Census Bureau are not eligible to apply for an exception.

We believe that to extend the grandfather provision to clinics in nonrural areas through the exception process would be contrary to the fundamental definition of an RHC as an entity located in a rural area.

Process. We would specify, in § 491.3(c), the following procedures for submitting an exception request:

- In order to apply for an exception from the requirement that it meets the criteria in section 1861(aa)(2)(I) of the Act, the affected RHC must submit a request to its HCFA regional office for review.
- An RHC will have 90 days, from the date of notification from HCFA that its location no longer meets the definition of shortage area, to submit an exception request to the HCFA regional office.
- The HCFA regional office will have authority to grant a 3-year exemption to any RHC that it determines, under the criteria discussed below, is essential to the delivery of primary care that would otherwise be unavailable in the geographic area served by the clinic. The 3-year exemption time period is consistent with the shortage redetermination period of 3 years and would be administratively easy to manage.

Termination of RHCs located in areas that lose their shortage area designation. RHCs ineligible for an exception would be denied RHC participation in the Medicare program 90 days following the initial HCFA notification that its location no longer meets the definition of a shortage area.

RHCs eligible to apply for an exception but unable to satisfy the criteria for an exception would be denied RHC participation in the Medicare program 90 days following the HCFA notification that its application for an exception has been rejected. We are allowing this period in part to permit the health care professionals of these clinics time to arrange to receive payment from the Medicare carrier for their services under other Medicare payment provisions for which they may qualify. An RHC that does not request an exception will have its Medicare participation as an RHC terminated 90 days following the initial HCFA notification that its location no longer meets shortage area requirements.

Criteria for Exception

We propose, in § 491.5, to accord an exception to an existing RHC that can satisfy one of the following tests:

Sole Community Provider. We are proposing to classify an existing RHC as ''essential'' if it is the only Medicare or Medicaid primary care provider within the service area. To determine whether it is the only participating provider, we would apply a time and distance standard that would be measured by a travel time greater than 30 minutes from the RHC applying for the exception to other Medicare and Medicaid participating primary care providers. The standard that primary care services should be available and accessible within 30 minutes travel time has been in use by Health Resources and Services Administration programs, which deal extensively with primary care providers and access to these services, since the 1970s. For purposes of this test, primary care provider means an RHC, a Federally Qualified Health Center (FQHC), or a physician practicing in either general practice, family practice, or general internal medicine.

The following criteria could potentially be used in determining distances corresponding to 30 minutes travel time: under normal conditions with primary roads available—20 miles; in areas with only secondary roads available—15 miles; in flat terrain or in areas connected by interstate highways—30 miles.

The geographic test would address the principal reason the Congress established the original grandfather provision: to ensure that the service area does not return to its previous medically underserved status because of the removal of the clinic's RHC status and reimbursement incentives.

This test is being proposed because RHCs are currently the sole providers for many underserved rural communities in this country that could lose their status as underserved with the addition of one or two health care professionals. When these RHCs' successful recruitment of additional health care professionals results in a dedesignation of the shortage area, we want to make sure that the RHC and its new professionals remain in the service area as viable providers. Without the clinic's presence in the community, the area could potentially return to its medically underserved status. RHCs applying for an exception under this test would be expected to demonstrate that they accept Medicare (where applicable), Medicaid and uninsured patients that present themselves for treatment.

Traditional Community Providers. We are also proposing to classify an existing RHC as essential if it is the sole RHC for its community and the only primary care provider that has traditionally served Medicare, Medicaid, and uninsured patients in the community despite the fact that there may be other primary care providers that have recently begun participating within reasonable travel time of the RHC. We believe it is necessary to accord these RHCs an exception if the recent presence of other primary care provider(s) caused the shortage area to lose its designation as underserved. In this situation, where the recent presence of other primary care providers, such as one or two new physician practices, in the service area triggered the shortage area dedesignation. We believe such an area may be too unstable in terms of access to primary care to warrant the removal the clinic's RHC status and cost-based reimbursement. We believe this is particularly true if the sole RHC has been serving its community for many years and has accepted Medicare, Medicaid, and uninsured patients that presented themselves for treatment.

However, if there are several primary care providers who have been actively treating Medicare, Medicaid, and uninsured patients for a number of years and these providers are within 30 minutes travel time of the RHC, we believe the RHC should not be granted an exception as an essential clinic because the service area would now appear to be stable. For example, if the RHC's service area (30 minutes travel time) has two or more participating primary care providers that have been actively treating Medicare, Medicaid, and uninsured patients for a minimum of 5 years, we would not grant the exception. Consequently, we would

only accord an exception to sole RHCs that are actively treating Medicare and Medicaid beneficiaries and the uninsured located in unstable service areas as described above.

Major Community Provider. We are also proposing to classify an existing RHC as essential if it is treating a disproportionate greater share of the patients in its community compared to other RHCs that are within 30 minutes travel time. We are proposing this test to address the situation (as reported by the General Accounting Office, DHHS Inspector General, and State Medicaid agencies) of RHC concentrations, such as RHCs located next door to or across the street from each other.

Concentrations of RHCs have developed in a number of service areas since 1990, and it is possible that some of these communities have already lost or will lose their medically underserved designation. It is also possible that no RHCs within the cluster would be able to qualify for an exception, under the criteria described above. However, within this group there may nonetheless be an ''essential'' RHC. To address this situation, we are proposing this test to identify whether there is a major community provider within a concentration of RHCs.

The premise behind this test is to grant an exception to an RHC that is a major community provider to Medicare and Medicaid beneficiaries and the uninsured in service areas where other RHCs do not provide or limit services to these groups. Granting an exception to a clinic under this test is not meant to be a routine occurrence. The RHC applying for an exception would have to make a compelling case that services it provides would be otherwise unavailable in the geographic area served by the clinic.

Specialty Clinic Test. We are proposing to classify an existing RHC as ''essential'' if it exclusively provides pediatric services or obstetrical/gynecological (OB/GYN) services for its community.

The purpose of this test is to recognize RHCs that are providers of pediatric or OB/GYN health care for their communities. In general, clinics applying for an exception are in jeopardy of losing RHC status because their service areas are no longer designated as medically underserved, which means there is an adequate supply of health care professionals within the community. Although the local delivery system may consist of several primary care practitioners, it may be that the RHC is the only provider furnishing pediatric or OB/GYN care for the community. If the specialty clinic(s) cannot remain financially viable, the community could be left without any OB/GYN or pediatric services. Therefore, in rural communities where these services are limited despite an otherwise adequate supply of health care professionals, we would classify the specialty clinic as essential to the delivery of primary care and grant it an exception. RHCs applying for an exception under this test would be expected to demonstrate that they accept Medicare (where applicable), Medicaid, and uninsured patients that present themselves for treatment.

Graduate Medical Education (GME) Test. We are proposing to classify an existing RHC as ''essential'' if it is actively participating in an accredited GME program. We would accord an exception to any RHC located in a rural area that is part of a medical residency training program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association.

Under section 4625 of the BBA, the Congress specifically recognized RHCs as qualified non-hospital providers for GME payments, to encourage more training of future physicians in non-hospital settings. Without RHC status, rural clinics that are part of a GME program would lose their Medicare funding for primary care medical education. This could cause a clinic to discontinue its training, which is currently in high demand and needed in rural communities. Therefore, RHCs that are actively serving as rural primary care training sites should be accorded an exception. For additional information regarding eligibility as nonhospital providers for GME payments, see the **Federal Register**, May 8, 1998.

B. Payment Limits for Provider-Based RHCs

We would amend § 405.2462 to provide payment to all RHCs on the basis of an all-inclusive rate per visit, subject to the per-visit payment limit. We would also include within this section the definition for identifying small rural hospitals with fewer than 50 beds for purposes of the exception to the payment limit. Although these statutory changes have already been implemented in administrative instructions, we need to conform the regulations.

To implement this provision, we released Program Memorandum A–97–20, ''Per-Visit Rates in Rural Health Clinics and Federally Qualified Health Centers,'' in January 1998. That instruction directed Medicare fiscal intermediaries to determine which RHCs are eligible for the exception by counting the number of a provider's beds in accordance with the regulations at § 412.105(b). That regulation is part of the provisions on calculating a teaching hospital's indirect medical education adjustment under the prospective payment system for inpatient hospital services and is based on ''available bed days.'' The latter term means that the bed must be permanently maintained for lodging inpatients and must be available for use and housed in patient rooms or wards. Section 2405.3.G of the Medicare Provider Reimbursement Manual contains further administrative guidance on ''available bed days.''

In defining rural and urban areas for the Medicare program, we have consistently used the definition of ''Metropolitan Statistical Area'' (MSA) established by the Office of Management and Budget. For example, the MSA definition is applied to identify hospitals eligible for an exception to the prospective payment system as rural referral centers. It is also used to determine an institution's eligibility for the critical access hospital program and for many other purposes.

Section 4205(a) of the BBA provides an exception to the RHC payment limit for clinics of small rural hospitals (fewer than 50 beds) for the purpose of helping them remain financially viable. RHCs affiliated with small rural hospitals were targeted by this provision because they are typically located in very rural areas and represent the sole source of health care for their communities.

As mentioned above, we issued a Program Memorandum to implement this new payment provision, which instructed Medicare fiscal intermediaries to use the available bed definition at § 412.105(b) for determining eligibility for the exception. Despite its reasonableness, we recognize that some very rural providers may not qualify for an exception using the available bed definition. To assure continued access to primary care services in thinly populated rural areas where the hospital and its clinic(s) are the primary source of health care for their communities, we are proposing to adopt an alternative definition of hospital bed size.

For hospitals that are the primary source of health care in their community as defined at § 412.92, we are proposing to look to the hospital's average daily census rather than bed size in determining whether RHC services are subject to the upper payment limit. We believe average daily census may be a more appropriate measure of inpatient capacity in certain situations (for example, rural areas that

experience seasonal fluctuations due to logging or commercial fishing). To identify hospitals located in thinly populated rural areas, we propose to use the Urban Influence Codes, a 9-category measure developed by the U.S. Department of Agriculture. These Codes rank all U.S. counties, ranging from 1 for large, densely populated metropolitan counties to 9 for the most remote, sparsely populated counties. This definition takes into account each county's largest city or town and its proximity to counties with large urban areas. We propose to accept an 8-level and 9-level Urban Influence Code for purposes of this provision. An 8-level code is a county not adjacent to a metropolitan area, but has a town with a population of 2,500 to 9,999. A 9-level is a county not adjacent to a metropolitan area, with no place greater than a population of 2,500. A list of the Urban Influence Codes is available on the United States Department of Agriculture website at the following address:http://www.econ.ag.gov/briefing/rural/data/urbinfl.txt. We believe an 8 or 9-level reflects a degree of rurality to sufficiently target hospitals located in extremely remote areas that may need the flexibility in the bed definition to accommodate potentially significant fluctuations in patient census.

To assure that hospitals possess the unique characteristics of significant fluctuations in its average daily census, we are proposing a specific fluctuation threshold for patient census at or above 150 percent of the lowest monthly average daily census. We believe this demonstrates a degree of fluctuation sufficient to warrant an alternative definition of hospital bed size.

This proposed alternative definition for the aforementioned hospitals would recognize the needs of extremely rural hospitals with an average daily census of 40 or less to carry a larger number of available beds in order to address seasonal fluctuations. Absent seasonal fluctuations in patient census, it would be reasonable to expect a hospital with an average daily census of 40 acute care inpatients to require no more than 50 beds to meet random fluctuations in patient census. A hospital seeking an exception on this basis would have to submit with its cost report a summary by month of its average acute care census. This alternative definition should afford every RHC that was truly targeted—clinics of sole community hospitals located in sparsely populated rural areas—an opportunity to receive an exception to the RHC payment limit.

C. Staffing Requirements

Practitioners Available 50 Percent of the Time

Under our current regulations at § 491.8(a)(6), a nurse practitioner or physician assistant must be available to furnish patient care services at least 60 percent of the time the RHC operates. However, section 6213(a)(3) of OBRA 1989 amended the staffing requirements for an RHC, described in section 1861(aa)(2)(J) of the Act, to require that a nurse practitioner, physician assistant, or certified nurse midwife be available to furnish patient care services at least 50 percent of the time the RHC operates.

Therefore, we propose to revise § 491.8(a) to require that a nurse practitioner, physician assistant, or certified nurse midwife must be available to furnish patient care at least 50 percent of the time the RHC operates.

Temporary Staffing Waiver

As noted, section 1861(aa)(2)(J) of the Act requires an RHC to have a nurse practitioner, physician assistant, or certified nurse midwife available to furnish patient care services at least 50 percent of the time the clinic operates. In addition, clause (iii) of the second sentence of section 1861(aa)(2) of the Act requires an RHC to employ a nurse practitioner or physician assistant. Section 1861(aa)(7) requires us to waive one or both of these requirements for a 1-year period, if the facility has been unable, despite reasonable efforts, to hire a nurse practitioner, physician assistant, or certified nurse midwife in the previous 90-day period. Before the BBA, temporary staffing waivers were available both to RHC applicants and participating RHCs. However, section 4205(c)(1) of the BBA amended section 1861(aa)(7)(B) of the Act to limit waivers to RHCs that have been found qualified for Medicare participation. Therefore, we would amend our regulations at § 491.8 to provide that only currently participating RHCs (not facilities applying for participation) are eligible for this waiver.

Procedures

We would also amend § 491.8 to include procedures for when the waiver expires. We would terminate an RHC from participation in the Medicare program if the RHC has not recruited the required mid-level practitioner. We would notify the RHC 15 days before the termination date, which cannot be earlier than the day after the waiver expires.

Six-month Interim Period

Section 1861(aa)(7)(B) of the Act prohibits the Secretary from granting a waiver if the RHC requests the waiver before 6 months after the expiration of any previous waiver has elapsed. During this interim 6-month period, some facilities with physicians or other medical personnel who are authorized to furnish Part B services outside of the RHC setting and to bill Medicare on a fee-for-service basis may choose to continue operations, while other facilities may choose to cease operations.

Subsequent Waivers

The granting of a waiver under § 491.8(d) in the past would not preclude the granting of subsequent waiver requests if a waiver again becomes necessary. There would be no limit to the number of staffing waivers that a participating RHC would be able to obtain as long as the subsequent waiver is requested no earlier than 6 months after the expiration of the previous waiver and the clinic demonstrates it has made a reasonable effort over the previous 90-day period to hire the required staff.

D. Commingling

Proposed Policy

In order to achieve a clear distinction between an RHC and another entity when the RHC is open to furnish services, and in order to remove opportunities for duplicate billing and payments, we propose to prohibit the use of RHC space, professional staff, equipment, and other resources by another health care professional. This would mean that physicians, nonphysician practitioners, and mental health professionals (clinical psychologists and clinical social workers) cannot bill Part B for payment for their services furnished in RHC space when the RHC is open to furnish services to its patients.

Our proposal would prohibit these health care professionals from using RHC space, staff, supplies, records, and other resources to conduct a private Medicare practice. However, physicians, nonphysician practitioners, and mental health professionals can bill Part B as long as they clearly separate their private practices from RHC hours of operation.

To assure that all RHC services furnished by the clinic are billed as RHC services, we propose to revise § 405.2401(b) of our regulations, ''Scope and definitions,'' to clarify that the term ''rural health clinic'' means, in part, a facility that, in addition to filing an

agreement with us to furnish RHC services under Medicare and being approved as a Medicare RHC it is not operated simultaneously with, and does not share professional staff, space, supplies, records, and other resources with another entity.

Problems With Commingling

Both independent and provider-based RHCs must meet the RHC staffing requirements in section 1861(aa)(2)(J) of the Act. The statute requires a nonphysician practitioner to be present in the RHC to furnish services more than 50 percent of the time the clinic is open. Providers that routinely reassign RHC mid-level practitioners to other parts of the provider risk failure of meeting the RHC staffing requirements. Also, when RHC professionals and other resources are shared, they are not available to the RHC. Therefore, the RHC is no longer meeting the Medicare participation requirements. A complaint investigation, undertaken by a Medicare State survey agency, could find an RHC deficient. That deficiency could result in the termination of the RHC's Medicare participation agreement if the RHC does not resolve the deficiency quickly.

When RHC staff members use RHC space and resources to conduct a private practice, Medicare could provide two payments for the administrative cost of services furnished by a particular staff member who had simultaneous assignments. We do not want to continue an environment in which duplicate payments could result, because the cost, both direct and indirect, for professional services is included in setting the RHC payment rate. We believe that the Congress never intended to provide opportunities for RHCs to shift between functioning as RHCs and as other entities, such as private physician practices, merely to achieve higher payment.

We studied several proposals to address the consequences of commingling because we do not believe it is consistent with the statute and often lends itself to abusive, fraudulent practices. It is an intolerable situation that requires action on our part to eliminate its effects. If commingling is not eliminated, incorrect and duplicate payments could continue to be made to RHCs and physicians.

The beneficiary is disadvantaged when commingling occurs. When the physician's billing decisions for services are based on which Medicare payment for the services is higher (the RHC's all-inclusive rate, or the amounts payable under the non-RHC Part B payment provisions), the result is an inflated Medicare payment and an inflated coinsurance amount charged to the beneficiary.

Commonly, RHCs maintain a unit record for each patient, but patient visits to the RHC and to the physician practice are not well differentiated. By combining patient records, these RHCs call into question the correctness of their payments, the proper maintenance of records as required by § 491.10(a), and the appropriateness of payment to the physician.

Exception to Commingling

Although we believe strong action is needed, we want to make sure our proposed policy does not create hardship for physicians and patients in rural underserved communities, such as frontier areas with limited medical resources. Therefore, with sufficient documentation allocating costs associated with the sharing of staff, we propose offering critical access hospitals the option to share common staff between the RHC and the emergency room. We believe this exception is necessary because recruitment of physicians into rural communities is very difficult. An isolated community often does not have the ability to hire and maintain a sufficient number of practitioners to staff both the RHC and emergency room simultaneously within a critical access hospital. We are also inviting the public to offer additional suggestions regarding how to address the negative effects of commingling.

Cost Reports

To assure that physicians clearly separate their private practices from the RHC, we have revised the Medicare cost report for independent and provider-based clinics to collect information that may be used by the fiscal intermediary to determine if commingling exists at an approved RHC. This will help assure that RHCs do not claim the cost of services that Medicare is paying for outside the RHC payment system. This cost report information, which includes describing any other entity that occupies RHC space and hours of operation, would alert the fiscal intermediary to the existence of possible commingling and allow the fiscal intermediary to determine if it should examine the costs reported in more detail.

E. Quality Assessment and Performance Improvement Program

During the last decade, the health care industry has moved beyond the problem-focused approach of quality assurance in favor of focusing on systemic quality improvement. We have followed suit. Our revised approach to our quality assurance responsibilities is linked closely both to the Administration's commitment to reinventing government. Our revised quality initiatives are now focused on stimulating improved health outcome and patient satisfaction. To achieve this objective, we are now developing revised requirements for several health care providers; that is, hospitals, hospices, end-stage renal disease facilities, and home health agencies. These requirements are directed at improving outcomes of care and satisfaction for patients while eliminating unnecessary procedural requirements. This was, largely, the impetus for the revised legislation concerning requiring a quality improvement program for RHCs discussed above.

A quality assessment and performance improvement (QAPI) program should be based on a continuous, proactive approach to both managing the RHC and improving outcomes of care and satisfaction for patients.

Instead of continuing to prescribe the structure and processes by which an RHC evaluates its services, we have identified the outcome expected of an RHC that assesses its performance and improves the services that it provides to beneficiaries. For this condition of certification, we are proposing to eliminate structural or process-oriented requirements that we believe are no longer necessary (such as prescriptive details concerning policies and procedures, reviewing medical records, etc.). At this time, we are not making changes to all of part 491 to make it outcome oriented. Maybe, in the future, we will change all of part 491 to focus on outcomes.

A recent study of the Institute of Medicine (IOM) of the National Academies discussed medical errors as one of the nation's leading causes of death and injury. The study estimated that more people die from medical errors each year than from highway accidents, breast cancer, or autoimmune deficiency syndrome. We have been concerned about medical errors for some time and are exploring how to address this issue through our rulemaking process.

We want to make it clear that the requirements of QAPI set forth in this proposed rule for RHCs will address the issues of measuring and prioritizing the medical errors of underuse, overuse, and misuse. These issues are clearly concerns of the public, healthcare providers, and others, as highlighted by the IOM study. RHCs will be required to

develop and implement programs that will foster continuous and proactive approaches to discovering and prioritizing opportunities to improve patient outcomes. Medical errors would clearly be a priority area for improvement actions.

We are proposing to replace the current requirements in § 491.11 with the proposed QAPI condition that contains three standards: the first addresses the components of a performance improvement program; the second addresses monitoring performance activities; and the third addresses program responsibilities.

Clinical Effectiveness

The first proposed standard charges each RHC with the responsibility to carry out a performance improvement program of its own design to improve the quality of care furnished to its patients. Each clinic would have to develop, implement, maintain, and evaluate an effective, data-driven, QAPI program based on its individual needs and resources. This requirement would stimulate an RHC to monitor and improve its own performance continuously and to be responsive to the needs and desires of its patients to ensure their satisfaction. The program would be required to reflect the complexity of the RHC's organization and services. We believe that the gathering and reviewing of data are important steps in the process to improve the quality of services provided to beneficiaries of the Medicare and Medicaid programs. As a result of the evaluation of improvement measures, RHCs would be able to support the sharing of best practices among their peers.

The RHC's QAPI program should achieve, through ongoing measurement and intervention, demonstrable and sustained improvement in significant aspects of clinical care and nonclinical services that can be expected to affect the population it serves. With an effective QAPI program, the RHC would, on a continuous basis, be able to identify and reinforce activities that it is doing well and identify and respond to opportunities for improvement.

We would not prescribe the structures and methods for implementing this requirement and would focus the condition for certification on the expected results of the program; that is, improved quality of care. This would provide flexibility to the RHC, as it would be free to develop a creative program that meets the RHC's needs and reflects the scope of its services.

Key Elements. The RHC should develop its program that meets the RHC's needs (and reflects the scope of its services) with four key elements in mind:

- Identify and prioritize opportunities to improve health status and health care.
- Conduct intervention(s) developed to target specific populations.
- Include documentation of results.
- Identify additional opportunities to improve health status and health care.

We would require that an RHC set priorities for performance improvement based on the prevalence and severity of identified problems. Of course, we expect that an RHC would immediately correct problems that are identified through its quality assessment and performance improvement program that actually or potentially affect the health and safety of patients. For example, if a clinic's QAPI process identifies problems with accuracy of medication administration, it would not be enough for the clinic to consider this area a candidate for an improvement program that may or may not be chosen from a priority list of potential projects. Rather, since accuracy of medication administration is critical to the health and safety of patients, the clinic would have to intervene with a correction and improvement program immediately. Overall, a clinic would be expected to give priority to improvement activities that most affect clinical outcomes.

Critical Areas. Specifically, we would require that an RHC objectively evaluate the following areas that we believe are critical to an RHC's performance:

Domain 1. Clinical Effectiveness

- *Appropriateness of Care.* This area evaluates the appropriateness of care provided to the patients. That is, it evaluates whether needed tests, procedures, treatment, and services are provided to a patient in a timely and appropriate manner.
- *Prevention.* There are no requirements for the provision of preventive health services for an RHC. However, if these services are provided, there should be continuous evaluation of the areas as part of the clinic's QAPI program. Preventive health services may include medical social services, nutritional assessment and referral, preventive health education, children's eye and ear examinations, perinatal services, well-child services, preventive health screenings, immunizations, and voluntary family planning services.

Domain 2. Access to Care

Access is a multifaceted concept that encompasses transportation and geographic location, outreach, cultural relevance, financial barriers, patient acceptance, and convenient practice hours. By identifying quality concerns and the development of corrective actions in this area, it is anticipated that access to covered services would improve. Also, patient satisfaction should increase.

- *Availability and Accessibility.* The RHC would have to assure that all services are available (that is, it has employed appropriately qualified practitioners and providers) and that these practitioners and providers have sufficient capacity to make services available to the patient population. The RHC would also have to ensure accessibility: that is, patients could obtain available services in a timely fashion, with consideration of travel time, waiting time, and potential access barriers for special populations, such as the disabled or non-English speaking members.
- *Cultural Competency.* This includes the attainment of knowledge, skills, and attitudes that enable administrators and practitioners within systems of care to provide and support effective health care delivery for diverse populations. Focuses for Domain 2 could include: decreasing the waiting times when appointments are scheduled and after arriving at the clinic; improving the access rates for patients with chronic disorders or patients with special needs; examining the effectiveness of an outreach program for a specific population; identifying current and potential barriers to care; evaluating staffing needs to ensure service availability.
- *Emergency Intervention.* An RHC is required to provide medical emergency procedures as a first response to common life-threatening injuries and acute illnesses. The definition of first response is service that is commonly provided in a physician's office. There are no specific requirements for an RHC to directly provide on call coverage. However, the RHC would have to arrange for access to care; that is, referral to a hospital outpatient department. Therefore, focuses could include follow-up activities to examine the effectiveness of the initial assessment and treatment.

Domain 3. Patient Satisfaction

Soliciting feedback from patients on the quality of care they receive (including complaints and grievances) is not only reflective of good patient care, but it is also a sound business practice.

Quality of care can typically be categorized in two ways: perceived and technical. We have discussed the technical aspects of measuring quality in the section ''Clinical Effectiveness.''

Perceived quality deals with the assessment of quality as experienced by the patient. Patients often base their satisfaction on how well they were treated by the staff—the amount of time spent waiting to be seen, and the time and attention given to their concerns.

The clinic could utilize a standardized survey instrument for purposes of determining whether the patients served by the clinic are satisfied with the care received, or they may design their own survey instrument. Elements in the survey should capture—

Access, communication and interaction with health care professionals;

- Continuity and coordination of care;
- Preventive care (where applicable);
- Paperwork burden on the patient;
- Complaints and grievances;
- Utilization of health services;
- Health status; and
- Respondent characteristics.

Information collected could be used to improve quality of care or adjust practice patterns to better meet the needs of the patient.

Examples of a Quality Improvement Project

We want to assure RHCs, especially clinics that are operating with a limited staff and resources, that our expectations for the use of performance measures are commensurate with the size and resources available to the clinic. Effective improvement programs can be and are often premised on simple, straightforward designs, using measures that are direct and uncomplicated. For example, a patient satisfaction survey could be used to evaluate whether the clinic should alter practice hours to accommodate patients that need evening appointments.

We are not proposing specific language for a minimum level in the regulation text at this time because we recognize that there are many ways in which such a level can be set. We are inviting comments on the best approaches to achieve this minimum level of effort for clinics that currently do not have a performance improvement program and have limited resources to develop a QAPI program.

Among the possible alternatives that we are considering are the following:

- Require RHCs to engage in an improvement project in each domain annually.
- Require a minimum number of improvement projects (for example, two) in any combination of the domains annually. Require a minimum number of projects annually based on patient population (for example, three projects for every 1,000 patients).
- Rather than requiring a minimum number of projects, require RHCs to demonstrate to the survey agency what projects they are doing and what progress is being achieved.

We are certain there are other ways to approach the ''minimum-effort'' discussion. The purpose of these examples is to elicit comment and suggestions in this regard, and we welcome alternative approaches. We note that although our intention is to specify in the final rule a minimum level of effort, it is also possible that, after reviewing all the comments, we may conclude that it is neither feasible nor desirable to do so.

Monitoring Performance Activities

The second standard proposed at § 491.11(b) states that, for each of the areas listed under standard (a), the clinic must measure, analyze, and track aspects of performance that the clinic adopts or develops that reflect processes of care and clinic operations. These measures must be shown to be predictive of desired outcomes or be the outcomes themselves.

When we use the word ''measure,'' we mean that the RHC would have to use objective means of tracking performance that enables a clinic (and a surveyor) to identify the differences in performance between two points in time. For example, we would not consider a clinic's subjective statement that it is ''doing better'' in a given performance area as a result of an improvement process to be an acceptable measure. We would require identifiable units of measure that a reasonably knowledgable person would be able to distinguish as evidence of change. Not all objective measures would have to be shown to be valid and reliable (that is, subjected to scientific rigor) in order to be usable in improvement projects, but they would have to at least identify a start point and an end point stated in objective terms, most often, numbers that actually relate directly to the objectives and expected or desired outcomes of the improvement project.

Program Responsibilities

Under the third proposed standard, § 491.11(c), we are proposing that the RHC's professional staff, administration officials, and governing body (where applicable) ensure that there is an effective quality assessment and performance improvement program as well as the current requirement for assessing utilization. The RHC would have to prioritize areas of improvement, considering prevalence and severity of identified problems and giving priority of improvement to those activities that affect clinical outcomes.

We anticipate that both large and small RHCs will use a variety of performance measures in their QAPI program. These measures may be designed by the clinic itself or by other sources outside the RHC. Regardless, HCFA intends, through its survey process, to assess the clinic's success in collecting data on its operation and measuring quality. Each clinic's professional staff should use its judgement, which is supported by nationally approved standards, practices and reviews of current professional literature, to evaluate the quality of care performed in the clinic. The survey process would focus on the clinic's ability to demonstrate that it has developed a viable quality assessment and performance improvement program. Also, the clinic should be able to prove with objective data that sustained improvements have taken place in (1) actual care outcomes, patient satisfaction levels, and access to care; and/or (2) processes of care and clinic operations that are predictive of improved outcomes of care and satisfaction for patients. HCFA does not intend and would not be in a position to judge the measures themselves; instead, we would assess their utility for the clinic in its own efforts to improve its performance. As part of oversight, we would expect RHCs to make information on their QAPI program available for surveyors during initial certification, routine recertification, and complaint surveys to demonstrate how they meet the requirement.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the

affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 491.3 Rural Health Clinic (RHC) Procedures

Section 491.3(c)(2) states that an existing RHC located in an area no longer considered a shortage area may apply for an exception from disqualification by submitting a written request to the HCFA regional offices within 90 days from the date HCFA notifies it that it is no longer located in a shortage area. We believe that this information collection requirement is exempt in accordance with 5 CFR 1320.4(a)(2) since this activity is pursuant to the conduct of an investigation or audit against specific individuals or entities.

Section 491.8 Staffing and Staff Responsibilities

Section 491.8(d)(1) states that HCFA may grant a temporary waiver if the RHC requests a waiver and demonstrates that it has been unable, despite reasonable efforts in the previous 90-day period, to hire a nurse midwife, nurse practitioner, or physician assistant to furnish services at least 50 percent of the time the RHC operates.

The burden associated with this requirement is the time and effort for the RHC to request a waiver and demonstrate that it has been unable to hire a nurse midwife, nurse practitioner, or physician assistant to furnish services at least 50 percent of the time the RHC operates. It is estimated that this requirement will take each RHC 3 hours. There are approximately 45 RHCs that will be affected by this requirement for a total of 135 burden hours.

Section 491.11 Quality Assessment and Performance Improvement states that the RHC must develop, implement, evaluate, and maintain an effective, ongoing, data-driven quality assessment and performance improvement program. The RHC's QAPI program must include, but not be limited to, the use of objective measures to evaluate clinical effectiveness, access to care, patient satisfaction, and utilization of clinical services, including at least the number of patients served and the volume of services.

Most of the burden of this section is covered by the paperwork requirements of § 491.9(b)(3), patient care policies, which requires the RHCs to have in place a description of services the clinic furnishes, guidelines for management of health problems, and procedures for periodic review and evaluation of clinic services. This burden is approved under 0938–0334 and expires in April, 2000.

To maintain the data required by § 491.11, we estimate it will take each clinic one hour per year to meet this requirement. Since there are an estimated 3,528 facilities, the total burden associated with this requirement is 3,528 annual hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room NO–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN.: Louis Blank, HCFA–1910–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN.: Allison EDT, HCFA Desk Officer

IV. 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 major comments in the preamble to that document.

V. Regulatory Impact Statement

Overall Impact

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). 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. For purposes of the RFA, all RHCs are considered to be small entities. 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 603 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 proposed rule that may result in an expenditure in any one year by State, local, or tribal government, in the aggregate, or by the private sector of $100 million. The proposed rule would not have an effect on the governments mentioned, and private sector costs would be less than the $100 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule would not have an effect on the governments mentioned.

Although we view the anticipated results of these proposed regulations as beneficial to the Medicaid and Medicare programs as well as to Medicaid recipients and Medicare beneficiaries and State governments, we recognize that some of the provisions could be controversial and may be responded to unfavorably by some affected entities. We also recognize that not all of the potential effects of these provisions can definitely be anticipated, especially in view of their interaction with other Federal, State, and local activities regarding outpatient services. In particular, considering the effects of our simultaneous efforts to improve the delivery of outpatient services, it is impossible to quantify meaningfully a projection of the future effect of all of these provisions on RHC's operating costs or on the frequency of substantial

noncompliance and termination procedures.

We believe the foregoing analysis concludes that this regulation would not have a significant financial impact on a substantial number of small entities, such as RHCs. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA.

Anticipated Effects

Effects on Rural Health Clinics

The total number of participating RHCs under Medicare and Medicaid as of March 1, 1998, was 3,528. Participating RHCs that are no longer located in rural, underserved areas could lose their RHC status and their cost-based reimbursement, which could cause them to reduce services or discontinue serving our beneficiaries. To minimize the impact of this provision on rural health care, the Congress has authorized us to grant, if needed, an exception to clinics essential to the delivery of primary care in these affected areas. Our proposed criteria in § 491.3 would identify the areas and clinics where RHC status and its payment methodology would still be needed despite the fact the service area is no longer considered medically underserved.

Implementing the statutory requirement to replace the current payment method used by provider-based RHCs to the payment method used by independent RHCs will establish payment equity and consistency within the RHC program. Before the BBA, payment to provider-based RHCs was made without considering the number of patient visits provided by the RHC without a limit on the payment per visit. These criteria are applicable to independent RHCs that furnish the same scope of services. Our proposal to codify the statutory requirement to pay all RHCs under an all-inclusive rate per visit also would avoid allocation of excessive administration costs to RHCs. We believe that about a thousand RHCs would be affected by this proposal.

We believe the fiscal impact of limiting payment to provider-based RHCs to the independent RHC rate per visit will result in program savings. Provider-based RHCs that have costs above the all-inclusive cost-per-visit limit required by the law could experience some decrease in their current reasonable cost basis payments. To reduce detrimental impacts of this decrease, the Congress authorized an exception to the annual payment limit to those clinics affiliated with small rural hospitals; that is, a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This QAPI requirement may increase burden in the short term because resources would have to be devoted to the development of a quality assessment and performance improvement program that covers the complexity and scope of the particular clinic. However, while the proposed requirements could result in some immediate costs to an individual clinic, we believe that the QAPI program will result in real, but difficult to estimate, long-term economic benefits to the clinic (such as cost-effective performance practices or higher patient satisfaction that could lead to increased business for the clinic).

Moreover, we are proposing that the QAPI and utilization review requirements replace the current annual evaluation requirement. Resources that the clinics are currently using for the annual evaluation could be devoted to the QAPI program. Therefore, we believe that there would be no long-term increased burden to the clinics. Currently, a number of RHCS, primarily provider-based, have some type of quality improvement program in place. To the extent that clinics are familiar with collecting data on their operations and measuring quality, the new requirement would not be perceived as a burden.

OBRA 1989 reduced the nonphysician staffing requirement for RHC qualification from 60 percent to 50 percent. This reduction should have a positive effect on RHCs by providing them more flexibility in satisfying their overall staffing needs.

Effects on Other Providers

We are aware of situations in which an RHC and a physician's private practice occupy the same space and Medicare is billed for the service, either as an RHC or physician service, depending upon which payment method produces the greater payment. Our proposed revision would require an RHC to be a distinct entity that is not used simultaneously as a private physician office or the private office of any other health care professional. As a result, a private physician or other practitioner who has used this approach to take advantage of the Medicare program may experience some change in the operation of their practices from an administrative standpoint.

Effects on the Medicare and Medicaid Programs

As a result of this proposed rule, most provider-based RHCs would be subject to payment limits and some RHCs would lose their RHC status and cost-based payment rates. Although these proposed changes would likely result in program savings, we believe the aggregate amount would be negligible for both programs. We cannot accurately estimate the payment differential between the new payment system for provider-based RHCs and the previous payments because the old system made payments without considering the number of patient visits. Without these data, we cannot precisely determine the fiscal impact.

However, in light of the fact that total expenditures for this program represent a small fraction of the Medicare and Medicaid's total budget and that less than half of all RHCs would experience changes to their payment rates, we believe any aggregate savings would be insignificant. We also believe an insignificant amount of Medicare and Medicaid program savings would result from the proposed provision that would terminate RHC status for certain providers. Less than 5 percent of all participating RHCS could lose their status, and these affected clinics would continue to participate under Medicare and Medicaid and receive payment for their services on a fee-for-service basis.

Alternatives Considered

Section 4205 of the BBA imposes new requirements that an RHC program must meet. We considered some of the following alternatives to implement these provisions:

''Essential'' RHCs. Since the statute mandates an exception process for essential clinics, we considered using a national utilization test to recognize clinics that are accepting and treating a disproportionately greater number of Medicare, Medicaid, and uninsured patients, compared to other participating RHCs, for the purpose of addressing the situation of RHC clusters. For example, using an aggregate threshold based on the average Medicare, Medicaid, and uninsured utilization rates of participating RHCs, applicants would have to demonstrate that their utilization rates exceed the threshold.

Although the test would be administratively feasible, we concluded, based on our analysis of available Medicare and Medicaid RHC data, that it would not accurately determine ''essential'' clinics at the community level because of the wide variability in

the percentage of services furnished to Medicare and Medicaid patients by RHCs. Despite our rejection of a national utilization test, we are open to suggestions on developing a minimum national percentage, which could be integrated with our proposed major community provider test.

QAPI Program. Because the statute mandates that an RHC have a QAPI program, and appropriate procedures for review of utilization of clinic services, no alternatives for the requirement were considered. However, in the preamble section we have proposed alternative ways of satisfying the ''minimum level requirement'' for the QAPI program and have asked for comments. Among the alternatives that we are considering are the following:

- Require RHCs to engage in an improvement project in each domain annually.
- Require a minimum number of improvement projects in any combination of the domains annually.
- Require a minimum number of projects annually based on patient population.
- Rather than requiring a minimum number of projects, require RHCs to demonstrate to the survey agency what projects they are doing and what progress is being achieved.

Conclusion

We would not expect a significant change in the operations of RHCs generally, nor do we believe a substantial number of small entities in the community, including RHCs and a substantial number of small rural hospitals, would be adversely affected by these proposed changes. The commingling provision of this regulation adds little savings. One reason for this conclusion is that the outpatient visit rate for HCPC 99214 was about $59.00 and the RHC visit was also about $59.00. Therefore, if an adjustment made for lower physician overhead than that of the RHC, the savings would probably be marginal.

Therefore, we are not preparing analyses for either the regulatory impact analysis or section 1102(b) of the Act since we believe that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. We solicit public comments on the extent to which any of the entities would be significantly economically affected by these provisions.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 491

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

1. The authority citation for part 405, subpart X, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 405.2401(b), the definition of ''rural health clinic'' is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.*

* * * * *

Rural health clinic (RHC) means an entity that meets the following criteria:

(1) It does not share space, professional staff, supplies, records, and other resources during RHC hours of operation with a private physician's office or the office of any other health care professional. RHCs physically located on the same campus of a critical access hospital have the option of sharing common staff between the RHC and the emergency room.

(2) It has filed an agreement with HCFA that meets the basic requirements described in § 405.2402 to furnish RHC services under Medicare.

(3) HCFA has determined that the entity meets the requirements of section 1861(aa)(2) of the Act and part 491 of this chapter concerning RHC services and conditions for approval.

* * * * *

3. Section 405.2410 is revised to read as follows:

§ 405.2410 Application of Part B deductible and coinsurance.

(a) *Application of deductible.* (1) Medicare payment for RHC services begins only after the beneficiary has incurred the deductible. Medicare applies the Part B deductible as follows:

(i) If the deductible has been fully met by the beneficiary before the RHC visit, Medicare pays 80 percent of the all-inclusive rate.

(ii) If the deductible has not been fully met by the beneficiary before the visit and the amount of the RHC's reasonable customary charge for the service that is applied to the deductible is—

(A) Less than the all-inclusive rate, the amount applied to the deductible is subtracted from the all-inclusive rate and 80 percent of the remainder, if any, is paid to the RHC; or

(B) Equal to or exceeds the all-inclusive rate, no payment is made to the RHC.

(2) Medicare payment for FQHC services is not subject to the usual Part B deductible.

(b) *Application of coinsurance.* (1) The beneficiary is responsible for the coinsurance amount that cannot exceed 20 percent of the clinic's reasonable customary charge for the covered service.

(2) The beneficiary's deductible and coinsurance liability, with respect to any one service furnished by the RHC may not exceed a reasonable amount customarily charged by the RHC for that particular service.

(3) For any one service furnished by an FQHC, the coinsurance liability may not exceed 20 percent of reasonable amount customarily charged by the FQHC for that particular service.

4. Section 405.2462 is revised to read as follows:

§ 405.2462 Payment for rural health clinic services and Federally qualified health clinic services.

(a) *General rules.* (1) RHCs and FQHCs are paid on the basis of 80 percent of an all-inclusive rate per visit determined by the fiscal intermediary for each beneficiary visit for covered services, subject to an annual payment limit.

(2) The fiscal intermediary determines the all-inclusive rate in accordance with this subpart and instructions issued by HCFA.

(3) If an RHC is an integral and subordinate part of a rural hospital, it can receive an exception to the per-visit payment limit if its rural hospital is not located in a metropolitan statistical area as defined in § 412.62(f)(1)(ii)(A) of this chapter and has fewer than 50 beds as determined by using one of the following methods:

(i) The definition at § 412.105(b) of this chapter.

(ii) The hospital's average daily patient census count of those beds described in § 412.105(b) of this chapter and the hospital meets all of the following conditions:

(A) It is a sole community hospital as determined in accordance with § 412.92 of this chapter.

(B) It is located in an 8-level or 9-level nonmetropolitan county using Urban Influence Codes as defined by the U.S. Department of Agriculture.

(C) It has an average daily patient census that does not exceed 40.

(D) It has significant fluctuations in its average daily census to the extent that the average daily census for 1 or more months is at least 150 percent of the lowest monthly average daily census.

(b) *Payment procedures.* To receive payment, an RHC or FQHC must follow the payment procedures specified in § 410.165 of this chapter.

(c) *Mental health limitation.* Payment for the outpatient treatment of mental, psychoneurotic, or personality disorders is subject to the limitations on payment in § 410.155(c) of this chapter part 491.

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

1. The authority citation for part 491 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

2. Section 491.2 is revised to read as follows:

§ 491.2 Definition of shortage area for RHC purposes.

Shortage area means a geographic area that meets one of the following criteria. It has been:

(a) Designated by the Secretary as an area with shortage of personal health services under section 330(b)(3) of the Public Health Service Act;

(b) Designated by the Secretary as a health professional shortage area under section 332(a)(1)(A) of that Act because of its shortage of primary medical care professionals;

(c) Determined by the Secretary to contain a population group that has a health professional shortage under 332(a)(1)(B) of that Act; or

(d) Designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services.

3. Section 491.3 is revised to read as follows:

§ 491.3 RHC procedures.

(a) *General.* (1) HCFA processes Medicare participation matters for RHCs in accordance with §§ 405.2402 through 405.2404 of this chapter and with the applicable procedures in part 486 of this chapter.

(2) If HCFA approves or disapproves the participation request of a prospective RHC, it notifies the State Medicaid agency for that RHC.

(3) HCFA deems an RHC that is approved for Medicare participation to meet the standards for certification under Medicaid.

(b) *Current designation.* Applicants requesting entrance into the Medicare program as an RHC must be located in a current shortage area, whose designation has been made or updated within the current year or within the previous 3 years.

(c) *Exception process.* (1) An RHC's location fails to satisfy the definition of a shortage area if it is no longer designated by the Secretary or by the chief executive officer of the State as medically underserved.

(2) An existing RHC may apply for an exception from disqualification by submitting a written request to the HCFA regional office within 90 days from the date HCFA notifies it that it is no longer located in a shortage area. The request must contain all information necessary to establish whether an exception is warranted.

(3) Based on its review of an RHC request, and other relevant information, if the HCFA regional office determines that the RHC is essential to the delivery of primary care services that otherwise would not be available in the geographic area served by the RHC, consistent with § 491.5(b), the HCFA regional office may grant a 3-year exception to the RHC.

(4) HCFA terminates an ineligible clinic from participation in the Medicare program as an RHC 90 days after HCFA notifies the clinic of its ineligibility under this section.

4. In § 491.5, paragraphs (d) and (e) are removed, paragraph (f) is redesignated as paragraph (d), and paragraph (b) is revised to read as follows:

§ 491.5 Location of clinic.

* * * * *

(b) *Exceptions.* If HCFA determines that the RHC has established that it is essential to the delivery of primary care that otherwise would not be available in the geographic area served by the RHC, HCFA does not disqualify the RHC approved for Medicare participation if the area in which the RHC is located no longer meets the definition of a shortage area. HCFA makes this determination when the RHC meets one of the following conditions:

(1) *Sole community provider.* The RHC is the only participating primary care provider within 30 minutes travel time. For purposes of this exception, a participating primary care provider means an RHC, an FQHC, or a physician practicing in either general practice, family practice, or general internal medicine that is actively accepting and treating Medicare beneficiaries and Medicaid recipients. RHCs applying for an exception under this test must demonstrate that they accept Medicare (where applicable), Medicaid, and uninsured patients that present themselves for treatment. HCFA uses the following criteria in determining distances corresponding to 30 minutes travel time:

(i) Under normal conditions with primary roads available—20 miles.

(ii) In areas with only secondary roads available—15 miles.

(iii) In flat terrain or in areas connected by interstate highways—30 miles.

(2) *Traditional community provider.* RHC is the only participating RHC within 30 minutes travel time and is actively accepting and treating Medicare, Medicaid, and uninsured patients. HCFA does not grant an exception under this test if the RHC's service area (30 minutes travel time) has two or more participating primary care providers that have been actively treating Medicare beneficiaries and Medicaid recipients for a minimum of 5 years. For purposes of this exception, a primary care provider means an FQHC or a physician practicing in either general practice, family practice, or general internal medicine.

(3) *Major community provider.* The RHC is treating a disproportionately greater share of Medicare, Medicaid, and uninsured patients compared to other participating RHCs that are within 30 minutes travel time.

(4) *Speciality clinic.* The RHC is the sole clinic that provides pediatric or obstetrical/gynecological services and actively serves Medicare (where applicable), Medicaid, and uninsured patients.

(5) *Graduate medical education test.* The RHC is actively part of an approved medical residency training program as defined in §§ 413.86 and 405.2468(f) of this chapter.

* * * * *

4. In § 491.8, paragraph (a)(6) is revised and a new paragraph (d) is added to read as follows:

§ 491.8 Staffing and staff responsibilities.

(a) * * *

(6) A physician, nurse practitioner, physician assistant, nurse-midwife,

clinical social worker, or clinical psychologist is available to furnish patient care services at all times the clinic or center operates. In addition, for RHCs, a nurse practitioner, physician assistant, or certified nurse midwife is available to furnish patient care services at least 50 percent of the time the RHC operates.

* * * * *

(d) *Temporary staffing waiver.* (1) HCFA may grant a temporary waiver of the RHC staffing requirements in paragraphs (a)(1) and (a)(6) of this section for a 1-year period to a qualified RHC, if the RHC requests a waiver and demonstrates that it has been unable, despite reasonable efforts in the previous 90-day period, to hire a nurse midwife, nurse practitioner, or physician assistant to furnish services at least 50 percent of the time the RHC operates.

(2) If the RHC is not in compliance with the provisions waived under paragraph (a)(1) and paragraph (a)(6) of this section at the expiration of the waiver, HCFA terminates the RHC from participation in the Medicare program.

(3) The RHC may submit its request for an additional waiver of staffing requirements under this paragraph no earlier than 6 months after the expiration of the previous waiver.

5. Section 491.11 is revised to read as follows:

§ 491.11 Quality assessment and performance improvement.

The RHC must develop, implement, evaluate, and maintain an effective, ongoing, data-driven quality assessment and performance improvement (QAPI) program. The program must be appropriate for the level of complexity of the RHC's organization and services. The program should achieve, through ongoing measurement and intervention, demonstrable and sustained improvement in significant aspects of clinical care and nonclinical services.

(a) *Standard: Components of a QAPI program.* (1) The RHC's QAPI program must include, but not be limited to, the use of objective measures to evaluate the following:

(i) Clinical effectiveness (for example, appropriateness of care, and prevention).

(ii) Access to care (for example, availability and accessibility of services, cultural competency, and emergency intervention).

(iii) Patient satisfaction.

(iv) Utilization of clinic services, including at least the number of patients served and the volume of services.

(2) Projects that focus on clinical areas should include, at a minimum, high-volume and high-risk services, the care of acute and chronic conditions, and coordination of care.

(3) Projects that focus on nonclinical services should include, at a minimum, criteria to measure convenience and timeliness of available services and grievances and complaints.

(b) *Monitoring performance activities.* For each of the areas listed in paragraph (a)(1) of this section, the RHC must adopt or develop performance criteria that reflect processes of care and RHC operations. The RHC must use those criteria to analyze and track its performance. These performance criteria must be shown to be predictive of desired patient outcomes or be the outcomes themselves.

(c) *Program responsibilities.* The RHC's professional staff, administrative officials, and governing body (if applicable) are responsible for ensuring that quality assessment and performance improvement efforts effectively address identified priorities. They are responsible for identifying or approving those priorities and for the development, implementation, and evaluation of improvement actions.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 1, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: September 2, 1999.

Donna S. Shalala,

Secretary.

[FR Doc. 00–4389 Filed 2–25–00; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 65, No. 39

Monday, February 28, 2000

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

Commission on 21st Century Production Agriculture

AGENCY: Commission on 21st Century Production Agriculture, USDA.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in March of the Commission on 21st Century Production Agriculture. The purpose of this meeting will be to address issues regarding trade. This meeting is open to the public.

PLACE, DATE, AND TIME OF MEETINGS: This meeting will be held from 9 AM EST until 5 PM EST on March 7, 2000 in Room 108–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250–3810.

FOR FURTHER INFORMATION CONTACT: Timothy M. Peters (202–720–4860), Assistant Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: February 15, 2000.

Keith J. Collins,

Chief Economist.

[FR Doc. 00–4031 Filed 2–25–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Duck-Sheriff Project, Forest and Warren Counties, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: Reference is made to our notice of intent to prepare an environmental impact statement for the Duck-Sheriff Project (FR Document. 99–2377 filed 1/27/99) published in the **Federal Register**, Volume 64, No. 21, Tuesday, February 2, 1999, pages 5019–5020.

In accordance with Forest Service Environmental Policy and Procedures handbook 1909.15, part 21.2—*Revision of Notices of Intent,* we are revising the date that the Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and be available for public review and comment on April 1, 2000. Subsequently, the date the final EIS is scheduled to be completed is revised to be July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jim Apgar, Bradford Ranger District at HCI Box 88, Bradford, PA 16701 or by telephone at 814/362–4613.

Dated: February 17, 2000.

John R. Schultz,

Bradford District Ranger.

[FR Doc. 00–4542 Filed 2–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Management Area 11 Analysis; Seeley Lake Ranger District, Lolo National Forest, Missoula and Powell Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environment impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the effects of snowmobiling on specific sites within Management Area 11 of the Lolo National Forest Plan on the Seeley Lake Ranger District.

DATE: Initial comments concerning the scope of the analysis should be received in writing no later than April 13, 2000.

ADDRESSES: Send written comments to Deborah L. R. Austin, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Karen Linford, Seeley Lake Ranger District, HC 31, Box 3200, Seeley Lake, MT 59868, phone 406–677–3920, or email klinford@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Lolo National Forest proposes to amend the Lolo Forest Plan in order to allow snowmobiling in specific sites that are located on the Seeley Lake Ranger District within Management Area 11 (MA 11) as described in the Lolo Forest Plan. The Lolo Forest Plan assigns land to 28 management areas. MA 11 represents large roadless blocks of land distinguished by their natural character and managed to provide for a variety of dispersed recreation activities and for wildlife that are dependent on old-growth forests. The forest plan prohibits motorized access in MA 11. Snowmobiling in portions of MA 11 is being considered in response to public interest in having a variety of dispersed recreation activities.

Public scoping was conducted on this proposal in 1998 and 1999 through public meetings and letters. Issues and comments identified during this earlier scoping will be carried forward and addressed in this analysis. During this process the Forest Service is seeking written comment, particularly addressing possible issues or alternatives. A scoping document will be prepared and mailed to parties known to be interested in the proposed action.

Effects of the proposed action on recreation, the Seeley Lake area economy wildlife, and roadless areas have been identified as four preliminary key issues. The following preliminary alternatives were identified in the original environmental analysis and respond to the key issues: (1) No action alternative—Do not allow any snowmobiling in MA 11, (2) Allow snowmobiling in specific portions of MA 11, (3) Close some areas not in MA 11 to snowmobiling, while opening specific MA 11 areas to snowmobiling, (4) Limit some of the areas open to snowmobiling with seasonal restrictions.

The federal Forest Service is the lead agency for preparing this EIS. They will consult with the United States Fish and Wildlife Service when making this decision. The responsible official who will make the decision regarding snowmobile use in Management Area 11 lands is Deborah L. R. Austin, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula MT 59804. She will decide on this proposal after considering comments, responses, environmental consequences, applicable laws, regulations, and policies. The decision and rational for the decision will be documented in a Record of Decision.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability in the **Federal Register**. The final EIS is scheduled to be completed by October 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency published the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: February 17, 2000.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 00–4541 Filed 2–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Wisconsin

AGENCY: Natural Resources Conservation Service (NRCS) in Wisconsin, US Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Wisconsin for review and comment.

SUMMARY: It is the intention of NRCS in Wisconsin to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Conservation Cover (Code 327). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald A. Baloun, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200 Madison, WI 53719–2726, 608–276–8732. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to dbaloun@wi.nrcs.usda.gov.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Wisconsin will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Wisconsin regarding disposition of those comments and a final determination of change will be made.

Dated: January 12, 2000.

Patricia S. Leavenworth,

State Conservationist, Madison, Wisconsin.

[FR Doc. 00–4560 Filed 2–25–00; 8:45 am]

BILLING CODE 3410–06–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, 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) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2001.

	Period to be reviewed
Antidumping Duty Proceedings:	
Canada: Brass Sheet & Strip A–122–601, Wolverine Tube (Canada), Inc	1/1/99–12/31/99
France: Anhydrous Sodium Metasilicate (ASM) A–427–098, Rhone-Poulenc, S.A	1/1/99–12/31/99
The People's Republic of China: Potassium Permanganate* A–570–001, Guizhou Provincial Chemical I/E Corp. Zunyi Chemical Factory	1/1/99–12/31/99
The Republic of Korea: Top-of-the-Stove Stainless Steel Cooking Ware A–580–601, Chefline Corp., Dae-Lim Trading Co., Ltd., Dong Won Metal Co., Ltd., Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., SaeKwang Aluminum Co., Ltd., Woosung Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., B.Y. Enterprise, Ltd	1/1/99–12/31/99
Countervailing Duty Proceedings: None.	
Suspension Agreements: None.	

*If one of the above named companies does not qualify for a separate rate, all other exporters of potassium permanganate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 17, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration (Group II).

[FR Doc. 00–4622 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–803]

Gray Portland Cement and Cement Clinker From Venezuela; Preliminary Results of Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: gray portland cement and cement clinker from Venezuela.

SUMMARY: On August 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the suspended antidumping duty investigation on gray portland cement and cement clinker from Venezuela (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department determined to conduct a full (240-day) sunset review. As a result of this review, the Department preliminarily determines that termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of a dumping.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho 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) 482–1698 or (202) 482–1560, 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 regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department 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).

Background

On August 2, 1999, the Department initiated a sunset review of the suspended antidumping duty investigation on gray portland cement and cement clinker from Venezuela (64 FR 41915). We invited parties to comment. On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department determined to conduct a full (240-day) sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 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., a suspension agreement in effect on January 1, 1995). Therefore, on November 30, 1999, the Department determined that the sunset review of the suspended investigation on gray portland cement and cement clinker from Venezuela is extraordinarily complicated and extended the time limit for completion of the preliminary results of this review until not later than February 18, 2000, in accordance with section 751(c)(5)(B) of the Act. [1]

Scope of Review

The products covered by this order include gray portland cement and cement clinker (''portland cement'') from Venezuela. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Oil well cement is also included within the scope of the investigation. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as other hydraulic cements. The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses and rebuttals by parties to this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 18, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the suspended investigation were terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/, under the heading Venezuela. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Vencemos	50.02
Caribe	49.20
All others	49.26

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 April 19, 2000. Interested parties may submit case briefs no later than April 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 April 17, 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 June 27, 2000.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: February 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4616 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews, 64 FR 66879 (November 30, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Cement Clinker From Mexico; Preliminary Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: gray portland cement and cement clinker from Mexico.

SUMMARY: On August 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on gray portland cement and cement clinker from Mexico (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho 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) 482–1698 or (202) 482–1560, 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 regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department 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).

Background

On August 2, 1999, the Department initiated a sunset review of the antidumping duty order on gray portland cement and cement clinker from Mexico (64 FR 41915). We invited parties to comment. On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 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). This antidumping duty order on cement is a transition order. Therefore, on November 30, 1999, the Department determined that the sunset review of the antidumping duty order on gray portland cement from Mexico is extraordinarily complicated and extended the time limit for completion of the preliminary result of this review until not later than February 18, 2000, in accordance with section 751(c)(5)(B) of the Act. [1]

Scope of Review

The products covered by this order include gray portland cement and clinker (''portland cement'') from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as other hydraulic cements. In its only scope ruling, the Department determined that masonry cement is not within the scope of the order. [2] The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses and rebuttals by parties to this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 18, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/, under the heading Mexico. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
CEMEX	95.44
Apasco	53.26
Cementos Hildago, S.C.L.	3.69
All others	59.91

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 April 19, 2000. Interested parties may submit case briefs no later than April 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 April 17, 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 June 27, 2000.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: February 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4617 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews, 64 FR 66879 (November 30, 1999).

[2] See Notice of Scope Rulings, 61 FR 18381 (April 25, 1996). In their rebuttal comments (at 24–26), the domestic interested parties argue that the aforementioned scope ruling is only specific to Cementos de Chihuahua, S.A. de C.V. (''CDC''), and Mexcement, Inc. The domestic interested parties argue that masonry cement exported to the United States by CEMEX and Apasco should not be excluded from the scope. However, in Final Scope Ruling—Antidumping Duty Order on Gray Portland Cement and Clinker from Mexico (A–201–802) (January 18, 1996, memorandum from Holly A. Kuga, Director Office of Antidumping Compliance, to Joseph A Spetrini, Deputy Assistant Secretary for Compliance), the Department determined that masonry cement is excluded from the scope of the order based on the chemical characteristics and end-use of the product and not on specific manufacturers. Specifically, the Department excluded the masonry cement because its uses (in mortar for masonry construction for joining bricks and blocks) do not fall within the scope of the order (as a primary component of concrete). In addition, the petitioners made a joint submission in which they agreed that masonry cement is excluded from the scope so long as masonry cement could not be used to produce concrete. Finally, the Final Scope Ruling concerns the subject merchandise from Mexico, not just that of CDC or Mexcement. Consequently, the Department excluded all masonry cement from Mexico, regardless of the company at which the masonry cement originated, from the scope of the order.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–605)(A–580–507]

Continuation of Antidumping Duty Orders: Malleable Cast Iron Pipe Fittings From Japan and Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty orders: malleable cast iron pipe fittings from Japan and Korea.

SUMMARY: On August 5, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea is likely to lead to continuation or recurrence of dumping (64 FR 42665 (August 5, 1999)). On February 16, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 7891). Therefore, in accordance with CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea.

FOR FURTHER INFORMATION CONTACT : Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 28, 2000.

Background

On January 4, 1999, the Department initiated and the Commission instituted sunset reviews (64 FR 364 and 64 FR 369, respectively) of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea pursuant to section 751(c) of the Act. As a result of these reviews the Department found that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margin likely to prevail were the orders to be revoked (*see Final Results of Expedited Sunset Reviews: Malleable Cast Iron Pipe Fittings from Japan and South Korea,* 64 FR 42665 (August 5, 1999)).

On February 16, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Malleable Cast Iron Pipe Fittings from Japan and South Korea,* 65 FR 7891 (February 16, 2000) and USITC Publication 3274, Inv. Nos. 731–TA–374 (REVIEW), and 731–TA–279 (REVIEW) (February 2000).

Scope

Japan and Korea

Imports covered by these orders are shipments of certain malleable cast iron pipe fittings, other than grooved and alloy cast iron, from Japan and Korea. In the original orders, the merchandise was classified in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. The merchandise is currently classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation.

As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than January 2005.

Dated: February 22, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4620 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[(A–351–505)(A–583–507)(A–549–601)]

Revocation of Antidumping Duty Orders: Malleable Cast Iron Pipe Fittings From Brazil, Taiwan, and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty orders: Malleable cast iron pipe fittings from Brazil, Taiwan, and Thailand.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil (A–351–505), Taiwan (A–583–507), and Thailand (A–549–601) is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 7891 (February 16, 2000)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce (''the Department'') is revoking the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Taiwan, and Thailand. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2) the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On January 4, 1999, the Department initiated and the Commission instituted sunset reviews (64 FR 364 and 64 FR 367, respectively) of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Taiwan, and Thailand pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the orders to be revoked (*see Final Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings from Brazil,* 64 FR 66886 (November 30, 1999), Final Results of Expedited Sunset Review: Malleable Cast Iron Pipe Fittings from Taiwan, 64 FR 42665 (August 5, 1999), and *Final Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Thailand,* 64 FR 66884 (November 30,1999)).

On February 16, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Taiwan, and Thailand would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Malleable Cast Iron Pipe Fittings From Brazil, Taiwan, and Thailand,* 65 FR 7891 (February 16, 2000), and USITC Publication 3274, Inv. Nos. 731–TA–278 (REVIEW), 731–TA–280 (REVIEW), and 731–TA–348 (REVIEW) (February 2000)).

Scope

Brazil

Imports covered by this order are shipments of certain malleable cast iron pipe fittings, other than grooved from Brazil. In the original antidumping duty orders, these products were classifiable in the Tariff Schedules of the United States, Annotated, (''TSUSA'') under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule (''HTS'').

Taiwan

Imports covered by this order are shipments of certain malleable cast iron pipe fitting, other than grooved from Taiwan. In the original antidumping duty order, this product was classifiable in the TSUSA under item numbers 610.7000 and 610.7400. This product is currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the HTS.

Thailand

Imports covered by this order are malleable cast iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, of cast iron other than alloy cast iron, as provided for in items 610.7000 and 610.7400 of the TSUSA. The products covered by this order are currently classified under the Harmonized Trade Schedule (''HTS'') as item number 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80.

The HTS item numbers for these antidumping duty orders are provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of these antidumping duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Taiwan, and Thailand. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), these revocations are effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposits rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: February 22, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4621 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–844–802]

Uranium From Uzbekistan; Preliminary Results of Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Uranium from Uzbekistan.

SUMMARY: On August 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty suspension agreement on uranium from Uzbekistan (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty suspension agreement would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: February 28, 2000.

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 and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

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 in CFR Part 351 (1999) 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'').

Background

On August 2, 1999, the Department initiated a sunset review of the antidumping duty suspension agreement on uranium from Uzbekistan (64 FR 41915), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of domestic interested parties, the Ad Hoc Committee, [1] USEC, Inc. and its subsidiary, the United States Enrichment Corporation (collectively, ''USEC''), and Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO (''PACE''), within the applicable deadline (August 17, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* On August 27, 1999, we received a notice of intent to participate on behalf of AHUG.[2] The Ad Hoc Committee claimed interested-party status under section 771(9)(C) of the Act, as the only U.S. producers of a domestic like product; AHUG claimed interested-party status as industrial users of uranium; [3] PACE claimed interested-party status as a union representing workers of two domestic gaseous diffusion plants that produce uranium products.

The Ad Hoc Committee claims that, along with the Oil, Chemical and Atomic Workers International Union, it was the original petitioner in the suspended antidumping investigation and resulting suspension agreement under review (*see* September 1, 1999, Substantive Response of the Ad Hoc Committee at 4). AHUG did not submit a summary of its past participation in the proceeding.

On September 1, 1999, the Government of Uzbekistan (''GOU'') and Navoi Mining and Metallurgical Combinat (''Navoi'') notified the Department of their intent to participate in the review. GOU 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; Navoi is an

[1] The Ad Hoc Committee consists of Rio Algom Mining Corporation, Uranium Resources Inc., and Cotter Corporation.

[2] AHUG consists of Ameren UE, Baltimore Gas and Electric Co., Carolina Power and Light Co., Commonwealth Edison Co., Consumers Energy, Duke Power Co., Entergy Services, Inc., FirstEnergy Nuclear Operating Co., Florida Power and Light Co., Northern States Power Co., PECO Energy Co., Southern Nuclear Operating Co., Texas Utilities Electric Co., and Virginia Power.

[3] The Department notes that, although industrial users are allowed to participate in sunset reviews, they are not considered ''interested parties'' as defined in the statute and regulations. *See* section 771(9) and 777(h) of the Act, and 19 CFR 351.32.

interested party pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of subject merchandise. GOU and Navoi note that they actively participated in the proceedings in July 1992, once they became aware of the action brought by the United States against uranium from Uzbekistan.

On September 1, 1999, we received complete substantive responses from the above domestic and respondent interested parties, and industrial users, with the exception of USEC and PACE,[4] within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On September 2, 1999, we received a request for an extension to file rebuttal comments from the AHUG.[5] Pursuant to 19 CFR 351.302(b) (1999), the Department extended the deadline for all participants eligible to file rebuttal comments until September 13, 1999.[6] On September 14, 1999, pursuant to 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct a full (240-day) sunset review of this suspension agreement.[7]

In accordance with section 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). Accordingly, on November 22, 1999, the Department determined that the sunset review of the uranium investigation is extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than February 18, 2000, in accordance with section 751(c)(5)(B) of the Act.[8]

Scope of Review

The merchandise covered in the June 3, 1992, preliminary determination of the suspended investigation includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U^{235} and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}; and any other forms of uranium within the same class or kind. According to the Department's preliminary determination, the uranium subject to these investigations is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[9] In addition, the Department preliminarily determined that highly-enriched uranium (''HEU'') is not covered within the scope of the investigation, and that the subject merchandise constitutes a single class or kind of merchandise.

On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Uzbekistan and an amendment of the preliminary determination.[10] The suspension agreement (the ''Agreement'') provided that uranium ore from Uzbekistan that is milled into U_3O^8 and/or converted into UF^6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Uzbekistan and is subject to the terms of the Agreement.[11] Further, uranium enriched in U^{235} in another country prior to direct and/or indirect importation into the United States is not considered uranium from Uzbekistan and is not subject to the terms of this Agreement.[12] In this Agreement, imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are classifiable under HTSUS subheadings 2844.10.10 and 2844.44.10.50. Although the above HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

The Department determined in the amendment that HEU and any other forms of uranium within the same class or kind are included in the scope of the investigations.[13]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 18, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspension investigation terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading ''Uzbekistan.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

We determine that revocation of the antidumping duty suspension agreement on uranium from Uzbekistan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporters	Margin (percent)
All Uzbek manufacturers/exporters	115.82

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 April 18, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than April 10, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which

[4] *See* September 9, 1999, Letter to the Secretary from Philip H. Potter withdrawing PACE from participation in the sunset reviews of uranium from Russia, Uzbekistan, and Ukraine.

[5] *See* September 2, 1999, *Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Uranium from Russia, Uzbekistan, and Ukraine* from Shaw Pittman to the Office of Policy.

[6] *See* September 3, 1999, Letter from Jeffrey A. May, Director of the Office of Policy to Nancy A. Fischer of Shaw Pittman.

[7] *See* May 24, 1999, Memoranda for Jeffrey A. May, Re: Sunset Reviews of Uranium from Russia and Uzbekistan: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[8] *See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews*, 64 FR 66879 (November 30, 1999).

[9] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23381, 23382 (June 3, 1992).

[10] *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[11] *Id.* at 49255.

[12] *Id.*

[13] *Id.* at 49221.

must be limited to issues raised in the case briefs, may be filed not later than April 14, 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, no later than June 27, 2000.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4618 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Uranium From Russia; Preliminary Results of Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Uranium from Russia.

SUMMARY: On August 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty suspension agreement on uranium from Russia (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty suspension agreement would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: February 28, 2000.

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 and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

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 in CFR Part 351 (1999) 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*'').

Background

On August 2, 1999, the Department initiated a sunset review of the antidumping duty suspension agreement on uranium from Russia (64 FR 41915), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of domestic interested parties, the Ad Hoc Committee,[1] USEC, Inc. and its subsidiary, the United States Enrichment Corporation (collectively, ''USEC''), and Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO (''PACE''), within the applicable deadline (August 17, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On August 27, 1999, we received a notice of intent to participate on behalf of AHUG.[2] The Ad Hoc Committee claimed interested-party status under section 771(9)(C) of the Act, as the only U.S. producers of a domestic like product; the AHUG claimed interested-party status as industrial users of uranium;[3] PACE claimed interested-party status as a union representing workers of two domestic gaseous diffusion plants that produce uranium products.

The Ad Hoc Committee claims that, along with the Oil, Chemical and Atomic Workers International Union, it was the original petitioner in the suspended antidumping investigation and resulting suspension agreement under review (*see* September 1, 1999, Substantive Response of the Ad Hoc Committee at 4).

USEC notes that it was created, in 1993, as a U.S. government-owned company to operate the enrichment facilities then owned by the Department of Energy (''DOE'') and privatized in July 1998. While USEC was not in existence when the petition in the original proceeding was filed in 1991, the DOE participated in the original proceeding and provided comments regarding the implementation of the original Russian suspension agreement. After its creation, USEC commented on subsequent amendments to the agreement and, on March 13, 1998, requested that the Department determine that enriched uranium derived from the re-enrichment of depleted uranium tails in Russia should be treated as Russian-origin material covered by the Russian suspension agreement (*see* September 1, 1999, Substantive Response of USEC at 7). On August 6, 1999, USEC requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the Russian suspension agreement. *Id.*

AHUG did not submit a summary of their past participation in the proceedings.

On September 1, 1999, the Ministry of the Russian Federation for Atomic Energy (''Minatom''), AO Technsnabexport, (''Tenex''), and Globe Nuclear Services and Supply GNSS, Limited (''GNSS'') (collectively, ''respondent interested parties'') notified the Department of their intent to participate in the review. Minatom 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; Tenex claims interested-party status pursuant to section 771(9)(A) of the Act as the exclusive producer and exporter; and GNSS imports into the United States from Russia.

Minatom and Tenex claim that they have been involved in all aspects of the suspended investigation through their compliance with the terms of the suspension agreement and through ongoing consultations with the United States. GNSS claims that it has participated as an importer by reporting sales of the subject merchandise under

[1] The Ad Hoc Committee consists of Rio Algom Mining Corporation, Uranium Resources Inc., and Cotter Corporation.

[2] The AHUG consists of Ameren UE, Baltimore Gas and Electric Co., Carolina Power and Light Co., Commonwealth Edison Co., Consumers Energy, Duke Power Co., Entergy Services, Inc., FirstEnergy Nuclear Operating Co., Florida Power and Light Co., Northern States Power Co., PECO Energy Co., Southern Nuclear Operating Co., Texas Utilities Electric Co., and Virginia Power.

[3] The Department notes that, although industrial users are allowed to participate in sunset reviews, they are not considered ''interested parties'' as defined in the statute and regulations. *See* section 771(9) and 771(h) of the Act, and 19 CFR 351.312.

the agreement and by submitting comments to the Department on various aspects of the suspended investigation.

On September 1, 1999, we received complete substantive responses from the above domestic and respondent interested parties, and industrial users with the exception of PACE,[4] within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On September 2, 1999, we received a request for an extension to file rebuttal comments from AHUG.[5] Pursuant to 19 CFR 351.302(b)(1999), the Department extended the deadline for all participants eligible to file rebuttal comments until September 13, 1999.[6] On September 14, 1999, pursuant to 19 CFR 351.218 (e)(1)(ii)(A), the Department determined to conduct a full (240-day) sunset review of this suspension agreement.[7]

In accordance with section 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). Accordingly, on November 22, 1999, the Department determined that the sunset review of the uranium investigation is extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than February 18, 2000, in accordance with section 751(c)(5)(B) of the Act.[8]

Scope of Review

The merchandise covered in the June 3, 1992, preliminary determination of the suspension investigation includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U^{235} and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}; and any other forms of uranium within the same class or kind. According to the Department's preliminary determination, the uranium subject to these investigations is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[9] Although the above HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive. In addition, the Department preliminarily determined that highly-enriched uranium (''HEU'') is not covered within the scope of the investigation, and that the subject merchandise constitutes a single class or kind of merchandise.

On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Russia and an amendment of the preliminary determination.[10]

The suspension agreement (the ''Agreement'') provided that uranium ore from Russia that is milled into U_3O_8 and/or converted into UF_6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Agreement.[11] Further, uranium enriched in U^{235} or compounds of uranium enriched in Russia are covered by the Agreement, regardless of their subsequent modification or blending. Uranium enriched in U^{235} in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Agreement.[12]

HEU is within the scope of this investigation, and HEU is covered by this Agreement. For the purpose of this Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235. Imports of uranium ores and concentrates, natural uranium compounds, and all other forms of enriched uranium are currently classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are currently classifiable under HTSUS subheadings 2844.10.10 and 2844.10.50. *Id.* Although the above HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation (collectively, ''USEC'') requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakstan at the time of the dissolution of the Soviet Union is within the scope of the Russian suspension agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department at this time.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated February 18, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspension investigation terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn/, under the heading ''Russia.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

We determine that revocation of the antidumping duty suspension agreement on uranium from Russia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

[4] *See* September 9, 1999, Letter to the Secretary from Philip H. Potter withdrawing PACE from participation in the sunset reviews of uranium from Russia, Uzbekistan, and Ukraine.

[5] *See* September 2, 1999, *Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Uranium from Russia, Uzbekistan, and Ukraine* from Shaw Pittman to the Office of Policy.

[6] *See* September 3, 1999, Letter from Jeffrey A. May, Director of the Office of Policy to Nancy A. Fischer of Shaw Pittman.

[7] *See* May 24, 1999, Memoranda for Jeffrey A. May, Re: Sunset Reviews of Uranium from Russia and Uzbekistan: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[8] *See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews*, 64 FR 66879 (November 30, 1999).

[9] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

[10] *See Antidumping; Uranium from Kazakhstan, Kyrgyszstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[11] *Id.* at 49235.

[12] *Id.*

Manufacturer/exporters	Margin (percent)
All Russian manufacturers/exporters	115.82

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 April 19, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than April 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 April 12, 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, no later than June 27, 2000.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–4619 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the New Hampshire and Rhode Island Coastal Managements Programs.

These evaluations will be conducted pursuant to Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, and regulations at 15 CFR Part 928. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives enumerated in the CZMA, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. A public meeting will be held as part of the site visit.

Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

The New Hampshire Coastal Management Program site visit will be from March 20–24, 2000. A public meeting will be held Tuesday, March 21, 2000, at 7 p.m., in the Urban Forestry Center Meeting Barn Room, 45 Elwin Road, Portsmouth, New Hampshire.

The Rhode Island Coastal Resources Management Program site visit will be from April 17–21, 2000. A public meeting will be held Wednesday, April 19, 2000, at 7 p.m., in Conference Room A, 2nd floor, RI Department of Administration, One Capitol Hill, Providence, Rhode Island.

The State will issue notice of the public meeting in a local newspaper at least 45 days prior to the public meeting, and will issue other timely notice as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding these programs are encouraged and will be accepted until 15 days after the date of the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, Extension 114.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–4627 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021700E]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the IFQ Program

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

ACTION: Notice of fishing season dates.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 15, 2000, and will close 1200 hrs, A.l.t., November 15, 2000. This period is the same as the IFQ season for Pacific halibut announced by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is announced by publication in the **Federal Register**.

DATES: Effective 1200 hrs, A.l.t., March 15, 2000, until 1200 hrs, A.l.t., November 15, 2000.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory areas defined in § 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375), and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the

sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ program will open 1200 hrs, A.l.t., March 15, 2000, and will close 1200 hrs, A.l.t., November 15, 2000. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season is announced by publication in the **Federal Register**.

Dated: February 22, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–4626 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021600D]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on March 14–16, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Villa Parguera Hotel, 304 St., Km. 3.3, La Parguera, Lajas, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 100th regular public meeting to discuss the items contained in the following agenda:

Conflict of Interest Presentation

Essential Fish Habitat

-Side Scan Sonar Work, La Parguera

-Fishing Gear Impact Study La Parguera

Reef Fish Fishery Management Plan (FMP)

-Gear Impact Update

Queen Conch FMP

-Option Paper for Amendment Number 1

Coastal Pelagics FMP (Wahoo/Dolphin)

-Committees Meetings Report

Enforcement

-Federal Government

-Puerto Rico

-U.S. Virgin Islands

Administrative Committee Recommendations

Meetings Attended by Council Members and Staff

Other Business

Next Council Meeting

The Council will convene on Wednesday, March 15, 2000, from 9:00 a.m. to 5:00 p.m., through Thursday, March 16, 2000, from 9:00 a.m. until noon, approximately.

The Administrative Committee will meet on Tuesday, March 14, 2000, from 2:00 p.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

The meetings are open to the public, and will be conducted in English. However, simultaneous interpretation (Spanish-English) will be available during the Council meeting (March 15–16, 2000). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: February 22, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–4625 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021700C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a workshop to study the productivity of West Coast groundfish species and to evaluate the Council's harvest rate (F) policy.

DATES: The meeting will begin on Monday, March 20, 2000 at 1 p.m. and end on Friday, March 24, 2000. On Tuesday, March 21, 2000; Wednesday, March 22, 2000; Thursday, March 23, 2000, and Friday, March 24, 2000, the workshop will convene at 8:00 a.m. and will continue until business for the day is completed. An opportunity for public comment will be provided each day at 4 p.m.

ADDRESSES: The meeting will be held in building nine (9) at NMFS 7600 Sand Point Way NE., Seattle, WA 98115–0070.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to review past work on spawning potential per recruit (SPR) harvest rate proxies (*e.g.,* F_{35}); determine their appropriateness with respect to West Coast groundfish stocks; and, if appropriate, recommend changes to existing policies. Based on information presented at the workshop, a panel of scientists will write a report to the Council that summarizes the results of the workshop and makes specific recommendations regarding the formulation of default harvest rate policies for West Coast groundfish.

The workshop will be divided into three phases. During the first half-day

(March 20, 2000) participants will review the Council's groundfish harvest policy history, as well as published material pertinent to the specific harvest rate proxies that have been used. During the second and third days of the meeting (March 21–22, 2000), presentations will be made that will contribute to the overall understanding of West Coast groundfish productivity and the determination of appropriate harvest rates; particularly, the estimation of F_{MSY} and/or its proxy. The last phase of the workshop (March 23–24, 2000) will be devoted to consensus building and report writing by the panel. Active discussion of research results following each presentation will be promoted, as will on-site analyses designed to explore different model assumptions and/or configurations.

Although non-emergency issues not contained in this notice may arise during the workshop, those issues will not be the subject of formal SSC action during this meeting. SSC action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SSC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 22, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–4624 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

February 23, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: February 29, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used and special carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54872, published on October 8, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 23, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on February 29, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	2,328,744 dozen.
342/642	637,294 dozen.
345	162,992 dozen.
347/348	2,232,723 dozen.
351/651	695,098 dozen.
361	2,122,231 numbers.
433	3,253 dozen.
443	39,330 numbers.
638/639	2,306,860 dozen.
647/648	1,255,169 dozen.
Group II	
200–227, 300–326, 332, 359–O [2], 360, 362, 363, 369–O [3], 400–414, 434–438, 440, 442, 444, 448, 459pt. [4], 464, 469pt. [5], 600–607, 613–629, 644, 659–O [6], 666, 669–O [7], 670–O [8], 831, 833–838, 840–846, 850–858 and 859pt. [9], as a group.	206,848,958 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (Category 359pt.).

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–4612 Filed 2–25–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Appointment to the Board of Advisors and Board of Managers of Army Emergency Relief

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Army Chief of Staff (General Eric K. Shinseki and his successors) has been authorized to serve as Chairman of the Board of Advisors of Army Emergency Relief. The Army Vice Chief of Staff (General John M. Keane and his successors) and Major General Charles W. Thomas have been authorized to serve as members of the Army Emergency Relief Board of Managers.

FOR FURTHER INFORMATION CONTACT: Major Nancy Waldron, Army Standards of Conduct Office, (703) 588–6704.

SUPPLEMENTARY INFORMATION: The Joint Ethics Regulation, DoDD 5500.7–R, allows the Secretary of the Army, with the concurrence of the Department of Defense General Counsel, to authorize employees to participate in their official capacities in the management of certain non-federal entities. 10 U.S.C. 1033(b) and 1589(b). Army Emergency Relief has been designated as a non-federal entity that employees may serve without compensation as directors, officers, or trustees, pursuant to the regulation. The required authorization and concurrence have been obtained.

Robert L. Swann,

Chief, Standards of Conduct Office.

[FR Doc. 00–4645 Filed 2–25–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Appointment to Serve on the Boards of Directors of Conference USA and the Patriot League

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Superintendent of the US Army Military Academy (Lieutenant General Daniel W. Christman and his successors) has been authorized to serve in his official capacity on the boards of directors of Conference USA and the Patriot League.

FOR FURTHER INFORMATION CONTACT: Major Nancy Waldron, Army Standards of Conduct Office, (703) 588–6704.

SUPPLEMENTARY INFORMATION: The Joint Ethics Regulation, DoDD 5500.7–R, allows the Secretary of the Army, with the concurrence of the Department of Defense General Counsel, to authorize employees to participate in their official capacities in the management of certain non-federal entities. 10 U.S.C. 1033. Conference USA and the Patriot League are groups of universities formed to promote competitive athletics while maintaining a focus on academics at their institutions. They have been designated as non-federal entities that employees may serve without compensation as directors, officers, or trustees, pursuant to the regulation. The required authorization and concurrence have been obtained.

Robert L. Swann,

Chief, Standards of Conduct Office.

[FR Doc. 00–4646 Filed 2–25–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 8, 9, 10, and 11, 2000.

Place: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

Time: 8:30 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant staff and faculty; table and examine online College issues; assess resident and distance education programs, self-study techniques, and plans for the Process for Accreditation of Joint Education (PAGE) 2000; assemble a working group of the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Thomas D. Scott, Box 524, U.S. Army War College, Carlisle Barracks, PA 17013 or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Thomas D. Scott at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–4643 Filed 2–25–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Grant of General Availability of Exclusive, or Partially Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under U.S. Patent application serial number 09/178,503, filed October 26, 1998 entitled Telescoping Weir. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

DATE: Applications for an exclusive, partially exclusive license must be submitted on or before April 28, 2000.

ADDRESSES: United States Army Engineer Research and Development Center, Waterways Experiment Station, ATTN: CEERD–FV–T (Mr. Phillip Stewart), 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Stewart, ATTN: CEERD–OP–Z, (601) 634–4113, FAX (601) 634–4180, Internet *phillip.stewart@erdc.usace.army.mil* or, for technical information, Mr. Norman R. Francingues, ATTN: CEERD–E–P, (601) 634–3703, FAX (601) 634–4263, Internet francin@wes.army.mil; Environmental Laboratory, U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: This invention regulates the release of discharge water from dredged material containment sites through the use of a circular weir. It selectively releases only the relatively clean water while leaving behind the contaminated portion. The weir includes a foundation that is anchored to the bottom of the body of water and connected with a discharge pipe, a cylindrical telescoping portion connected with the discharge pipe and extending upwardly from the foundation and terminating adjacent to the surface of the body of water, and a set of mechanical screw jacks for selectively extending and retracting the upper end of the telescoping portion above and below the water surface in order to selectively drain a top layer of clean decant water therefrom.

Each interested party is requested to submit an application for an exclusive or partially exclusive license within 60 days of publication of this notice in the **Federal Register**. The applications will be evaluated using the following criteria:

1. Demonstrated ability to manufacture and/or market the patented technology.
2. Presentation of applicant's plan to manufacture and/or market products/system based on the patented technology.
3. Time required to bring the item to market.
4. License fee and/or royalty payment offered.

Richard L. Frenette,

Counsel.

[FR Doc. 00–4644 Filed 2–25–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 28, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 23, 2000.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Guidance to SEAs on Procedures for Adjusting ED-Determined Title I Allocations to Local Educational Agencies (LEAs).

Abstract: Guidance for State educational agencies (SEAs) on procedures for adjusting ED-determined Title I Basic and Concentration Grants allocations to local educational agencies (LEAs) to account for newly created LEAs and LEA boundary changes.

Additional Information: Failure to issue this guidance document would mean that SEAs have no guidance from ED on procedures to follow in determining final allocations for the more than 800 LEAs not on the Census list that are eligible for Title I. SEAs must make final allocations for all LEAs and notify school districts of the Title I amounts they will receive for school year 1999–2000 in April and May.

Frequency: Guidance issued on as needed basis.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 2,080.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements, please contact Kathy Axt at 703–426–9692. 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. 00–4673 Filed 2–25–00; 8:45 am]

BILLING CODE 4000–01–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 March 29, 2000.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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: February 24, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Application for a Comprehensive School Reform Educational Research Grant.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or households; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 80; Burden Hours: 9,600.

Abstract: This information collection will allow applicants to compete for the $9 million appropriated to accomplish expanded research on comprehensive school reform. These funds will be used to fund a set of related studies that will focus on the effectiveness of externally developed school reform models in improving student performance, and the strengths and limitations of reform strategies using large-scale implementation of externally developed models in promoting student achievement. The respondents will be experts in comprehensive school reform research from institutions of higher education, state and local education agencies, private organizations, and individual researchers.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). 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. 00–4759 Filed 2–25–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Impact Aid Program

AGENCY: Department of Education.

ACTION: Notice reopening the application deadline date for Impact Aid fiscal year (FY) 2000 section 8002 grants and FY 2001 section 8003 grants.

SUMMARY: The Secretary reopens the deadline date for the submission of applications for Impact Aid FY 2000 section 8002 grants and FY 2001 section 8003 grants until February 29, 2000. Impact Aid regulations at 34 CFR 222.3 specify that the annual application deadline date is January 31. The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants adversely affected by severe inclement weather conditions throughout the Nation.

EFFECTIVE DATE: This notice reopening the application deadline date to February 29, 2000, for Impact Aid FY 2000 section 8002 grants and FY 2001 section 8003 grants is effective February 28, 2000.

DEADLINE DATE FOR TRANSMITTAL OF APPLICATIONS: February 29, 2000. The Secretary will also accept and approve for payment any otherwise approvable application from applicants that is received on or before the 60th calendar day after February 29, 2000, which is April 29 or its next business day, May 1, 2000. However, any applicant meeting the conditions of the preceding sentence will have its payment reduced by 10 percent of the amount it would have received had its application been filed by February 29, 2000.

DEADLINE DATE FOR INTERGOVERNMENTAL REVIEW: In accordance with 34 CFR 222.3(c), the deadline date for the transmittal of comments on the applications by State educational agencies is March 15, 2000.

FOR APPLICATIONS OR INFORMATION CONTACT: Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6244. Telephone: (202) 260–3858. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary reopens the deadline for potential applicants under sections 8002 and 8003 for Impact Aid assistance for the respective years specified. Section 8003 applicants should use a survey date for their student counts that is at least three days after the start of the 1999–2000 school year and before the reopened deadline of February 29, 2000.

Waiver of rulemaking. Currently, 34 CFR 222.3, which establishes the annual January 31 Impact Aid application deadline, is in effect. However, applicants may not have sufficient time to gather data and comply with that annual deadline because they were adversely affected by severe weather conditions. Because this amendment makes a procedural change for this year only as a result of unique circumstances for potential applicants, proposed rulemaking is not required under 5 U.S.C. 553(b)(A). In addition, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on this one-time suspension of the regulatory deadline date is impracticable, unnecessary, and contrary to the public interest.

Program Authority: 20 U.S.C. 7705.

Electronic Access to This Document

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Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.041)

Dated: February 23, 2000.

Richard W. Riley,

Secretary of Education.

[FR Doc. 00–4760 Filed 2–25–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. The purposes of this meeting are to discuss the Presidential Executive Order 13096 on American Indian and Alaska Native Education, and to discuss the reauthorization of programs under the Elementary and Secondary Education Act of 1965 (ESEA), of which the Title IX Indian Education Program is included. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

Executive Order 13096 was signed by President Clinton on August 6, 1998. The order committed the Federal Government to developing a comprehensive response to the national need for better education for American Indian and Alaska Native people. Particular attention is to be provided in the areas of reading, mathematics and science, improving postsecondary attendance and completion rates, and ensuring that Indian students have access to strong, safe, and drug-free school environments. Specific long-term strategies for meeting these objectives are being developed by a Federal Interagency Task Force.

DATES AND TIMES: Holiday Inn on the Hill, March 13, 2000, 9 a.m.–5 p.m. and March 14, 2000, 9 a.m.–4:30 p.m.

ADDRESSES: 415 New Jersey Avenue NW, Washington, DC. Phone: (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone: (202) 260–3774; Fax: (202) 260–7779.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is a presidentially appointed advisory council on Indian education established under Section 9151 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7871). The Council advises the Secretary of Education and the Congress on funding and administration of programs with respect to which the Secretary has jurisdiction and that include Indian children and adults as participants or in which those children and adults benefit. The Council also makes recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs. The meeting of the Council is open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Council for its consideration. Written statements should be submitted to the address listed above.

A summary of the proceedings and related matters that are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting, and are available for public inspection at the Office of Elementary and Secondary Education, U. S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202 from the hours of 8:30 a.m. to 5 p.m.

Michael Cohen,

Assistant Secretary, Office of Elementary and Secondary Education.

The National Advisory Council on Indian Education—March 13–14, 2000

The Holiday Inn on the Hill, 415 New Jersey Ave. NW, Washington, DC, 202–638–1616

Monday, March 13, 2000

9:00 a.m.
Roll Call
Introductions
Review Agenda and Purpose of Meeting
10:00 a.m.
Presidential Executive Order 13096 on American Indian and Alaska Native Education
Update on ESEA Reauthorization
Executive Order Research Agenda
12:00 noon
Lunch Recess
1:15–4:00 pm
Draft NACIE Charter and Work Plan
Annual Report Review
OIE Staff Updates
4:30 p.m.
Summarize Discussion & Set Agenda for Next Day

Tuesday, March 14, 2000

9:00 a.m.
Call to Order
9:15–10:30
Continue Business Meeting
10:30–12:00
Open Meeting on Reauthorization of Indian Education Programs
Executive Order 13906
12:00–1:00
Lunch
1:00–4:00
Open Hearing on Indian Education Concerns from Field
4:00–4:30
Summarize Meeting Accomplishments
4:30 p.m.
Adjourn NACIE Meeting

[FR Doc. 00–4011 Filed 2–25–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 00–08: Integrated Assessment of Global Climate Change Research

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for the Integrated Assessment of Global Climate Change Program. This notice is a follow on to five previous notices published in the **Federal Register**. The program funds research that contributes to integrated assessment of global climate change, including specialized topics to improve specific features. The research program supports the Department's Global Change Research Program, the U.S. Global Change Research Program, and the Administration's goals to understand, model, and assess the effects of increasing greenhouse gas levels in the atmosphere on climate and within that framework to evaluate the options to mitigate the long term rise in greenhouse gases.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is suggested to allow time for meaningful dialogue.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., April 24, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000 and early Fiscal Year 2001.

ADDRESSES: Preapplications, referencing Program Notice 00–08, should be sent E-mail to john.houghton@science.doe.gov.

Formal applications, referencing Program Notice 00–08, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–08. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: john.houghton@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–08 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: Integrated assessment of climate change is defined here as the analysis, including costs and benefits, of climate change from the cause, such as greenhouse gas emissions, through impacts, such as changed energy requirements for space conditioning due to temperature changes. Integrated assessment is sometimes, but not always, implemented as a computer model. A description of integrated assessment may be found in Chapter 10: ''Integrated Assessment of Climate Change: An Overview and Comparison of Approaches and Results,'' in Climate Change 1995: Economic and Social Dimensions of Climate Change, edited by Bruce, James P.; Lee, Hoesung; and Haites, Erik F., Cambridge University Press, 1996.

The results of research in integrated assessment of global climate change help the U.S. Global Climate Change Research Program (USGCRP) in several ways. First, this program sponsors research that focuses on the connection of two or more different aspects of the entire analysis of global climate change. This research can lead to insights that would be otherwise unavailable if investigating a more narrowly focused aspect of climate change. Second, results from integrated assessments can be used to highlight high priority research topics for the rest of the USGCRP. A representation of the salient aspects of climate change, from emissions through impacts, is able to provide useful information regarding the degree to which underlying uncertainty in specific topics influence the results. And third, the models may be used outside this research program by the policy community to evaluate specific options. The research described in this notice provides a foundation so that others may analyze benefits and costs, not necessarily measured monetarily, in a policy context. This research will be judged in part on its potential to improve and/or support the analytical basis for policy development. Policy analysis will not be funded.

The program is narrowly focused and will concentrate support on the topics described below. Applications that involve development of analytical models and computer codes will be judged partly on the basis of proposed tasks to prepare documentation and to make the models and codes available to other groups. The following is a list of topics that are high priority. Topics proposed by principal investigators that fall outside this list will need strong justification.

A. Technology Innovation and Diffusion

This category has been a primary focus of the Integrated Assessment of Global Climate Change Program since its inception. The research in this element is not a stand-alone activity. Its purpose is to fill critical gaps in current integrated assessment modeling.

Assumptions regarding technology innovation and diffusion are one of the most important uncertainties in integrated assessment models, especially for the prediction of greenhouse emissions over long time scales. Making good predictions and being consistent across different modules of the models are crucial to good modeling. The representation of backstop technologies; resource depletion; labor and capital productivity improvements; capital, labor and energy substitutability; and adaptation are all based on technology assumptions. Technology innovation and diffusion affects energy sector consumption and technology characteristics, carbon emissions, economic growth, and many other factors in integrated assessment.

Sometimes it is difficult to identify and separate the driving forces behind the prediction of future changes in activities, particularly greenhouse gas emissions. Information on these driving forces that direct change, such as GDP (gross domestic product), productivity, energy mix, and invention, innovation, and diffusion, are important for integrated assessment. Another way to view technology innovation and diffusion is through three aspects of learning that are relevant to integrated assessment. The first is ''learning-by-doing'' for manufacturing, or returns to adoption, which reduces the unit cost of manufacturing. The second is ''learning-by-using'' for consumers, which affects consumer hurdle rates by increasing consumers' willingness to adopt new technologies. The third is ''learning through information'', which affects consumer decisions through information programs.

The rate and nature of technology diffusion from the OECD (Organization for Economic Cooperation and Development) countries to developing countries is not well understood. Predicting economic structural change in those developing countries is also difficult. These issues are important for many reasons. The reasons include the impact on the rest of the world of the invention of new technologies by the OECD countries and the debate on ''carbon leakage'', the movement of emissions of greenhouse gases away from relatively regulated countries to relatively unregulated countries.

Other relevant questions include:

Can research and development accelerate the speed with which innovations that would mitigate climate change are moved to the manufacturing production line? What

evidence is there of this and what are the relationships between R&D and adoption?

How do innovation and/or diffusion relate to measurable parameters such as public and private research and development investments or regulations?

B. Development of Metrics and Measures of Economic Costs of Climate Change Policies

There are at least five measures of macro-economic losses that are used to compare climate change policies. These include: (a) the area under a marginal cost curve plus payments for permits, (b) loss in consumption, (c) equivalent variations losses, (d) loss in potential GDP (gross domestic product), and (e) loss in real GDP. These measures are incomplete or flawed under certain limiting conditions. The purpose of this research would be to describe the pros and cons of these measures and to demonstrate the differences for actual case studies.

C. Develop Consistent International Data

Certain data sets are important to collect and distribute to the integrated assessment community so they can be used by several researchers. The focus of this research would be to fill in important integrated assessment data gaps. Past data collection programs funded by this program include improvement of energy sector and usage information, energy quantity flows, fossil fuel resource and reserve estimates, non-market energy sources in developing countries, and carbon dioxide emissions and land use changes by country.

D. Supply Curves for Non-Carbon Dioxide Greenhouse Gases

Carbon dioxide provides about two-thirds of the total atmospheric forcing potential of anthropogenic greenhouse gases. The remainder is supplied by such gases as methane, nitrous oxide, and the halocarbons. The emissions scenarios for the other greenhouse gases and particularly the cost of reducing those emissions are much more poorly understood than those for carbon dioxide. This research topic would provide information on global emissions of the other greenhouse gases under business-as-usual scenarios as well as under plausible alternative scenarios that might result from policy actions.

E. Representation of Anthropogenic Release or Sequestration of Carbon Dioxide Through Land Use Changes and Carbon Sequestration Technologies

Integrated Assessment models do not represent with desirable accuracy forecasts of carbon dioxide release or sequestration through anthropogenic activities such as land use changes and carbon sequestration. Research in this element is not a stand-alone activity. Proposed research will be judged on the use made by integrated assessment models of the results.

Research is ongoing that will improve our understanding and ability to develop innovative carbon sequestration technologies and procedures that will help reduce levels of carbon dioxide in the atmosphere. Such developments may rely on the continued use of fossil fuels with the sequestration of carbon in the terrestrial biosphere, in underground formations, and in the ocean. New modes of supplying and using substantial amounts of energy, such as hydrogen and fuel cells, may alter future energy and emission parameters substantially. Research in this topic would identify reasonable technology scenarios that will guide the prediction of such integrated assessment scenarios of energy, fossil fuel use, costs, and emissions, in response to various policy options. Research funded under this topic might also develop new information on global carbon dioxide emissions from various land use change and land use management scenarios, including forests and agricultural lands. The emphasis is on global scale estimates, perhaps regionally disaggregated. What potential is there for enhancing carbon dioxide uptake? What changes in the global carbon balance could be expected from policy options?

F. Representing Adaptation in Integrated Assessment Models

The emphasis in this research topic is to generate information that will improve the analysis of impacts on most or all of the sectors in an integrated assessment model by including autonomous adaptation in the analysis. Case studies of adaptation for particular sectors, such as agricultural, water resources, or unmanaged ecosystems, may be proposed, but a criterion will be the degree to which the case study can be generalized to other sectors. The focus of this topic is autonomous adaptation, that is, either adaptation that occurs naturally in, for example, unmanaged ecosystems, or adaptation taken by individuals in response to actual or perceived climate change. The focus is not on non-autonomous adaptation, that is, adaptation that is instigated by government agency. However, research on the effectiveness of possible government-sponsored adaptation may be necessary to understand individual adaptation alternatives.

Program Funding

It is anticipated that up to $1 million will be available for multiple awards to be made in Fiscal Year 2000 and early Fiscal Year 2001 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from $30,000 to $150,000 total costs. Funds for this research primarily will come from the Integrated Assessment Research program; some funds may come from the Carbon Management Science program.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

A brief preapplication is strongly encouraged but not required prior to submission of a full application. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Integrated Assessment of Global Climate Change Research Program. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of their abstract of the proposed research in ASCII format and their E-mail address to Karen Carlson by E-mail at karen.carlson@science.doe.gov.

Related Funding Opportunities: Investigators may wish to obtain information about the following related funding opportunities:

National Oceanic and Atmospheric Administration: Within the context of its Human Dimensions of Global Change Research Program, the Office of Global Programs of the National Oceanic and Atmospheric Administration will support research that identifies and analyzes how social and economic systems are currently influenced by fluctuations in climate, and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. The program is particularly interested in learning how advanced climate information on seasonal to yearly time scales, as well as an improved understanding of current coping mechanisms, could be used for reducing vulnerability and providing for more efficient adjustment to these variations. Notice of this program is included in the Program Announcement for NOAA's Climate and Global Change Program, which is published each spring in the **Federal Register**. The deadline for proposals to be considered in Fiscal Year 2001 is expected to be in late summer 2000. For further information, contact: Caitlin Simpson; Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 152; Internet: simpson@ogp.noaa.gov.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on February 17, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–4584 Filed 2–25–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's, Laboratory Operations Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

NAME: Secretary of Energy Advisory Board—Laboratory Operations Board.

DATES: Thursday, March 9, 2000, 8:30 a.m. 3 p.m., Eastern Standard Time.

ADDRESSES: Westin Fairfax Hotel, Ballroom, 2100 Massachusetts Avenue NW., Washington, D.C. 20008.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Laurie Keaton, LOB Staff Director, Office of Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide independent external advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Thursday, March 9, 2000

8:30–8:45 a.m.—Opening Remarks
8:45–9:30 a.m.—Briefing & Discussion: Thirty-Day Review
9:30–10:30 a.m.—Briefing & Discussion: Budget Overview
10:30–10:45 a.m.—Break
10:45–11 a.m.—Briefing & Discussion: Technology Transfer Rule Making
11:00–12:00 p.m.—Briefing & Discussion: Policy Issues Involving Tier 2 Laboratories
12–1 p.m.—Lunch
1–2 p.m.—Briefing & Discussion: National Nuclear Safety Administration
2–2:45 p.m.—Briefing & Discussion: Performance Based Management
2:45–3 p.m.—Public Comment
3 p.m.—Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to monitor the business of the Laboratory Operations Board and to submit written comments or comment during the scheduled public comment period. The meeting will be conducted in a fashion that will, in the Co-Chairs' judgment, facilitate the orderly conduct of business. During its open meeting, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before

the date of the meting due to the late resolution of programmatic issues.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Laboratory Operations Board is available at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on February 22, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–4585 Filed 2–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–88–000]

National Fuel Gas Supply Corporation; Notice of Application

February 22, 2000.

Take notice that on February 11, 2000, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP00–88–000 pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authority to abandon certain minor underground natural gas storage facilities, all as more fully set forth in application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

National Fuel proposes to abandon facilities in Collins Storage Field located in Erie County, New York. Specifically, National Fuel proposes to abandon Well 245–I and to abandon the associated well line R–W245, because the line will no longer serve a purpose once the well is plugged and abandoned. National Fuel states that the well is no longer useful due to poor deliverability and it needs to be reconditioned or plugged due to deterioration of the well casing. National Fuel emphasizes that there will be no abandonment or decrease in service to any of its customers as a result of the proposed abandonment. National Fuel states that the estimated cost of the abandonment is $55,000.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

Any person obtaining to be heard or to make a protest with reference to said application should on or before March 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provide for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–4587 Filed 2–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–94–000, et al.]

Northeast Generation Company, et al.; Electric Rate and Corporate Regulation Filings

February 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Northeast Generation Company

[Docket No. EG00–94–000]

Take notice that on February 14, 2000, Northeast Generation Company, P.O. Box 270, Hartford, Connecticut, 06141, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Northeast Generation Company, a Connecticut corporation, proposes to acquire 13 electric generating stations currently owned by The Connecticut Light and Power Company and Western Massachusetts Electric Company and to sell the electric energy at wholesale. The transaction is the result of an auction of those assets held in accordance with the retail restructuring plans in Connecticut and Massachusetts. State Commission determinations allowing such facilities

to become eligible facilities have been issued by the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy, and the New Hampshire Public Utilities Commission.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. DTE Edison America, Inc. Nine Energy Services, LLC Starghill Alternative Energy Corporation Stand Energy Corporation

[Docket Nos. ER98–3026–006, ER98–1915–007, ER97–4680–008, and ER95–362–020]

Take notice that on February 14, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. California Independent System Operator Corporation

[Docket No. ER98–2843–010]

Take notice that on February 14, 2000, the California Independent System Operator Corporation (ISO), tendered for filing proposed changes in its FERC Electric Tariff, Volume Nos. I and III to comply with the Commission's order in California Independent System Operator Corp., 90 FERC ¶ 61,036 (2000). The ISO states that this filing has been served upon all parties in this proceeding.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Madison Gas and Electric Company

[Docket No. ER00–586–001]

Take notice that on February 14, 2000, Madison Gas and Electric Company (MGE) filed Original Sheet No. 4 of MGE's FERC Tariff Original Volume No. 4 in final form and in redline/strikeout form to show the changes. This sheet is being revised in response to the letter order dated February 9, 2000, in the above-referenced docket.

MGE's market-based rate tariff is effective February 15, 2000.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1262–000]

Take notice that on February 14, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a request to amend their Pro Forma Open Access Transmission Tariff (OATT) to substitute sheets reflecting changes previously accepted by the Commission in an Order dated November 14, 1997, and to change the basis of the energy charge in Schedule 9 of the OATT.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER00–1614–000]

Take notice that on February 14, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, EnerStar Power Corp.

CILCO requested an effective date of February 1, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–1615–000]

Take notice that on February 14, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral Service Agreement between the Companies and Citizens Power Sales under the Companies Rate Schedule MBSS.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Detroit Edison Company Consumers Energy Company

[Docket No. ER00–1616–000]

Take notice that on February 14, 2000, Detroit Edison Company (Detroit Edison), on behalf of itself and Consumers Energy Company (Consumers), tendered for filing addenda to various rate schedules that would permit the incremental cost of sulfur dioxide (SO_2) emissions allowances to be included in the calculation of rates under those rate schedules. The rate schedules affected are: Detroit Edison Company Rate Schedule FERC No. 22 and Consumers Energy Company Rate Schedule FERC No. 41.

The change is designed to conform the rate schedules to the Commission's rule regarding the ratemaking treatment of SO_2 emissions allowances for Phase II units issued under the Clean Air Act Amendments of 1990. A copy of the filing was served upon the Michigan Public Service Commission.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER00–1617–000]

Take notice that on February 14, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, EnerStar Power Corp.

CILCO requested an effective date of February 1, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER00–1618–000]

Take notice that on February 14, 2000, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a fully executed Long-term Load Regulation Agreement (Agreement) between Hinson Power Company, Inc.(Hinson) and PacifiCorp.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER00–1619–000]

Take notice that on February 14, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing Termination of Service Agreement Nos. 39, 41 and 61 under Wisconsin Electric Power Company's Coordination Sales

Tariff, FERC Electric Tariff First Revised Volume 2.

An effective date of March 1, 2000 is requested.

Copies of the filing have been served on El Paso Power Merchant Energy, L.P. and Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER00–1620–000]

Take notice that on February 14, 2000, the California Independent System Operator Corporation (ISO), tendered for filing the Big Creek Physical Scheduling Plan Agreement (Agreement) between the ISO and Southern California Edison Company (SCE), for acceptance by the Commission. The purpose of the Agreement is to govern the treatment of SCE's Big Creek Hydroelectric Project, which consists of 23 Generating Units, as a single Physical Scheduling Plant for purposes of providing Regulation to the ISO.

The ISO states that this filing has been served upon SCE, the California Electricity Oversight Board, and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Agreement to be made effective as of January 13, 2000.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER00–1621–000]

Take notice that on February 14, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a request to amend the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to waive for this year the requirement of Section 7.1 of the Operating Agreement that PJM retain an independent consultant to propose candidates for the three seats on PJM's Board of Managers (PJM Board) for which an election is required at PJM's 2000 Annual Meeting. PJM states that the requested amendment has been approved by the PJM Members Committee.

PJM requests that its filing become effective on April 14, 2000.

Copies of this filing were served upon all PJM Members and all electric utility regulatory commissions in the PJM Control Area.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER00–1622–000]

Take notice that on February 14, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Carville Energy LLC.

Comment date: March 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company Minergy Neenah, LLC

[Docket Nos. ER00–1623–000 and ER00–1627–000]

Take notice that on February 14, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: March 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4550 Filed 2–25–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–495–013, et al.]

Pacific Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 18, 2000.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER98–495–013]

Take notice that on February 15, 2000, Geysers Power Company, LLC (Geysers Power), tendered for filing revised rate sheets amending the terms of the Reliability Must-Run (RMR) Agreements with the California Independent System Operator Corporation (ISO) applicable to the Geysers Main Units and Geysers Units 13 and 16. The revised rate schedules are submitted in compliance with the letter order dated January 31, 2000, approving Geysers Power's settlement with Pacific Gas and Electric Company, the California Electricity Oversight Board and the ISO, 90 FERC ¶ 61,096 (2000).

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER99–4560–001]

Take notice that on February 15, 2000, Idaho Power Company, tendered for filing revised service agreements in the above-captioned docket.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER00–317–001]

Take notice that on February 15, 2000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing a refund report pursuant to the Commission's December 16, 1999 order in the above-captioned docket regarding refunds under the CSW Operating Companies' Transmission Coordination Agreement.

A copy of this filing has been served on each person designated on the official service list compiled by the Secretary in this proceeding and on the Arkansas Public Service Commission,

the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER00–1599–000]

Take notice that on February 15, 2000, the New England Power Pool (NEPOOL) Participants Committee supplemented its February 11, 2000 filing and tendered for filing additional revisions to the Market Rules and Procedures (the Market Rules), which collectively remove from the Market Rules all mention of the Operable Capability Market in accordance with NEPOOL's proposed elimination of that Market as set forth in the Fiftieth Agreement Amending Restated NEPOOL Agreement filed with the Commission on December 30, 1999 in Docket No. ER00–985–000.

The NEPOOL Participants Committee states that copies of these materials were sent to all participants in the New England Power Pool, the New England state governors and regulatory commissions.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso SPM Company

[Docket No. ER00–1624–000] (as the successor to Sonat Power Marketing Inc.)

Take notice that on February 15, 2000. El Paso SPM Company (as the successor to Sonat Power Marketing Inc.), tendered for filing Cancellation of Rate Schedule FERC No. 1 (Market'Based Rate Schedule), effective as of August 18, 1995 and filed with the Federal Energy Regulatory Commission by Sonat Power Marketing Inc. (the predecessor in interest to El Paso SPM Company). The rate schedule is being canceled in connection with the consolidation of the power marketing operations of El Paso Energy Corporation into one single entity, El Paso Merchant Energy, L.P.

As El Paso SPM Company has no outstanding trades with any parties, and all potential parties have been notified of the consolidation referenced above, this cancellation does not involve any affected purchasers. Accordingly, notice of the proposed cancellation has not been served upon any party.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER00–1625–000]

Take notice that the California Independent System Operator Corporation (ISO), on February 15, 2000, tendered for filing Amendment No. 3 to the Participating Generator Agreement between the ISO and the company now known as Reliant Energy Coolwater, LLC. The ISO states that Amendment No. 3 modifies Schedule 3, Section 10.2 (concerning notices) of the Participating Generator Agreement.

The ISO states that this filing has been served upon all parties listed in the official service list in Docket No. ER98–1830–000.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER00–1626–000]

Take notice that on February 15, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, for short-term firm point-to-point transmission service under the terms of PNMs Open Access Transmission Service Tariff, with Coral Power L.L.C., dated February 8, 2000. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Metropolitan Edison Company

[Docket No. ER00–1628–000]

Take notice that on February 15, 2000, Metropolitan Edison Company (Met-Ed), tendered for filing an amendment to the Interconnection Agreement, dated as of October 15, 1998, by and between AmerGen Energy Company, L.L.C. (AmerGen) and Met-Ed. The amendment consists of new Schedule B, which sets forth a Meeting Charge to be charged to AmerGen under the Interconnection Agreement.

Copies of the filing were served upon AmerGen and regulators in the Commonwealth of Pennsylvania.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Montaup Electric Company

[Docket No. ER00–1629–000]

Take notice that on February 15, 2000, Montaup Electric Company (Montaup), tendered for filing a notice of cancellation of its Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 8, together with a notice of termination of associated service agreements, to be made effective as of May 1, 2000. Montaup states that not withstanding such cancellation and termination, any transaction in effect on May 1, 2000 will not terminate prior to the conclusion of its term. In such cases, the tariff and service agreement will remain in effect until the transaction terminates at the conclusion of such term.

Notice of the cancellation and termination have been served upon the following:

Baltimore Gas & Electric Co. ER99–2804–000
Constellation Power Source, Inc. ER99–3384–000
Duke Solutions, Inc. ER99–2804–000
Enserch Energy Services, Inc R99–2804–000
FPL Energy Power Marketing, Inc. ER99–2804–000
Great Bay Power Corporation ER99–4063–000
New Energy Ventures, Inc. ER99–4063–000
PG&E Energy Trading Power, L.P. ER00–924–000
Reliant Energy Services ER99–4063–000

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–1630–000]

Take notice that on February 15, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., providing for market-based pricing of Regulation service.

PJM intends to implement the Regulation Market on June 1, 2000, and requests the Commission to act on this filing within 60 days.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Smarr EMC

[Docket No. ER00–1631–000]

Take notice that on February 15, 2000, Smarr EMC, tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's Regulations.

This filing consists of the Power Purchase Agreements (Sewell Creek), dated January 1, 2000, between Smarr EMC and each of its thirty-one member

distribution cooperatives (the Members) pursuant to which Smarr EMC will sell power and/or energy to those Members.

Smarr EMC is seeking waivers of certain Commission requirements as part of this filing.

Copies of the filing were served upon Altamaha Electric Membership Corporation, Amicalola Electric Membership Corporation, Canoochee Electric Membership Corporation, Carroll Electric Membership Corporation, Central Georgia Electric Membership Corporation, Coastal Electric Membership Corporation, Cobb Electric Membership Corporation, Coweta-Fayette Electric Membership Corporation, Greystone Power Corporation, Habersham Electric Membership Corporation, Hart Electric Membership Corporation, Irwin Electric Membership Corporation, Jackson Electric Membership Corporation, Jefferson Energy Cooperative, Lamar Electric Membership Corporation, Little Ocmulgee Electric Membership Corporation, Middle Georgia Electric Membership Corporation, Mitchell Electric Membership Corporation, Ocmulgee Electric Membership Corporation, Okefenoke Rural Electric Membership Corporation, Pataula Electric Membership Corporation, Planters Electric Membership Corporation, Rayle Electric Membership Corporation, Satilla Rural Electric Membership Corporation, Sawnee Electric Membership Corporation, Slash Pine Electric Membership Corporation, Snapping Shoals Electric Membership Corporation, Sumter Electric Membership Corporation, Troup Electric Membership Corporation, Upson Electric Membership Corporation, and Washington Electric Membership Corporation.

Comment date: March 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4586 Filed 2–25–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application For Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

February 22, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License

b. *Project No:* 297–039

c. *Date Filed:* January 28, 2000

d. *Applicants:* Yadkin, Inc. (Yadkin or transferor) and Alcoa Power Generating Inc. (Alcoa or transferee)

e. *Name of Project:* Yadkin

f. *Location:* On the Lower Yadkin stretch of the Yadkin-Pee Dee River in Stanley, Montgomery, Davidson, and Rowan Counties, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* 18 CFR 4.200

h. *Applicant Contacts:* For transferor—B. Julian Polk, P.O. Box 576, Badin, NC 28009, (704) 422–5617.

For transferee—Mr. David Poe or Mr. Benjamin S. Wechsler, LeBoeuf, Lamb, Green & MacRae, L.L.P., 1875 Connecticut Avenue, NW, Washington, DC 20009–5728, (202) 986–8000.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: thomas.papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* March 24, 2000

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (2197–039) on any comments or motions filed.

k. *Description of Transfer:* Yadkin requests approval to transfer its license to Alcoa. The applicants state that the transfer relates to Alcoa's corporate restructuring under which Yadkin became a part of Alcoa as of January 1, 2000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 285.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–4588 Filed 2–25–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6543–7]

Clean Air Act Advisory Committee—Notice of Creation of the Clean Air Excellence Awards Program

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues. At its meeting on April 27, 1999, the Committee approved a proposal to establish an annual awards program to recognize outstanding and innovative efforts that support progress in achieving clean air. This notice announces the creation of this awards program.

AWARDS PROGRAM NOTICE: Pursuant to 5 U.S.C. App.2 Section 10(a)(2), notice is hereby given that the Clean Air Advisory Committee is establishing the ''Clean Air Excellence Awards Program'' (CAEAP). The intent of the program is to recognize and honor outstanding, innovative efforts that help to make progress in achieving cleaner air. The CAEAP is open to both public and private entities. Entries are limited to the United States. There are six award categories: (1) Clean Air Technology; (2) Community Development/Redevelopment; (3) Education/Outreach; (4) Regulatory/Policy Innovations; (5) Transportation Efficiency Innovations; and (6) Outstanding Individual Achievement Award. Awards are recognition only and will be given on an annual basis.

ENTRY REQUIREMENTS AND DEADLINE: All applicants are asked to submit their entry on a CAEAP entry form, contained in the CAEAP Entry Package, which may be obtained from the CAAAC WEB site at *www.epa.gov/oar/caaac/index.html* or contacting Mr. Paul Rasmussen, U.S. EPA at 202–564–1306 or 202–564–1352 (Fax), mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW, Washington DC, 20004. The entry form is a simple, three-part form asking for general information on the applicant and the proposed entry; asking for a description of why the entry is deserving of an award; and requiring information from three (3) independent references for the proposed entry. Applicants should also submit additional supporting documentation as necessary. Specific directions and information on filing an entry form are included in the Entry Package available through the directions above. The deadline for all submission of entries is June 2, 2000.

JUDGING AND AWARD CRITERIA: Judging will be accomplished through a screening process conducted by EPA staff, with input from outside subject experts, as needed. A workgroup of the CAAAC will conduct an addition review. The final award recommendations will be made by the CAAAC and forwarded to the EPA Assistant Administrator for Air and Radiation for a final decision. Entries will be judged using both general criteria and criteria specific to each individual category. There are four (4) general criteria: (1) The entry directly or indirectly (i.e., by encouraging actions) reduces emissions of criteria pollutants, greenhouse gases, or hazardous/toxic air pollutants; (2) The entry demonstrates innovation and uniqueness; (3) The entry provides a model for others to follow (i.e., it is replicable); and (4) The positive outcomes from the entry are continuing/sustainable. Although not required to win an award, the following general criteria will also be considered in the judging process: (1) The entry has positive effects on other environmental media in addition to air; (2) The entry demonstrates effective collaboration and partnerships; and (3) The individual or organization submitting the entry has effectively measured/evaluated the outcomes of the project, program, technology, etc. As mentioned above, additional criteria will be used for each individual award category. These criteria are listed in the 2000 Entry Package.

FOR FURTHER INFORMATION CONTACT: For further information concerning this new awards program please use the CAAAC Web site cited above or contact Paul Rasmussen at the telephone and address cited above.

Dated: February 11, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–4652 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–56–M

ENVIRONMENTAL PROTECTION AGENCY

[GA47–200003; FRL–6543–4]

Adequacy Status of the Atlanta, Georgia Submitted Ozone Attainment State Implementation Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Atlanta, Georgia ozone attainment State Implementation Plan (SIP) submitted on October 28, 1999, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Atlanta ozone nonattainment area can use the motor vehicle emissions budgets from the submitted ozone attainment SIP for future conformity determinations.

DATES: These budgets are effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

The SIP is available for public viewing at the United States Environmental Protection Agency, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. You can request a copy of the SIP submission by contacting Kelly Sheckler, Regulatory Planning Section, United States Environmental Protection Agency, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9042, Fax: (404) 562–9019, E-mail: Sheckler.Kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 4 sent a letter to Georgia Environmental Protection Division on [DATE] stating that the motor vehicle emissions budgets in the October 28, 1999, Atlanta ozone attainment SIP for 2003 are adequate. This finding has been announced on EPA's conformity website referenced above.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that

transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). This guidance was used in making our adequacy determination. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate action to approve or disapprove the SIP. The SIP could later be disapproved for reasons unrelated to the transportation conformity even though the budgets had been deemed adequate.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 17, 2000.

Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–4654 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6542–5]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Region VIII, Enforcement Support Services (ESS), Contractor Toeroek Associates, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, Toeroek Associates, Inc. (hereinafter ''Toeroek'') of Arvada, Colorado, certain financial data and cost documentation utilized in cost recovery actions at Superfund sites. Disclosure of this information may occur on sites that are listed on the National Priority List (NPL) as well as on sites that are not on the NPL. Information on non-NPL sites can be obtained by contacting the Region 8 Superfund Records Center at (303) 312–6473. These disclosures may include Confidential Business Information (''CBI'') which has been submitted to EPA Region 8, Office of Enforcement, Compliance and Environmental Justice and/or the Office of Ecosystems Protection and Remediation. Toeroek's offices are located at 6770 West 52nd Avenue, Suite A, Arvada, CO 80002–3928.

DATES: Comments are due by March 9, 2000.

ADDRESSES: Comments should be sent to Virginia Phillips, Office of Enforcement, Compliance and Environmental Justice, Technical Enforcement Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, ENF–T, Denver, Colorado 80202; (303) 312–6197.

FOR FURTHER INFORMATION CONTACT: Virginia Phillips, Office of Enforcement, Compliance and Environmental Justice, Technical Enforcement Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, ENF–T, Denver, Colorado 80202; (303) 312–6197.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity to Comment: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (''CERCLA''), as amended, (commonly known as ''Superfund'') requires the establishment of documentation upon which the President shall base cost recovery actions. EPA has entered into Enforcement Support Services Contract Two (2ESS), contract No. 68–W–99–050 with Toeroek for analysis and management of these documents. EPA Region 8 has determined that disclosure of CBI to Toeroek employees is necessary in order that they may carry out the work required under this contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310 (h). EPA Region 8 will require that each Toeroek employee working on financial analysis and/or cost recovery work sign a written agreement that he or she:

(1) Will use the information only for the purpose of carrying out the work required by the contract.

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and;

(3) Shall return to EPA all copies of the information and any abstracts or extracts therefrom, (a) Upon completion of the contract, (b) Upon request of the EPA, or (c) Whenever the information is no longer required by Toeroek for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region 8 Project Officer for Toeroek. All Toeroek employees who will handle CBI will be provided technical direction from EPA contract management staff.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h).

Dated: November 3, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

U.S. EPA Superfund

NPL Site Listing

Sorted by State/Site

Colorado

Air Force Plant PJKS
Asarco Inc (Globe Plant)
Broderick Wood Products
California Gulch
Central City-Clear Creek
Chemical Sales Co
Denver Radium Site
Eagle Mine
Lincoln Park
Lowry Landfill
Marshall Landfill
Rocky Flats Plant (USDOE)
Rocky Mountain Arsenal (USArmy)
Sand Creek Industrial
Smeltertown Site
Smuggler Mountain
Summitville Mine
Uravan Uranium Project (Union Carbide)
Vasquez Boulevard and I–70
Woodbury Chemical Co.

Montana

Anaconda Co. Smelter
Basin Mining Area
Burlington Northern Livingston Complex
East Helena Site
Idaho Pole Co
Libby Groundwater Contamination
Milltown Reservoir Sediments
Montana Pole and Treating
Mouat Industries
Silver Bow Creek/Butte Area
Upper Tenmile Creek Mining Area

North Dakota

Arsenic Trioxide Site
Minot Landfill

South Dakota

Ellsworth Air Force Base
Whitewood Creek
Williams Pipe Line Co. Disposal Pit

Utah

Hill Air Force Base
Intermountain Waste Oil Refinery
International Smelting and Refining
Jacobs Smelter Site
Kennecott (North Zone)
Kennecott (South Zone)
Midvale Slag
Monticello Mill Tailings (USDOE)
Monticello Radioactive Contaminated Prop.

Murray Smelter
Ogden Defense Depot (DLA)
Petrochem Recycling Corp/Ekotek Plant
Portland Cement (Kiln Dust 2 & 3)
Richardson Flat Tailings
Rose Park Sludge Pit
Sharon Steel Corp. (Midvale Tailings)
Tooele Army Depot (North Area)
Utah Power & Light/American Barrel Co.
Wasatch Chemical Co. (Lot 6)
Baxter/Union Pacific Tie Treating
F.E. Warren Air Force Base
Mystery Bridge Rd/U.S. Highway 20

Wyoming

Baxter/Union Pacific Tie Treating
F.E. Warren Air Force Base
Mystery Bridge at Hwy 20

[FR Doc. 00–4657 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6543–8]

Extension of Deadline for Submission of Superfund Redevelopment Pilot Program Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of submission deadline extension.

SUMMARY: Today, the Environmental Protection Agency (EPA) is providing notice that it is extending the deadline for submitting applications for selection of Superfund sites as Pilot Projects in the Superfund Redevelopment Pilot Program. The new deadline for submission is April 7, 2000. It replaces the deadline announced in the December 10, 1999 **Federal Register** Notice describing the program EPA is extending this deadline to give applicants more time to resolve questions and complete proposals supporting their applications. In addition, since the publication of the December 10, 1999 Notice, the EPA Headquarters official mailing address has changed. Proposals sent to the old address will still be accepted, but applicants are encouraged to send their proposals to EPA's new address given below.

DATES: To be considered for selection for the Superfund Redevelopment Pilot Program, an applicant's completed proposal must be received at EPA on, or before, 5 p.m., April 7, 2000. Proposals must be postmarked by the U.S. Postal Service on or before April 1, 2000, or received by EPA on or before April 7, 2000.

ADDRESSES: Since the publication of the December 10, 1999 Notice, EPA Headquarters official mailing address has changed. Applicants should send their proposals for the Pilot Program to the new official address: Anne Hodge, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Although applicants should use this new official address, proposals sent to the former address given in the December 10, 1999, Notice, will still be accepted. Proposals sent through registered mail or overnight mail should be sent to Anne Hodge, Office of Emergency and Remedial Response, 1235 Jefferson Davis Highway, 12th Floor, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

To Obtain a Proposal Packet: Call the RCRA, Superfund & EPCRA Hotline at the following numbers.

Washington, DC Metro Area: (703) 412–9810;
Outside Washington, DC Metro: (800) 424–9346;
TDD for the Hearing Impaired: (800) 553–7672.

Applicants may also obtain a proposal packet by calling the Superfund Redevelopment Initiative Helpline at (888) 526–4321, or by visiting EPA's Web site on the World Wide Web at http://www.epa.gov/superfund/programs/recycle/proposal.htm.

For Proposal Assistance: Applicants can get additional information about the Pilot Program and the proposal guidelines from EPA Regional Offices or from the Superfund Redevelopment Initiative Helpline. For more information, see ''Where Can I Go for Further Information or Proposal Assistance'' under the Supplementary Information section of this Notice.

SUPPLEMENTARY INFORMATION:

Why Has EPA Changed the Deadline for Submission of Proposals?

On December 10, 1999 (64 FR 69365). EPA published its solicitation of proposals for the Superfund Redevelopment Pilot Program. That Notice provided a three-month period, ending March 10, 2000, for submission of proposals. Since publication of the Notice, EPA has determined that applicants may need more time to complete their proposals. In addition, EPA has received some questions from potential applicants concerning their eligibility for the program. EPA is extending the submission period to allow sufficient time for all potential applicants to resolve any outstanding issues and to complete their proposals.

What Is the Superfund Redevelopment Pilot Program?

The Superfund Redevelopment Pilot Program is part of the Superfund Redevelopment Initiative, EPA's nationally coordinated effort to facilitate the return of Superfund sites to productive use by selecting response actions consistent with anticipated use to the extent possible. Future land use predictions are important in selecting the appropriate remedy, because future use may affect the type and frequency of future exposures that may occur at a site.

Through the Superfund Redevelopment Pilot Program, EPA is selecting pilot projects that will help political subdivisions within a state enhance their involvement in the Superfund decision-making process. This involvement consists primarily of helping EPA predict future land use at Superfund sites early in the cleanup cycle. However, where appropriate, EPA also will consider proposals for local governments to provide support to EPA with regard to land use-related decisions made during the design or construction of a remedy. Although this Notice is of particular relevance to local governments, federally recognized Indian tribes and states are also eligible to apply. Governments and tribes may be offered several types of assistance including; funds, through cooperative agreements; personnel, under the Intergovernmental Personnel Act; and facilitation services. Each pilot may receive up to $100,000 of EPA funding, or comparable value in services from potentially responsible parties, to accomplish the necessary work. EPA will select up to 40 pilot projects and expects to announce successful pilot applicants by June, 2000.

What Is the Statutory Basis for the Pilot Program?

CERCLA section 104 provides legal authority to carry out the Pilot program.

Where Can I Go for Further Information or Proposal Assistance?

Applicants should contact and, if possible, meet with EPA Regional officials to have any questions answered and to discuss the Initiative. This includes all questions concerning applicant eligibility. Individuals at EPA Regional Offices are available to answer questions about the Pilot Program and the proposal guidelines. Applicants can contact their Regions directly using the information provided in the following table:

REGIONAL CONTACT INFORMATION

Region	States	Address, phone, fax, e-mail
EPA Region 1—Don Berger	CT, ME, MA, NH, RI, VT	1 Congress Street, Ste. 1100, Boston, MA 02114–2023, Phone (617) 918–1351, Fax (617) 918–1294, berger.don@epa.gov
EPA Region 2—Dan Forger	NJ, NY, PR, VI	290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4402, Fax (212) 637–4439, forger.dan@epa.gov
EPA Region 3—Walt Graham	DE, DC, MD, PA, VA, WV	1650 Arch Street, Philadelphia, PA 19103–2029, Phone (215) 814–3146, Fax (215) 814–3002, graham.walter@epa.gov
EPA Region 4—Mike Norman	AL, FL, GA, KY, MS, NC, SC, TN	Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–8960, Phone (404) 562–8792, Fax (404) 562–8788, norman.michael@epa.gov
EPA Region 5—Jim Mayka	IL, IN, MI, MN, OH, WI	77 West Jackson Boulevard, Chicago, IL 60604–3507, Phone (312) 353–9229, Fax (312) 886–4071, mayka.james@epa.gov
EPA Region 6—Barbara Greenfield	AR, LA, NM, OK, TX	1445 Ross Avenue, Ste. 1200, Dallas, TX 75202–2733, Phone (214) 665–3111, Fax (214) 665–6660, greenfield.barbara@epa.gov
EPA Region 7—Bob Feild	IA, KS, MO, NE	901 North Fifth Street, Kansas City, KS 66101, Phone (913) 551–7697, Fax (913) 551–7063, feild.robert@epa.gov
EPA Region 8—Victor Ketellapper	CO, MT, ND, SD, UT, WY	999 18th Street, Suite 500, Denver, CO 80202–2466, Phone (303) 312–6578, Fax (303) 312–6897, ketellapper.victor@epa.gov
EPA Region 9—Jim Hanson	AZ, CA, HI, NV, AS, GU	75 Hawthorne Street, San Francisco, CA 94105, Phone (415) 744–2237, Fax (415) 744–1796, Hanson.jim@epa.gov
EPA Region 10—Susan Morales	AK, ID, OR, WA	1200 Sixth Avenue, Seattle, WA 98101, Phone (206) 553–7299, Fax (206) 553–0124, morales.susan@epa.gov

The Superfund Redevelopment Initiative (SRI) Helpline at (888) 526–4321 is also available to answer general questions related to the Superfund Redevelopment Initiative and the Pilot Program.

In addition, state environmental officials may provide valuable insight for an applicant. States have an important role at Superfund sites, and state governments may have complementary programs that could support a local government's proposal.

When and How Will EPA Announce Pilot Selection?

The EPA expects to announce pilot selections in June 2000. The Agency will mail confirmation letters to successful applicants informing them of their selection as Superfund Redevelopment Pilots. Unsuccessful applicants will also be informed by mail.

Dated: February 22, 2000.

Timothy Fields, Jr.,

Assistant Administrator.

[FR Doc. 00–4656 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6543–9]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, emergency notice is hereby given that the Drinking Water Committee of the Science Advisory Board (SAB) will meet on March 13 and 14, 2000 in room 6013 of the Ariel Rios Building at the U.S. Environmental Protection Agency (EPA) located at 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (the building entrance is adjacent to the Federal Triangle Metro Stop on 12th Street). The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting

The Committee will conduct a review of the scientific aspects of the US EPA draft proposal on the groundwater rule (GWR). In addition, the committee will be briefed on a number of other issues under active consideration by EPA's drinking water program (including research planning for the Candidate Chemical List, Long-term 1 Surface Water Treatment/Filter Backwash rule, arsenic, and possibly other topics).

Background and Proposed Charge for the Groundwater Draft Proposal

EPA is considering a rule which will specify the appropriate use of disinfection in ground water and address other components of ground water systems to assure public health protection. The GWR is scheduled to be finalized in November of 2000.

The Drinking Water Committee has been asked to address the following issues: (1) Based upon the available data, can each of the four candidate indicators (E. coli, enterococci, somatic coliphage, male-specific coliphage) be justified as a monitoring tool for determining the presence of fecal contamination in ground water? and (2) Given the available data on incidence, fate and transport of virus and bacteria through the soil/aquifer matrix, is it appropriate to monitor for both bacterial and viral indicators to determine the presence of fecal contamination?

Background and Proposed Charge for the Arsenic Review

The DWC will receive a briefing from EPA representatives on the status of EPA's proposed arsenic rule. The Committee will not be conducting its review of the Agency Arsenic proposal at the March 13–14, 2000 meeting. The intent of the briefing is to provide sufficient information to the DWC to allow it to plan the review meeting that will occur later in Fiscal Year 2000.

The current National Primary Drinking Water Regulation for arsenic of 50 micrograms per liter (ug/L) has been in effect since 1976. The 1996 Amendments to the Safe Drinking Water Act required the Agency to develop an arsenic research strategy by February 1997 to serve as road map for filling gaps in our understanding of the scientific issues surrounding arsenic and, at the same time, to work toward promulgating a new primary drinking water regulation by January 1, 2001.

The current draft Charge to the DWC asks the Committee to explore the following questions and provide its advice to the Agency: (1) Based upon the SAB's review of the health effects portion of the preamble to the proposed rule, are there any important issues that were not adequately identified or considered by the Agency in its evaluation of the NRC's report and its principal conclusions? (Examples of issues that may be of interest in this

regard include the Agency's choice to concentrate on inorganic Arsenic as the principal form causing adverse human health effects; the implications of mode of action (*i.e.,* the Agency's decision to propose an MCLG of zero and to qualitatively discuss the the fact that this is likely to overestimate risk); and the implications of the fact that arsenic is a natural element with exposure through food; and (2) Does the SAB have any particular advice on important considerations for the Agency in its evaluation of the multiple health endpoints of arsenic in drinking water, both quantified and not yet quantified (*e.g.,* bladder, lung, cardiovascular, skin, other)?

FOR FURTHER INFORMATION CONTACT: Additional information for this meeting, or the meeting agenda, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer (DFO) for the Drinking Water Committee, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by telephone at (202) 564–4558; by fax at (202) 501–0582 or via the E-Mail at: miller.tom@epa.gov, or by contacting Ms. Dorothy Clark at (202) 564–4537, by fax at (202) 501–0582, and by E-Mail at: clark.dorothy@epa.gov. Additional background information may also be obtained by contacting Mr. Eric Burneson, US EPA Office of Ground Water and Drinking Water (4607), 401 M. Street, SW, Washington, DC 20460; by telephone at (202) 260–1445; or by E-Mail at burneson.eric@epa.gov.

Providing Comments

Anyone wishing to make an oral presentation to the Committee must contact Mr. Miller, in writing (by letter, fax, or E-mail) no later than 12 noon, Thursday, March 9, 2000, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date (usually one week prior), may be mailed to the committee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the committee up until 15 days after the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4548 or via fax at (202) 501–0256. Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact Mr. Miller to ensure that appropriate arrangements can be made.

Dated: February 22, 2000.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 00–4606 Filed 2–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–00290; FRL–6493–6]

Forum on State and Tribal Toxics Action (FOSTTA); Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Four projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings March 6–7, 2000. This notice announces the location and times for the meetings and sets forth some tentative agenda topics. The National Conference of State Legislatures (NCSL) and the Environmental Protection Agency (EPA) are co-sponsoring the meetings. As part of a co-sponsorship agreement, NCSL facilitates ongoing efforts of the States and Tribes to identify, discuss, and address toxics-related issues, and to continue the dialogue on how Federal environmental programs can best be implemented.

DATES: The four projects will meet concurrently March 6, 2000, from 8 a.m. to 5 p.m. and March 7, 2000, from 8 a.m. to noon. A panel discussion on environmental justice issues will be held at the plenary session on Monday, March 6, 2000, from 8 a.m. to 9:30 a.m.

ADDRESSES: The meetings will be held at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA, 22209. The hotel is about three blocks from the Rosslyn Metro Station.

FOR FURTHER INFORMATION CONTACT: George Hagevik, National Conference of State Legislatures, 1560 Broadway, Suite 700, Denver, CO 80202; telephone: (303) 839–0273 and FAX: (303) 863–8003; e-mail: george.hagevik@ncsl.org or Darlene Harrod, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 260–6904 and FAX: (202) 260-2219; e-mail: harrod.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. All parties interested in FOSTTA and hearing more about the perspectives of the States and Tribes on EPA programs and the information exchange regarding important issues related to human health and environmental exposure to toxics are invited and encouraged to attend. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accomodate participation by observers attending the proceedings.

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

1. *Electronically*. You may obtain electronic copies of the minutes, and certain other related documents that might be available electronically, from the NCSL Web site at http://www.ncsl.org/programs/esnr/fostta/fostta.htm. To access this document on the EPA Internet Home Page go to http://www.epa.gov and select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/FOSTTA.

2. *Facsimile*. Notify the contacts listed above if you would like any of the documents sent to you via fax.

III. Purpose of Meeting

Tentative Agenda Items Identified by NCSL, the States, and the Tribes:

1. NCSL State-Tribal Relationships Project.
2. Panel Discussion on Environmental Justice Issues.
3. Environmental Council of the States Cross Media Initiative for 2000.
4. Subsistence Food Assessment Project.

5. Emergency Planning and Community Right-to-Know National Meeting.
6. Interagency Work Group on Lead.
7. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: February 15, 2000.

Joseph S. Carra,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–4241 Filed 2–22–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 10, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 29, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Public Notice—Medical Telemetry Equipment Operating in the 450–460 MHz Band.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 20.

Estimated Hours Per Response: 8.

Frequency of Response: Recordkeeping; One-time reporting requirement.

Estimated Total Annual Burden: 160 hours.

Total Annual Cost: None.

Needs and Uses: The Commission released a public notice on October 20, 1999 requesting that parties operating medical telemetry equipment in the 450–460 MHz Band assist the Commission by providing certain information on their operations. Our equipment authorization records show that the majority of medical telemetry equipment operating under Part 90 are authorized in the 460–470 MHz portion of the PLMRS bands, and that very little operates in the 450–460 MHz portion of the band. We are requesting that parties operating medical telemetry equipment in the 450–460 MHz band provide certain information on their operation to the Commission. This information could help prevent serious interference problems in the future.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–4536 Filed 2–25–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 17, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 29, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice. you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith, at (202) 418–0217 or via the Internet to *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX

Title: 406 MHz Personal Locator Beacons (PLB)

Type of Review: New collection

Respondents: Individuals or households; State, local, or Tribal Government

Number of Respondents: 1050

Estimated Hours Per Response: 0.5 hours

Frequency of Response: On occasion reporting requirement

Estimated Total Annual Burden: 525 hours

Total Annual Cost: None

Needs and Uses: This information collection requires individuals to register data with the National Oceanic and Atmospheric Administration and to gather data for licensing entities. The registration information would be made available to search and rescue personnel to assist in locating a lost individual, and the licensing information would be used to determine whether the applicant is legally and technically qualified to be licenses.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–4537 Filed 2–25–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 29, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0390.

Title: Broadcast Station Annual Employment Report.

Form Number: FCC 395–B.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 16,425.

Estimate Time Per Response: 0.166 to 1.0 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 12,100 hours.

Total Annual Costs: None.

Needs and Uses: The Annual Employment Report, FCC Form 395–B, is required to be filed by all licensees and permittees of AM, FM, TV, international, and low power TV broadcast stations. It is a data collection device used to assess industry employment trends. The report identifies each staff member by gender, race, color, and/or national origin in each of the nine major job categories. On September 30, 1998, the FCC suspended the requirement that television and radio broadcast licensees and permittees submit the FCC Form 395–B. This suspension was to remain in effect until the Commission revised the EEO rules to be consistent with the D.C. Circuit Court's decision in Lutheran Church-Missouri Synod v. FCC. On January 20, 2000, the Commission adopted a Report and Order, MM Docket Nos. 98–204 and 96–16, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. This Report and Order reinstates the requirement that broadcasters file the FCC Form 395–B. In addition, the FCC eliminated all requirements that broadcast licensees compare their employment profile and employee turnover with the local labor force. Furthermore, the Commission will no longer compare individual employment profiles with the local labor force as a screening device. These data will only be used to monitor industry employment trends and report to Congress.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–4538 Filed 2–25–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 13, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Shuler Holdings Ltd., (Thomas Michael Shuler and Jay Gordon Shuler), Apalachicola, Florida; to acquire voting shares of Apalachicola State Banking Corporation, Apalachicola, Florida, and thereby indirectly acquire voting shares of Apalachicola State Bank, Apalachicola, Florida.

Board of Governors of the Federal Reserve System, February 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4549 Filed 2–25–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–4058) published on pages 8709 and 8710 of the issue for February 22, 2000.

Under the Federal Reserve Bank of San Francisco heading, the entry for AMB Financial Services Corporation, Bainbridge Island, Washington, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. American Marine Bank ESOP, Bainbridge Island, Washington, and AMB Financial Services Corporation, Bainbridge Island, Washington, to acquire 100 percent of the voting shares

of Silverdale State Bank, Silverdale, Washington.

Comments on this application must be received by March 17, 2000.

Board of Governors of the Federal Reserve System, February 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4547 Filed 2–25–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Apalachicola State Banking Corporation, Apalachicola, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Apalachicola State Bank, Apalachicola, Florida.

2. First Central Bancshares, Inc., Lenoir City, Tennessee; to acquire 100 percent of the voting shares of First Central Bank of Monroe County, Sweetwater, Tennessee, a *de novo* bank.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Indiana United Bancorp and FAB Merger Corporation, both of Greensburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Affiliated Bancorp, Inc., Watseka, Illinois, and thereby indirectly acquire Capstone Bank, N.A., Watseka, Illinois. In connection with this application, FAB Merger Corporation has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, February 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4548 Filed 2–25–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Public Meeting on the Effect of Credentialing of Technologists and Sonographers on the Quality of Ultrasound Tests

AGENCY: Agency for Healthcare Research and Quality (AHRQ), formerly known as the Agency for Health Care Policy and Research (AHCPR).

ACTION: Notice of public meeting.

SUMMARY: As a first step in arranging for the conduct of a Congressionally mandated study, this Notice announces a public meeting for the purpose of receiving oral and written information on the subject of the effect of the credentialing of technologists and sonographers on the quality of ultrasound tests measured in terms of error rates, related complications, and patient outcomes, particularly with respect to the Medicare and Medicaid populations.

DATES: The meeting will be on March 29, 2000 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be at the Agency for Healthcare Research and Quality conference center, 6010 Executive Blvd., 4th Floor, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jacqueline Besteman, J.D., M.A., Center for Practice and Technology Assessment, AHRQ, 6010 Executive Blvd., Suite 300, Rockville, MD 20852; Phone: (301) 594–4017; Fax: (301) 594–4027; E-mail: *jbestema@ahrq.gov.*

Arrangements for the Public Meeting

Representatives of organizations and other individuals are invited to provide relevant written comments and information to AHRQ, and to make a brief (10 minutes or less) oral statement at the meeting. Individuals and representatives who would like to attend must register with Jacqueline Besteman, AHRQ, at the address above 2 weeks prior to the date of meeting. One copy of the written materials should also be submitted to Ms. Besteman. On the day of the meeting, presenters are requested to bring 25 copies of their written materials for distribution.

If sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, on (301) 594–6662 no later than (insert at least 3 days before the meeting).

SUPPLEMENTARY INFORMATION:

1. Background

On December 6, 1999, the former Agency for Health Care Policy and Research, was reauthorized and renamed the Agency for Healthcare Research and Quality (AHRQ) by P.L. 106–129, the Healthcare Research and Quality Act of 1999. The legislation directed AHRQ to improve the quality of health care, promote patient safety and reduce medical errors through research, including research on the use of health care services and outcomes research.

Shortly before the Agency became AHRQ, section 229 of the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 (incorporated by reference in, and enacted by section 1000(a) of Public Law 106–113) directed that the Agency (then AHCPR) provide for a study of differences in quality between ultrasound services furnished by individuals who are credentialed and ultrasound services furnished by those who are not so credentialed. This study is to examine and evaluate differences in error rates, resulting complications, and patient outcomes and determine any quality differences that can be correlated with the differences in credentialing. In particular, the Congress indicated that findings should be made with respect to the provision of ultrasound under the Medicare and Medicaid programs under titles XVIII and XIX of the Social Security Act. In

designing the study, the Administrator is to consult with organizations nationally recognized for their expertise in ultrasound. A report on the study is to be sent to Congress within two years of the enactment of this statutory research mandate (approximately November 2001).

2. Purpose

AHRQ is holding this meeting to gather pertinent scientific information and professional views that would contribute to the conduct of this study of the effect of credentialing of technologists and sonographers on the quality of ultrasound services, and especially information with respect to such services provided under the Medicare and Medicaid programs, Titles XVIII and XIX of the Social Security Act. AHRQ is interested in receiving information on the availability of relevant published literature, secondary data sources, and/or unpublished data, as well as information about other factors that may affect ultrasound results (for example, other quality assurance and control processes.)

3. Agenda

The meeting will begin at 9:00 a.m. and continue through 12:00 p.m. The Director of AHRQ's Center for Practice and Technology Assessment will chair the meeting. If more requests to make oral statements are received than can be accommodated at this meeting between 9:00 a.m. and 12:00 p.m., the chair will allocate speaking time in a manner that attempts, to the extent possible, to have a range of information, findings and views presented orally. Those who cannot be granted speaking time because of time constraints are assured that their written comments will be considered along with other evidence during the course of the study.

Dated: February 15, 2000.

John M. Eisenberg,

Director, AHRQ.

[FR Doc. 00–4647 Filed 2–25–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of the Assistant Secretary for Planning and Evaluation and the Office of Planning, Research and Evaluation of the Administration for Children and Families; Notice Inviting Abstracts for Policy Research and Studies on Welfare Reform Outcomes for Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services; Office of Planning, Research and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of the request for abstracts and the availability of funds for subsequent welfare reform policy research and studies.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) and the Office of Planning, Research, and Evaluation of the Administration for Children and Families (ACF) invite abstracts for policy research and studies related to welfare reform.

CLOSING DATE: The closing date for submitting abstracts under this announcement is March 29, 2000. Only abstracts, not full proposals, will be accepted under this announcement.

MAILING ADDRESS: Abstracts should be submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Telephone: (202) 690–8794. Administrative questions will be accepted and responded to up to ten working days prior to closing date of receipt of abstracts.

The printed **Federal Register** notice is the only official program announcement. Any corrections to this announcement will be published in the **Federal Register** as well as published on the ASPE and ACF World Wide Web Pages. The web sites are *http://aspe.hhs.gov/funding.htm* and *http://www.acf.dhhs.gov/programs/opre/frpa.htm* respectively. Although reasonable efforts are taken to assure that the files on the ASPE and ACF World Wide Web Pages containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical questions should be directed to Audrey Mirsky-Ashby, DHHS, ASPE, Telephone, 202–401–6640 or e-mail, *amirsky@osaspe.dhhs.gov* or Nancye Campbell, DHHS, ACF, 202–401–5760 or email, ncampbell@acf.dhhs.gov. Written technical questions may also be faxed to Audrey Mirsky-Ashby at 202–690-6562 or may be addressed to Ms. Audrey Mirsky-Ashby at the following address, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Room 404E, Hubert H. Humphrey Building, Washington, DC 20201. Please call Ms. Audrey Mirsky-Ashby to confirm receipt. Technical questions will be accepted and responded to up to ten working days prior to the closing date of receipt of abstracts.

Part I. Supplementary Information

Legislative Authority

This announcement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under the Department of Health and Human Services Appropriations Act, 2000, as enacted by section 1000(a)(4) of the Consolidated Appropriations Act, 2000 (Public Law 106–113).

Eligible Applicants

Pursuant to section 1110 of the Social Security Act, any public organization, including state and local governments, and private nonprofit organizations, including universities and other institutions of higher education, may apply. Applications may also be submitted by private for-profit organizations. However, no grant funds may be paid as profit to grantees or subgrantees. *i.e.,* any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

Available Funds

ASPE and ACF are engaging in a two-part process. The first part of the process will be the submission of six page research abstracts. After the abstracts are reviewed, a subset of the applicants who submitted abstracts will be invited by either ASPE or ACF to submit full applications. These will be reviewed competitively. Financial

awards will be made only in the second part of the process; no awards will be made based on abstracts submitted. An invitation to submit an application is not a guarantee of funding. The following information on fund availability is provided for planning purposes for applicants.

Approximately $2,250,000 in total is expected to be available from ASPE and ACF in funds appropriated for fiscal year 2000, and approximately $1 million from ACF in subsequent fiscal years, subject to the availability of funds. Of the fiscal year 2000 total, $1,000,000 is expected to be available from ASPE and $1,250,000 is expected to be available from ACF. We estimate that this level of funding will support between 8 and 12 ASPE awards with *total* budgets ranging from $75,000 to $150,000 for most short-term policy analyses (to be completed within about 12 months of award) and between 5 and 8 ACF awards with *total* budgets from $75,000 to $500,000 for either short-term or longer-term projects. These figures are provided as guidance but do not constitute minimum or maximum limits. We expect that ASPE will fund primarily short-term projects and ACF will fund either type. If additional funding becomes available in fiscal years 2000 or 2001, a greater number of projects may be funded.

No federal funds received as a result of this announcement can be used to purchase computer equipment and no funds may be paid as profit to grantees or subgrantees , *i.e.,* any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81). Our intent is to sponsor research and analytic work and not to fund the provision of services. Grant funds awarded in the full-proposal phase of this initiative may not be used to pay for programs or services.

Grantees must provide at least 5 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, a project requesting $200,000 in Federal funds must include a match of at least $10,527 (because $200,000 is 95% of $210,526).

If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE/ACF should be discussed in the budget information submitted as a part of the abstract. In both cases, the contribution that ASPE/ACF funds will make to the project should be clearly presented.

If data collection is part of the project and if federal funding support is used for the data collection, the researcher will make the data available for use by other researchers. Awards that include support for data collection will likely include requirements for the data to be made available to the public (e.g., public use data files or restricted access files).

Background

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) brought about fundamental changes in our nation's income support program for needy families and children. Welfare reform was expected to alter behavior in regard to work, marriage, fertility and program participation under the Temporary Assistance to Needy Families (TANF) block grant program. Under TANF, states were given considerable flexibility to design and implement their support programs for needy families with children. PRWORA authorized TANF through 2002.

Between January 1993 and June 1999, the number of people receiving cash assistance under the prior Aid to Families with Dependent Children (AFDC) program or the new TANF program fell from 14.1 million to under 7 million recipients, a reduction of 51 percent. This decline has occurred partly in response to the strong economy, the Administration's granting of Federal waivers to support welfare reform initiatives in 43 States prior to passage of PRWORA, and the state implementation of provisions of the PRWORA itself. In response to the need for government officials and others to better understand the policy and programmatic changes that have been made, the effects on families and children, and the implications for other organizations and programs, DHHS and others have sponsored and carried out a broad array of welfare reform research and evaluations.

Studies in progress address a broad set of questions and have and will continue to produce valuable information. However, while we are learning a good deal in some areas there is more we need to know. For example, additional research and analyses are needed on children and family poverty status, labor supply decisions, program participation pattern decisions, family formation and structure, outcomes for children, outcomes for different sub-populations, and the effects of different reform policies and administrative approaches. Further, more information is needed to better understand the interaction of welfare reform with and its implications for other programs such as Medicaid, Food Stamps, child care, child support, foster care, or child welfare, for example, and for other community services (e.g., emergency food, housing, employment, training, education, mental health, substance abuse treatment). While some families are benefiting from the new incentives, requirements and opportunities, others may be left behind. In response, many state and local governments and organizations have begun to design and implement new strategies to work with families with multiple challenges that interfere with obtaining or sustaining employment at levels that can meet family needs. Little is known about the effectiveness of these strategies.

This announcement is one part of the Department of Health and Human Services' strategy to support research that will address critically important questions about welfare reform and related programs serving low-income families and outcomes for mothers, fathers, children, and other family members. Congress explicitly authorized funds to carry out such research in the Health and Human Services Appropriation Act of 2000. Sound research and analyses on an array of important issues and topics will be needed to help inform the debate and deliberations on TANF reauthorization at the national level. Information is needed to provide information and guidance to state and local governing officials as they continue to reform and refine their policies, programs, and approaches. Further research and analyses are needed to inform us about the experiences of families during these times and their prospects for the future and about the experiences of organizations who are working with families to help them succeed and thrive.

Part II. Purpose

The purpose of these studies is to support policy-relevant research, using rigorous analytical methods, to address critical questions about welfare reform related outcomes for families and children, program design, implementation and management choices and effects at various levels. We are particularly interested in welfare outcomes and those issues that are likely to be of concern in TANF reauthorization discussions. We will

support short-term research and data analysis that are designed to be completed within about twelve months as well as some longer-term studies that may require multiple years. Our intent is to sponsor research and analytic work and not to fund the provision of services. Grant funds awarded in the full-proposal phase of this initiative may not be used to pay for programs or services.

ASPE and ACF are interested in analyses that would inform the general issues discussed above and the questions listed below. We are interested in the effect of welfare reform on families and children, the effects of state policies and practices, and other issues related to low-income families with children. Data from a variety of sources can be used (such as state and county administrative records or survey data). We also encourage the use of national surveys (*e.g.,* PSID, NLSY–79, NLSY–97, SIPP, SPD) and comprehensive state level administrative and survey databases which will allow for detailed analytic work on the causes, consequences and processes of welfare reform and the broader policy and economic environment. (*Note:* While there are positive aspects to the use of national surveys, researchers must be prepared to address the limitation that most data will be based on periods that precede passage of the welfare reform legislation or implementation of its major provisions.) We expect that most short-term projects will rely on secondary data analyses. However, primary data collection and analyses may be necessary for some projects.

While the list represents many of the topics that are important to ASPE and ACF, the suggested questions are by no means meant to be exhaustive or restrictive. ASPE and ACF invite researchers to submit abstracts for analytic work in other areas related to welfare outcomes that they deem to be important.

1. *Composition of Caseload.* Is the cash assistance caseload becoming more disadvantaged? In what ways are the families who remain on welfare different than the ones who have left? What are the characteristics of those who are working and still receiving TANF? Are there differences within this group in work patterns, TANF use, or individual or family and child characteristics? What role do policy decisions (*e.g.,* disregards, sanctions, time limits, working with ''harder-to-serve'' families) play in the variation in caseloads across states? What are the characteristics of those with little or no work experience? What are the interactions between low-wage work and state policies related to earnings disregards and time limits and what are the implications for families? In addition to increased numbers of child only cases, are there other changes in the composition of the TANF caseload? What are the implications for applicants and recipients of such changes? What are the implications for the TANF program or related programs?

2. *Patterns of use of government programs.* What are the relative roles of entry and exit effects in caseload decline? How are families (working and non-working) utilizing government sponsored programs including cash assistance, Medicaid, food stamps, child care, child support, SSI, EITC, Unemployment Insurance, workforce development programs, and other support service benefits? Are there differences in the patterns of use across programs among low-income working families, including current and former TANF families and non-welfare families? Have patterns changed? What are the major factors contributing to any change in patterns of use? Are there differences in the characteristics of families with different patterns of program utilization? Are the current utilization patterns affecting other safety-net programs (*e.g.,* foster care, child welfare, housing programs, substance abuse treatment)? What factors affect changes seen by other safety net programs (*e.g.,* early identification and referral by TANF agency, increased investments using TANF funds or other sources, families leaving TANF)? What is known about the usage patterns for the non-resident parent? To what extent do alternative state/local policies and practices affect utilization (*e.g.,* ''make work pay'' policies, levels of subsidy for child care, adjusted hours of operation for working families, outreach or marketing activities for health care, child care, or other benefits, level of training, extent of collaboration)?

3. *Effects on sub-populations.* What are the effects of welfare reform on those in different geographic settings (*e.g.,* urban centers, rural communities, tribal reservations)? What are the effects of welfare reform and related program changes on different groups of individuals or families (*e.g.,* teen parents, immigrants, ethnic or racial groups, families with infants and toddlers, those with mental or physical health problems, those with low basic skill levels or limited English proficiency, Native Americans, or those living in different types of family or household compositions)? What are the effects on the broader population of low-income families who are not participating in TANF or other needs-based assistance? To what extent do alternative state/local TANF policies and practices affect outcomes for different groups?

4. *Non-working welfare leavers.* What are the characteristics and circumstances of people who leave welfare and are not working? What are the circumstances of their children? What are the reasons that some families do not reenter the welfare system? To what extent does their employment or welfare status change over time? What are their sources of income, income levels and living arrangements? What kinds of support do they receive from the non-resident parent? Do these or other circumstances change over time? What public, family or community resources do they use and over what periods?

5. *Sanctions.* How effective are full-family sanctions versus partial sanctions or alternative conciliation policies and practices in obtaining compliance with work requirements? What is the level of employment among adults in fully sanctioned cases? Do sanctioned cases use other sources of public support more than other families? What are the effects of TANF sanctions on household income and circumstances? What are the reasons for continued noncompliance among sanctioned families? Are sanctioned families more likely to be involved with child welfare or foster care programs? Are there differences among continuously sanctioned cases and others in the extent or presence of problems such as substance abuse, mental health problems, domestic violence, or very low basic skills?

6. *Labor market experiences.* To what extent do TANF recipients and former recipients who work differ from other low-income working families or individuals without children? Specifically, how do they differ from each other with regard to outcomes such as earnings, increases in wage rates, average hours of work per week, types of work, benefits available, length of employment spells, number of jobs, use of TANF/Medicaid/SCHIP/Food Stamps and EITC, child care arrangements, costs and subsidies, asset accumulation, living arrangements, and marriage? To what extent do they differ with regard to individual, family or other characteristics (*e.g.,* education, skill level, family composition, health status, family supports)? Are certain characteristics associated with better outcomes? Are TANF (and related programs') policies, components, or features associated with better outcomes

for families and children? What role do workforce development programs play?

7. *Employment Stability.* What factors (*e.g.*, individual, family, geographic, public policy) contribute to employment stability among low-income workers (families and individuals without children), including current and former TANF recipients? To what extent is employment stability affected by child care arrangements, options, or costs? Does employment stability lead to better circumstances for adults or children (*e.g.*, wage advancement, jobs with better benefits, increased earnings, increased household income, housing stability or quality, types of child care used, stability of family routines, school outcomes for children, regular receipt of child support)?

8. *The potential importance of marriage and family structure with respect to family well-being.* To what extent does marriage improve the economic well-being of low-income families? How do the economic benefits of marriage differ by demographic characteristics including socioeconomic status and ethnicity? Among the low-income population, how does the economic well-being of married families compare to that of families entering other unions such as cohabitation, and what might be the reason for those differences? To what extent do the relative benefits depend on the sequencing of events such as pregnancy, birth, cohabitation, marriage, and union dissolution? In addition to potential economic benefits, does marriage among the low-income population also have positive impacts on adult and child behaviors, as compared to behaviors among single parent or cohabiting families? To what extent are outcomes among married individuals representative of the potential benefits to marriage among nonmarried individuals, and how can these outcomes be modeled in a way that better controls the selective factors affecting people's decisions to marry or not.

9. *TANF flexibility and implications for other programs.* To what extent has TANF flexibility resulted in changes in types of families served (*e.g.,* working-poor families not/never on cash assistance) and the types of programs or services funded? Has the flexibility within TANF affected the extent or manner of interaction (*e.g.,* policy development, funding decisions, staffing, formal/informal collaboration, referrals) with other programs such as child care, child support, Medicaid, SCHIP, food stamps, SSI, or workforce development programs or types of providers (*e.g.,* private, non-profit, faith-based)? What is the effect of changes in interaction on participants or on agencies involved? Has TANF flexibility or other aspects of welfare reform affected participation in other programs given the availability of similar benefits under TANF and other programs (*e.g.,* foster care)? To what extent have state/local decisions to utilize TANF flexibility affected the number of cases reported in other systems such as foster care?

10. *Use of TANF and Maintenance of Effort (MOE) funds.* How has TANF affected the total level of funding available for programs for low-income families? How are state and local governments utilizing the flexibility provided under TANF in deciding how to allocate and spend welfare funds (TANF and MOE funds)? What role do TANF and MOE funding levels play in state/local decision making with regard to services for low-income families and children? To what extent is there diversity in the types of organizations administering TANF funds or TANF-funded program activities and has this changed over time? What are the implications of this diversity (*e.g.*, for program accountability, public awareness, uses of cash assistance block grant funds)?

11. *Barrier identification and service utilization.* To what extent are individuals who are identified as having barriers to employment (*e.g.*, substance abuse, mental illness or mental health problems, very low basic skills, learning disabilities, physical disabilities, or violent relationships) referred to appropriate services? To what extent are those referred enrolled or engaged in services to address the barrier? To what extent do participants complete or continue to engage in the services or treatment? Does participation in treatment/services affect compliance with TANF requirements, employment and other outcomes for parents and other caregivers? To what extent has TANF funding flexibility and state/local policies and practices affected access to needed services or the ability of ''harder-to-employ'' individuals to make progress toward employment and reduced use of TANF?

12. *Entry effects and welfare dynamics.* How do entrants to TANF differ from entrants to AFDC, especially in regard to family and child characteristics (*e.g.,* age, number of children)? How can entries into TANF and AFDC be modeled, and what do such modeling efforts tell us about the effect of TANF policies on entries to TANF and diversion from entries? What events are associated with the beginning and ending of TANF spells? How have they changed over time in response to the economy and policy changes? How do these compare to beginning and ending AFDC spells? How does spell lengths for TANF entrants compare with spell lengths for AFDC entrants? What are the effects of time limits? What are the characteristics of those likely to hit the federal time limits?

Part III. Abstract Application Guidelines and Evaluation Criteria

As noted previously, ASPE and ACF are engaging in a two-part process. Applicants must first submit an abstract as described in the application section below. Please read this section carefully. Abstracts must comply with the application guidelines. Abstracts that do not comply with the application guidelines will not be considered.

Abstracts must be received in the following format:

12 point font size;
Single spaced;
1 inch top, bottom, left, and right margins

The deadline for receipt of abstracts is March 29, 2000. An abstract will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before March 29, 2000, or postmarked before midnight three days prior to March 29, 2000 and received in time to be considered during the competitive review process (within two weeks of the deadline).

Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An original and two copies are required, but applicants are encouraged to send an additional 4 copies to ease processing, but applicants will not be penalized if these extra copies are not included. The original and copies of the abstract must be mailed to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Room 405F, Hubert H. Humphrey Building, Washington, DC. 20201, Telephone: (202) 690–8794.

Abstracts must include the material indicated below. The information provided for items 1 through *4 must not exceed 6 pages.*

1. *Title page.* This page should include a reference to this program

announcement: Policy Research and Studies on Welfare Reform Outcomes; proposed project title; name of researcher(s); organizational affiliation; and the address, telephone number, and e-mail address of the lead investigator. (This will be the mailing address used by ASPE/ACF to request full proposals from selected applicants.) The title page must include an indication, by number, of the research question(s) presented within this announcement that are being addressed or indicate that the research question is not one of those contained in the announcement. The proposed data set must also be included. The title page must include the total number of months needed for completion of the project and the project's proposed start and end date. This should be the only information on page one.

2. *Statement of research question.* The statement should briefly discuss the relevance of the proposed work to the purposes of this announcement. The statement will be reviewed for policy relevance and the importance of the research question. Please indicate, by number, which research question(s) presented within this announcement are being addressed or indicate that the research question is not one of those contained in the announcement.

3. *Statement of proposed methods.* This section should describe the conceptual model, the data source and the analytic methods. This description should explicitly relate data sources and analytic methods to the research issues to be addressed. This section must also contain information regarding the researcher's ability to obtain the data and information on when data will be available, if they are not already. Note that in the final proposal the researcher will have to provide assurances that the data is available.

4. *Experience.* The principal investigator's relevant research experience must be described. Other key staff must be identified with a brief description of their relevant experience and an indication of the tasks or activities for which they will be primarily responsible.

5. *Estimated budget.* This section must include an estimate of staff time and other direct costs. Information about other funding sources and the contribution that the ASPE/ACF funds will make must be discussed. Only a total project budget need be submitted at this time.

Part IV. The Review Process

An independent review panel will review and score all abstracts that are submitted by the deadline date and which meet the screening criteria (all information and in formats required by this announcement). The panel will review the abstracts using the evaluation criteria listed below to score each abstract. The review results will be the primary elements used by the Assistant Secretary for Planning and Evaluation and the Assistant Secretary for Children and Families in making decisions regarding full application submission. The Department also reserves the option to discuss abstracts with other Federal or State staff, specialists, experts, and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in determining which applicants will be requested to submit a competitive application for review.

1. Research Question(s): The research must address important unanswered questions of local or national policy significance. The proposed research must contribute significantly to understanding the outcomes of welfare reform. Short-term research studies should provide information likely to be relevant to TANF reauthorization discussions. (35 points)

2. Methodology/Merits of the Research Design: The research design must identify the study population, indicate data sources and demonstrate the availability and reliability of proposed data sources and the appropriateness and reliability of data collection instruments or observational techniques as well as the validity of analytic methods proposed for addressing the research questions and hypotheses. The conceptual model and the analysis plan must be clearly explained. It is important to explain the time frame for the proposed work and that explanation must be clear and reasonable. (25 points)

3. Experience. The abstract must provide information on the principal investigator's relevant research experience and demonstrate capability to use the proposed data and methods. The relevant experience and proposed roles of other key staff must be presented. (30 points)

4. Budget. Applicants must provide an estimate of the total proposed budget, including information about other funding sources. The contribution of ASPE/ACF funding must be presented. The budget must be reasonable for the proposed scope of work. (10 points)

Estimate of Schedule

ASPE and ACF anticipate that abstracts will be reviewed and selected applicants notified to submit full proposals approximately 30 days following the deadline for submission of abstracts. We expect that full proposals will be required to be submitted within 45 days of the date of the notification letter.

The Catalogue of Federal Domestic Assistance Numbers are 93.239 and 93.647 for ASPE and ACF, respectively.

Dated: February 18, 2000.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

Dated: February 16, 2000.

Howard Rolsto,

Director, Office of Planning, Research and Evaluation, Administration for Children and Families .

[FR Doc. 00–4613 Filed 2–25–00; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Device Quality Systems Inspection Technique; Notice of Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a workshop on the FDA Quality System Inspection Technique (QSIT). The topics to be discussed include: The development of QSIT, compliance program and warning letter pilot, management controls, corrective and preventative actions, design controls, production and process controls, and industry perspective of QSIT. The purpose of this QSIT workshop is to increase understanding of QSIT in the medical device community. By explaining this new inspection technique, FDA intends to ensure that the medical device industry takes appropriate action to establish effective quality systems and to prevent regulatory problems when inspections occur.

Date and Time: The workshop will be held on March 8, 2000, from 8:30 a.m. to 4:30 p.m.

Location: The workshop will be held at the Condado Plaza Hotel, 999 Ashford Ave., San Juan, PR 00907.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) along with a registration fee of $125.00 to Jose P. Rodriguez, Director of Special Programs and Seminars, the Puerto Rico Manufacturers Association, P.O. Box 195477, San Juan, PR 00919–

5477, 787–759–9445, ext. 204, FAX 787–756–7670. The fee covers refreshments, organization and site costs, and materials. Space is limited; therefore interested parties are encouraged to register early. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please inform Jose P. Rodriguez (address above) at least 7 days in advance of the workshop.

Contact: H. Gordon Cox, Supervisory Investigator, FDA San Juan District Office, 466 Fernandez Juncos Ave., San Juan, PR 787–729–6801.

SUPPLEMENTARY INFORMATION: In the fall of 1999, the FDA field offices began using QSIT nationwide as the primary tool for medical device good manufacturing practice/quality system (GMP/QS) inspections. QSIT was developed using a collaborative effort with stakeholders, and it was tested in three districts.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise.

The workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities directed to small businesses.

Dated: February 23, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–4662 Filed 2–23–00; 4:20 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 9, 2000, 8 a.m. to 6 p.m., and on March 10, 2000, 8 a.m. to 3 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 9, 2000, the committee will discuss the safety and efficacy of a combination vaccine from SmithKline Beecham for the prevention of Diptheria/Tetanus, Pertussis, Polio, and Hepatitis B. On March 10, 2000, the committee will: (1) Complete recommendations pertaining to the influenza virus vaccine formulations for the 2000 to 2001 season, (2) hear a short briefing on the Vaccine Safety Action Plan, and (3) be updated on the status of vaccines for the prevention of rotavirus disease.

Procedure: On March 9, 2000, from 9:15 a.m. to 6 p.m., and on March 10, 2000, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 3, 2000. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 9:45 a.m. and between approximately 4 p.m. and 4:15 p.m on March 9, 2000. Oral presentations from the public will be heard on March 10, 2000, between approximately 10:20 a.m. and 10:30 a.m., between approximately 12:30 p.m. and 12:45 p.m., and between approximately 2:45 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 9, 2000, from 8 a.m. to 9:15 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information. (5 U.S.C. 552b(c)(4)). These portions of the meeting will be closed to discuss issues relating to pending or proposed investigational new drug applications.

FDA regrets that it was unable to publish this notice 15 days prior to the March 9 and 10, 2000, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 16, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–4589 Filed 2–23–00; 3:44 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration—(OMB 0915–0212)—Extension

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its ''partners'' to assess strengths and weaknesses in program services. A generic approval is being requested from OMB to conduct the partner surveys. HRSA partners are typically State or local governments, health care facilities,

health care consortia, health care providers, and researchers.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with a technical assistance contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve service. Focus groups may also beused to gain partner input into the design of mail and telephone surveys. Focus groups in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred methodologies.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the **Federal Register**.

The estimated response burden is as follows:

Type of survey	Number of respondents	Responses per respondent	Hours per response	Total hour burden
In-class evaluations	40,000	1	.05	2,000
Mail/Telephone surveys	12,000	1	.25	3,000
Focus groups	50	1	1.5	75
Total	52,050			5,075

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 16, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–4533 Filed 2–25–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AGENCY: Health Resources and Services Administration.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Thursday, August 18, 1999, make the following correction:

Correction

In the **Federal Register** issue of Wednesday, August 18, 1999, in FR Doc. 99–21257, on page 45027, the grant category beginning in the first column under the heading ''Health and Welfare Technical Advisory Group (CFDA# 93.110AI)'' is withdrawn from competition due to consideration of alternative mechanisms to fund proposed activities.

Dated: February 18, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–4534 Filed 2–25–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NIH Intramural Research Training Award, Program Application

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previoiusly published in the **Federal Register** on Thursday, October 28, 1999, page 58071 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for pblic comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NIH Intramural Research Training Award, Program Application; *Type of Information Collection Request:* Revision of OMB No. 0925–0299; 4/30/2000; *Need and Use of Information Collection:* The proposed information collection activity is for the purpose of collecting data related to the availability of Training Fellowships under the NIH Intramural Resaerch Training Award Program. This information must be submitted in order to receive due consideration for an award and wil be used to determine the eligibility and quality of potential awardees. *Frequency of Response:* On occasion. *Affected Public:* Individuals seeking Intramural Training award opportunities. *Type of Respondents:* Postdoctoral, Predoctoral, Post-baccalaureate, Technical, and Student IRTA applicants.

Estimated Number of Respodents: 15,779. *Estimated Number of Resposnes Per Respondent:* 1. *Average Burden Hours Requested:* .53 *Estimated Total Annual Burden Hours Requested:* 8,422.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral IRTA	1,089	1	1	1,089
Predoctoral	6	1	1	6
Postbaccalaureate	290	1	1	290
Technical IRTA	27	1	1	27

Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Student IRTA	3,386	1	1	3,386
References for all IRTA categories	10,981		.33	3,624
Total	15,779	1	.53	8,422

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and inistruments, contact: Edie Bishop, Human Resource Consultant, Office of Human Resource Management, OD, NIH, Building 31, Room B3C07, 31 Center Drive MSC. 2203, Bethesda, MD, 20892–2203.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 17, 2000.

Frederick C. Walker,

Executive Officer, OD, NIH.

[FR Doc. 00–4551 Filed 2–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Thymosin β4 for Wound Healing Applications

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any domestic or foreign applications corresponding to PCT Patent Application PCT/US99/17282 and USSN 60/094,960, both entitled ''Thymosin β4 Promotes Wound Repair'' to Alpha1 Biomedicals, Inc., of Bethesda, Maryland. The patent rights in this invention have been assigned to the United States of America and Alpha1 Biomedicals, Inc. The prospective exclusive license may be limited to the development of therapeutic applications, including compositions and methods, to be used in the treatment of wounds and tissue repair.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before May 30, 2000 will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comment and other materials relating to the contemplated license should be directed to Susan S. Rucker, J.D., Patent and Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext 245; fax: 301/402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications describe the use of the compound thymosin β4, isoforms of thymosin β4 (Tβ4 ^{ala}, Tβ9, Tβ11, Tβ12, Tβ13, Tβ14, or Tβ15) or a peptide derived therefrom, LKKTET, (aa residues 17–22) as an agent for promoting wound healing. Thymosin β4 is a small, 43 mer, 4.9 kDa, peptide which can be produced by chemical synthesis or recombinantly. Studies using a punch model for wounds in rats have shown that providing thymosin β4 either by systemic delivery (intraperitoneal) or topical delivery accelerates wound healing and that extracellular matrix deposition occurs in the wound bed. In addition, Thymosin β4 has been shown previously to promote endothelial cell migration and to promote angiogenesis.

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. This prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, NIH receives written evidence and argument that 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.

Applications for a license (*i.e.,* a completed ''Application for License to Public Health Service Inventions'') in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 35 U.S.C. 552.

Dated: February 16, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–4553 Filed 2–25–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4563–N–02]

Notice of Proposed Information Collection for Public Comment for the General Conditions for Construction, Public and Indian Housing Programs

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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:* April 28, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: General Conditions of the Construction Contract; Public and Indian Housing Programs.

OMB Control Number: 2577–0094.

Description of the need for the information and proposed use: This form is required for construction contracts awarded by Public Housing Agencies and Tribally Designated Housing Entities (TDHEs), referred to hereafter as Housing Agencies (HAs). The form provides the requirements for performance and compliance with the constructions under the conventional bid method and modernization. If the form were not used by HAs in solicitations, HAs would be unable to enforce their contracts. The form includes those clauses required by OMB's Common Rule on grantee procurement, implemented by HUD at 24 CFR 85.36, HUD program regulations on grantee procurement; those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u, Section 3, for the employment, training, and contracting opportunities for low-income persons), implemented by HUD at 24 CFR 135.

Agency form numbers, if applicable. Form HUD–5370.

Members of affected public: State, local or Tribal Government Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,694 responses (624 development and 2,070 modernization), one response per construction contract, one hour per response, 2,694 total burden hours.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 18, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0094 (exp. 2/28/2000)

General Conditions of the **Contract for Construction**

Public and Indian Housing Programs

Previous edition is obsolete

form **HUD-5370** (3/97)
ref Handbooks 7417.1 & 7485.1

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36 and those requirements set forth in Section 3 of the Housing and Urban development Act of 1968, as amended, and implemented by HUD at 24 CFR 135 and by its amendment by the Housing and Community Development Act 1992, implemented by HUD in the Interim Rule published June 30, 1994. The form is required for construction contracts awarded by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 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.

Responses to the collection of information; are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD 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 number

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General Conditions of the Contract for Construction

Public and Indian Housing Programs

Conduct of Work

1. Definitions

(a) **"Architect"** means the person or other entity engaged by the PHA/IHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA/IHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

(b) **"Contract"** means the contract entered into between the PHA/IHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5369-A), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from either the U.S. Department of Labor or HUD, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) **"Contracting Officer"** means the person delegated the authority by the PHA/IHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA/IHA in all dealings with the Contractor.

(d) **"Contractor"** means the person or other entity entering into the contract with the PHA/IHA to perform all of the work required under the contract.

(e) **"Drawings"** means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled **Specifications and Drawings for Construction** herein.

(f) **"HUD"** means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA/IHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA/IHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) **"Project"** means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(h) **"PHA/IHA"** means the Public Housing Agency or Indian Housing Authority organized under applicable state or tribal law which is a party to this contract.

(i) **"Specifications"** means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(l) **"Work"** means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA/IHA pursuant to the clause entitled **Availability and Use of Utility Services** herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA/IHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA/IHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA/IHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA/IHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the **Changes** clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA/IHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to -(i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA/IHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA/IHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA/IHA employees.

Construction Requirements

5. Preconstruction Conference and Notice to Proceed

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA/IHA, its Architect, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA/IHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled ***Inspection and Acceptance of Construction***, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA/IHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the **Default** clause of this contract.

7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA/IHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA/IHA.

(b) The PHA/IHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA/IHA. Nor does the PHA/IHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA/IHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA/IHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA/IHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA/IHA's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA/IHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA/IHA and one set will be returned to the Contractor. As required by the

Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

(a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA/IHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of re-testing materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Prohibition against use of lead-based paint. The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations

bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled **Changes** herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA/IHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and,

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 327 et seq.; and,

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA/IHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA/IHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA/IHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA/IHA or, where the utility is produced by the PHA/IHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA/IHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.

(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

(j) The Contractor shall indemnify and save harmless the PHA/IHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA/IHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA/IHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water Applicable to Contracts in Excess of $100,000

(a) Definition. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Contractor agrees to —

(1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;

(2) Promptly notify the Contracting Officer if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;

(3) Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,

(4) Include or cause to be included the provisions of this clause in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

19. Energy Efficiency

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause -

(1) **"Acceptance"** means the act of an authorized representative of the PHA/IHA by which the PHA/IHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.

(2) **"Inspection"** means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.

(3) **"Testing"** means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA/IHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) PHA/IHA inspections and tests are for the sole benefit of the PHA/IHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA/IHA after acceptance of the completed work under paragraph (j) below.

(d) The presence or absence of the PHA/IHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA/IHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA/IHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The PHA/IHA may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the PHA/IHA not to conform to contract requirements, unless the PHA/IHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA/IHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.

(i) If any work requiring inspection is covered up without approval of the PHA/IHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA/IHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA/IHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA/IHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's/IHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

(a) The PHA/IHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA/IHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA/IHA's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the PHA/IHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA/IHA's possession or use, notwithstanding the terms of the clause entitled **Permits and Codes** herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefor. If prior possession or use by the PHA/IHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This

warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA/IHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date that the PHA/IHA takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA/IHA-owned or controlled real or personal property when the damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defects of equipment, material, workmanship or design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA/IHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed in writing, for the benefit of the PHA/IHA; and,

(3) Enforce all warranties for the benefit of the PHA/IHA.

(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA/IHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA/IHA nor for the repair of any damage that results from any defect in PHA/IHA furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the PHA's/IHA's rights under the **Inspection and Acceptance of Construction** clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's/IHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required under this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Precedence

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

(a) The PHA/IHA shall pay the Contractor the price as provided in this contract.

(b) The PHA/IHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA/IHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA/IHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment

and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

_____

Name:

_____

Title:

_____

Date:

_____

(f) Except as otherwise provided in State law, the PHA/IHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA/IHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA/IHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's/IHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA/IHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA/IHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA/IHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA/IHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA/IHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA/IHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA/IHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA/IHA shall not (1) determine or adjust any claims for payment or disputes arising thereunder between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA/IHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters

which do not change the rights or responsibilities of the parties (e.g., change in the PHA/IHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's/IHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA/IHA.

29. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) PHA/IHA-furnished facilities, equipment, materials, services, or site; or,

(4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA/IHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

(2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

(3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

(g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

(i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled **Disputes** herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

(j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA/IHA.

(b) If the performance of all or any part of the work is, for an

unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled ***Labor Standards and Labor Standards- Nonroutine Maintenance***, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA/IHA against the Contractor shall be subject to a written decision by the Contracting Officer.

(d) The Contracting Officer shall, within _____ 60 unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA/IHA in accordance with the PHA's/IHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within _____ (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA/IHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA/IHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA/IHA in completing the work.

(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA/IHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA/IHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within _____ days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the ***Disputes*** clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is

determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA/IHA.

33. Liquidated Damages

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled ***Default*** of this contract, the Contractor shall pay to the PHA/IHA as liquidated damages, the sum of $ [Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA/IHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA/IHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA/IHA in completing the work.

(c) If the PHA/IHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA/IHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA/IHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA/IHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA/IHA or assignee takes possession thereof or assumes responsibility therefor; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA/IHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within _____ days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the ***Disputes*** clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA/IHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA/IHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than $_____[Contracting Officer insert amount] per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA/IHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA/IHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA/IHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA/IHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the super-structure

is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA/IHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA/IHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's/IHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

(a) Definitions. As used in this contract -

(1) **"Subcontract"** means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) **"Subcontractor"** means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA/IHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as

amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the ***Indian Preference*** clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUDs regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractors commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractors obligations under 24 CFR part 135.

(f) Noncompliance with HUDs regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(h) Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

41. Indian Preference Applicable to contracts awarded by

Indian Housing Authorities for projects owned or controlled by Indian Housing Authorities.

(a) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (1) preference and opportunities for training and employment shall be given to Indians, and (2) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(b) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant to section 7(b).

(c) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(d) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(e) Upon a finding by the IHA or HUD that any party to this contract is not in compliance with the section 7(b) clause, said party shall, at the direction of the IHA, take appropriate remedial action pursuant to the contract.

42. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

43. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA/IHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA/IHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

44. Limitations on Payments made to Influence Certain Federal Financial Transactions

(a) The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(c) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this clause.

45. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA/IHA harmless from loss on account thereof; except that the PHA/IHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

46. Examination and Retention of Contractor's Records

(a) The PHA/IHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the ***Disputes*** clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA/IHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

47. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the construction work to be performed under the contract, except if the construction work has been determined to be "Nonroutine Maintenance" subject to the terms of that clause of this contract.

(a) **Minimum Wages.**

(1) All laborers and mechanics employed or working upon the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; ***provided***, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding of funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevail-

ing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) **Payrolls and basic records.** (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (d)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) (1) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employ-

ment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(e) **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) **Contract termination; debarment.** A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) **Compliance with Davis-Bacon and related Act requirements.** All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(h) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA/IHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

(i) **Certification of eligibility.** (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any

person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

(j) **Contract Work Hours and Safety Standards Act**. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements**. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) **Withholding for unpaid wages and liquidated damages**. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.

(k) **Subcontracts**. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

[ ] **48. Labor Standards-Non-routine Maintenance**

(***If checked***, for contracts exceeding $2,000, HUD has determined that the construction covered by this contract consists of non-routine maintenance (as defined in 24 CFR 968.203) necessary for the operation of the Public or Indian Housing project; and the labor standards set forth below and the provisions of Section 12 of the United States Housing Act of 1937 which pertain to such work shall apply. Clause 47 does not apply to this contract.)

(a) **Minimum Wages**. (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:

(A) The work to be performed by the classification required is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the industry; and

(C) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(b) **Withholding of funds**. The Contracting Officer, upon his or her own action or upon request of HUD shall withhold or cause to be withheld from the Contractor under this contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic

employed or working on the site of the work all or part of the wages required by the contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, or advance, until such violations have ceased. The PHA/IHA or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) **Payrolls and basic records.**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (d)(1) above. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the OMB under OMB control number 1215-0149).

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(A) that the payroll for the payroll period contains the information required to be maintained under subparagraph (c)(1) of this clause and that such information is correct and complete;

(B) that each laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

(C) that each laborer or mechanic has been paid not less than the applicable wage rates for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or the PHA/IHA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment or denial of participation in HUD's programs pursuant to 24 CFR Part 24.

(d) **Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

(e) **Contract termination; debarment.** A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 24 CFR Part 24.

(f) **Disputes concerning labor standards.**

(1) Disputes arising out of the labor standards provisions of paragraphs (a), (b), (c), and (e) of this clause shall be subject to the general disputes clause of this contract.

(2) Disputes arising out of the labor standards provisions of paragraphs (d), and (g) of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this paragraph (f)(2) include disputes between the Contractor (or any of its subcontractors) and the PHA/IHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

(g) **Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at

a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in subparagraph (g)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in subparagraph (g)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (g)(1) of this clause.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (g)(2) of this clause.

(h) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in this clause.

49. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever either of the following occurs:

(1) Such non-Federal prevailing wage rate exceeds: (A) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor or a DOL-recognized State Apprenticeship Agency; or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(2) Such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

[FR Doc. 00–4540 Filed 2–25–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–05]

Housing Condition Assessment (Pilot Study)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is solicitating public comments on the subject proposal.

DATES: *Comments Due Date:* March 29, 2000.

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.

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 describerd 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 names and telephone nubmers 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: Housing Condition Assessment (Pilot Study).

OMB Approval Number: 2528–XXXX.

Form Number: None.

Description of the Need for the Information and its Proposed Use: Housing is the most basic and important part of the infrastructure in the United States and worldwide. Its direct and indirect impact on the economy and public welfare is far reaching. While increasing homeownership opportunities has benefits, it presents certain challenges to the future of housing in the United States. For example, housing production and resource utilization is stretched to meet the housing demand of a diverse and growing population. To continue to meet this demand, conventional methods need to be improved while innovative materials and methods need to rise to meet the challenge in a responsible, but competitive manner. This challenge can only be effectively met by better understanding the performance of the existing housing stock and developing improved technologies, including both design and construction practices that lead to better and more affordable homes for all Americans.

Respondents: New Collection.

Frequency of Submission: Individuals or Households.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		1		200

Total Estimated Burden Hours: 200.

Status: New.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 22, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–4642 Filed 2–25–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–FA–12]

Housing Opportunities for Persons with AIDS Program; Announcement of Funding Award—Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department under the Fiscal Year 1999 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice announces the selection of 22 project applications and two Technical Assistance applications under the 1999 HOPWA national competition which were announced under the SuperNOFA for HUD's Housing Community Development and Empowerment Programs and published in the **Federal Register** on February 26, 1999. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7212, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1934. The TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers). Information on HOPWA, community development and consolidated planning, and other HUD programs may also be obtained from the HUD Home Page on the World Wide Web. In addition to this competitive selection, 97 jurisdictions received formula based allocations during the 1999 fiscal year for $200.475 million in HOPWA funds. Descriptions of the formula programs is found at www.hud.gov/cpd/hopwahom.html.

SUPPLEMENTARY INFORMATION: The purpose of the HOPWA program competition was to award project grants for housing assistance and supportive services under two categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as

effective models in addressing the needs of low-income persons living with HIV/AIDS and their families; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for low-income persons living with HIV/AIDS and their families in areas that do not receive HOPWA formula allocations.

The purpose of the HOPWA Technical Assistance competition was to award grants that provide support for program operations. HUD established four national goals for these funds: (1) Helping communities develop comprehensive strategies for HIV/AIDS housing; (2) ensuring the sound management of HOPWA programs; (3) providing national HOPWA information to connect clients with assistance; and (4) using HUD information management tools to help achieve performance at the highest levels.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the HUD Appropriations Act for 1999. The competition was announced in a SuperNOFA for HUD's Housing Community Development and Empowerment Programs published in the **Federal Register** on February 26, 1999 (64 FR 9837). Each application was reviewed and rated on the basis of selection criteria contained in that Notice. A total of $22,464,110 was awarded to the 22 highest rated project applications in their ranked order and two technical assistance applications for $2 million.

Public Benefit

The award of HOPWA funds to these 22 projects will significantly contribute to HUD's mission in supporting projects that provide safe, decent and affordable housing for persons living with HIV/AIDS and their families who are at risk of homelessness. The projects proposed to use HOPWA funds to support the provision of housing assistance to an estimated 2,303 persons living with HIV/AIDS and an additional 992 family members who reside with the HOPWA recipient. In addition, an estimated 1,787 persons with HIV/AIDS are expected to benefit from some form of supportive service or housing information referral service that will help enable the client to maintain housing and avoid homelessness. The recipients of this assistance are expected to be very-low income or low-income households. These 22 applicants also documented that the Federal funds awarded in this competition, $22,464,110 million, will leverage an additional $50,143,834 in other funds and non-cash resources including the contribution of volunteer time in support of these projects, valued at $10/hour. The leveraged resources will expand the HOPWA assistance being awarded by 223 percent.

A total of $22,464,110 million was awarded to these 22 organizations to serve clients in the eighteen listed States:

1999 HOPWA Competitive Grants

Alaska

• The Alaska Housing Finance Corporation (AHFC) will receive a $616,000 grant to continue providing housing and supportive services to persons living with HIV/AIDS in Interior and Southeast Alaska. This Long-term grant will support clients as part of a comprehensive approach in addressing their needs in an area of the nation that does not receive formula funds. Shanti of Southeast Alaska and the Interior AIDS Association will join AHFC to provide a comprehensive program of rental assistance and case management services. This program combines local and federal resources to provide basic housing needs and services to approximately 90 persons living with HIV/AIDS in rural Alaska. For information, contact: Ms. Kris Duncan, P.O. Box 101020, Anchorage, AK 99510; (907) 338–2585

California

• The County of Alameda, Housing and Community Development Department will receive a $1,249,145 SPNS grant for rental assistance costs to renew Project Independence, a FY96 HOPWA grant. The County works in partnership with the AIDS Project of the East Bay, ARK of Refuge, Inc., Tri-City Health Center, and the Public Health Institute. The project will provide rental subsidies, accessibility improvement, moving assistance, case management and service coordination for health care, food assistance, and vocational/educational opportunities in Oakland and other communities in this County. Approximately 175 persons and 75 family members will be assisted with housing and services over the grant period. For information, contact: Ms. Katherine Gale, 224 W. Winton Ave., Room 108, Hayward, CA 94544; (510) 670–5211.

• The City of San Jose, Department of Housing will receive a $1,346,000 SPNS grant to create the Shared Housing Assistance Placement and Supportive Services (SHAPSS) in collaboration with the AIDS Resources Information & Services of Santa Clara County and Health Connections AIDS Services. The SHAPSS program, geared toward fostering independence, will provide operating costs for a transitional housing facility, a roommate referral service, tenant based rental subsidies and supportive services. Services include transportation, dietary counseling, respite care, psychosocial counseling and substance abuse counseling and treatment. The program will serve an estimated 80 clients with HIV/AIDS and 15 families in Santa Clara County and expand affordable housing for clients in a high cost housing market. For information, contact: Ms. Julia Abdala, 4 North Second Street, Suite 900, San Jose, CA 95113; (408) 277–8359.

• The West Hollywood Community Housing Corporation will receive an SPNS award of $459,005 to provide for a continuation of supportive housing for 450 persons living with HIV/AIDS. The Enhanced Management Program, developed originally under a 1996 SPNS grant, will expand permanent affordable housing options through service coordination in Los Angeles County in connection with housing programs developed and funded through other leveraged sources. A consortium with the Hollywood Community Housing Corporation, Project New Hope, and Skid Row Housing Trust will expand service to three additional communities, develop an On-Site Learning program for life skills development and offer training and employment programs. The program will fund Resident and Vocational Service Coordinators at 25 sites to promote long-term residential stability and reemployment opportunities. For information, contact: Mr. Paul Zimmerman, Executive Director, 8285 Sunset Blvd., Suite 3, West Hollywood, CA 90046; (323) 650–8771.

Colorado

• The Del Norte Neighborhood Development Corporation will receive an SPNS grant in the amount of $959,330 to fund the substantial rehabilitation of Dave's Place, a 15-bed single-room occupancy (SRO) facility located in Denver. This facility will provide for very-low income PLWA who are homeless and who may be double or triple diagnosed with substance abuse and/or mental illness issues. Participants will also receive individually tailored services including group and individual counseling, transportation assistance, food bank access, HIV education, 2 hot meals

daily, and self-sufficiency training, and other services in cooperation with the Colorado AIDS Project. An estimated 27 persons will benefit from the housing and supportive services in the three year period. For information, contact: Mr. Marvin Kelly, Executive Director, 2926 Zuni St., #202, Denver, CO 80211; (303) 477–4774.

Delaware

• The Delaware HIV Consortium will receive a $934,487 SPNS grant for the acquisition, rehabilitation and operation of a housing facility in collaboration with the Connections Community Support Programs, Inc. Under this grant, the Consortium will develop and operate ten units of permanent housing with intensive supportive services with a primary focus on the needs of women with HIV/AIDS and co-occurring substance use and/or mental health disorders in a high-impact minority neighborhood of Wilmington. This program, known as Womanspace, will provide a safe and comfortable environment where participants will be engaged in a three-tiered program of housing, stabilization and treatment. For information, contact: Ms. Kirsten Olson, 100 West Tenth Street, Suite 415, Wilmington, DE 19801; (302) 654–5472.

District of Columbia

• Safe Haven Outreach Ministries will receive a $1,286,000 SPNS grant to support 46 units of transitional housing for dually and multiply diagnosed homeless adults with HIV/AIDS. This program will convert the top two floors of Sibley Plaza, a D.C. public housing building, into one and two-bedroom units for this program. On-site substance abuse counseling, basic medical care, mental health treatment, case management, assistance with daily living and job readiness training will be provided. The program was developed from advocacy by residents through the Sibley Plaza Resident Council in coordination with the DC Public Housing Authority and creates options in public housing approaches to needs associated with the HIV epidemic. Clients with former criminal justice issues will be assisted in reentry support and guidance. The program will stabilize 256 homeless individuals and facilitate their entry into set-aside permanent housing following this transitional support. For information, contact: Ms. Marsha A. Richardson, Executive Director, 931 Potomac Ave., SE., Washington, DC 20005; (202) 546–7146.

Hawaii

• The Maui AIDS Foundation will receive a $1,158,399 SPNS grant for rental assistance to address housing needs of people living with HIV/AIDS throughout the neighbor islands outside of Oahu. This nonprofit will collaborate with the Big Island AIDS Project, Malama Pono, and West Hawaii AIDS Foundation in administering funds for rental assistance, short-term rent, supportive services, housing information and other resources. By linking housing assistance from HOPWA to the continuum of resources available through current service programs, the project will serve 82 persons and 40 family members with housing and support that is appropriate to client needs. An additional 234 persons will receive related services. For information, contact: Mr. Jon Berliner, Executive Director, 1935 Main Street, Suite 101, Wailuku, HI 96793; (808) 242–4900.

Idaho

• The Idaho Housing and Finance Association will receive $1,299,837 Long-Term grant for rental assistance and will be undertaking the first-ever HOPWA-funded activities in this State. The Idaho HOPWA Collaboration, in conjunction with the Boise City and Nampa Housing Authorities, the ID Department of Health and Welfare, the North Idaho AIDS Coalition, the Central ID Care Consortium, Magic Valley HIV/AIDS Group, Southeastern Idaho AIDS Coalition, the Idaho AIDS Foundation and Terry Reilly Health Services, will provide long-term rental assistance for 45 units, short-term rental and utility assistance, case management, dental and psychiatric services for low income persons living with AIDS. The project will expand the existing supportive service delivery system, assisting 384 persons living with AIDS and their families throughout the State of Idaho. For information, contact: Ms. Julie H. Williams, 565 W. Myrtle Street, Boise, ID 83707–1899; (208) 331–4886.

Illinois

• Pioneer Civic Services, located in Peoria, will receive a $515,592 SPNS grant for development and operations costs for a permanent housing unit in connection with health care and other services provided by the Heart of Illinois HIV/AIDS Center. The team will also collaborate with the Health Department, the Central Illinois Friends of PWA and Pioneer Properties in offering assistance. The housing includes the acquisition and rehabilitation of two 2-unit duplexes and the use of vouchers for four scattered site units to create additional flexibility for housing options. The project will make available intensive case management intervention to support persons living with HIV/AIDS to better achieve stability and independence. A community program development coordinator will also work to facilitate strategic planning to expand future resources for this population. The project will serve approximately 78 persons living with AIDS and their families. For information, contact: Ms. Helena M. Crum, Director, 1318 S.W. Adams Street, Peoria, IL 61602; (309) 673–9418.

• Traveler's and Immigrant Aid/Chicago Connections will receive a $1,286,000 SPNS grant to continue the operations of the First Step Program, which provides recovery support and housing for persons living with HIV/AIDS with substance abuse and mental illness challenges in Chicago. The program offers 15 units of transitional housing for persons with HIV/AIDS in recovery programs. As a renewal of their 1995 HOPWA grant, the Phase II Program establishes First Step, a recovery home providing case management, individual and group counseling, and day health providers and access to other support offered by Rafael House, a licensed drug and alcohol treatment provider. Under this grant, a comparative assessment of different service models which are employed in working with this population will also be conducted by the Mid America Institute on Poverty. The program will serve approximately 120 residents over a three year period. For information, contact: Mr. John S. Groseclose, 208 S. LaSalle, Suite 1818, Chicago, IL 60604; (773) 989–1935.

Maine

• The AIDS Project of Portland, Maine will receive a $712,221 SPNS grant to implement a HAVEN Project under the Housing Assistance and Volunteer Enlistment Network to continue and adapt prior HOPWA programs to address three new challenges-housing for homeless persons with HIV/AIDS, treatment for co-occuring mental illness and substance abuse, and needs of persons with HIV/AIDS recently released from incarceration. A collaboration with the AIDS Lodging House, Shalom House and Peabody House to address the needs of clients in southern Maine. The project will provide 42 units of tenant-based rental assistance, emergency assistance with rent, utility payments, intensive case management and in-home support, outreach and pre-release

planning for persons in the criminal justice system, outreach to homeless persons with HIV, and housing information services to all targeted groups. The HAVEN project will serve approximately 110 persons with HIV/AIDS and 25 family members. An additional 203 persons will receive social services. For information, contact: Mr. George W. Friou, Executive Director, 615 Congress Street, 6th. Fl., P.O. Box 5305, Portland, ME 04101; (207) 774–6877.

Maryland

• The City of Baltimore, Department of Housing and Community Development, will receive $1,359,500 for the ''At the Door Project'' to help transition newly released prisoners with HIV/AIDS by providing stable housing and intensive services to address the high recidivism rate for ex-offenders. Program participants will receive substance abuse treatment and mental health assistance, pre-release planning, housing counseling, peer support, access to medical care, and job training through the collaboration of eight project sponsors, Health Education Resources Organization, Inc. (HERO), Sisters Together and Reaching Inc (STAR), Black Educational AIDS Project, Inc., Ecumenical AIDS Resource Services, Inc., Offenders Aid and Restoration, Inc., Courage to Change, Inc., Project PLASE, Inc., and Prisoners Aid, Inc. The team will offer 150 persons housing assistance and an additional 150 persons will receive supportive service assistance. The SPNS program was developed in collaboration with the Maryland State Department of Corrections and other agencies, a focus group of ex-offenders and through a conference on the urgent needs of newly released prisoners and inmates. For information, contact: Mr. Leslie Leitch, P.O. Box 236, 417 East Fayette Street, Baltimore, MD 21202; (410) 396–3757.

Massachusetts

• Community Healthlink, Inc. in Worcester County, Massachusetts will receive a $1,236,000 SPNS grant to establish and operate an eight-unit residence for pregnant homeless women with HIV/AIDS who are also challenged with substance abuse issues.

Medical support to be offered will focus on preventing neonatal transmission of HIV and provide other prenatal care that would otherwise not be accessible for homeless clients. A wide range of supportive services, including specialized HIV/AIDS treatment, substance abuse treatment, mental health treatment, parenting skills development, and permanent housing search will be provided. This project will serve an estimated 48 persons with useful innovations in helping this client population address current needs due to homelessness, pregnancy and substance abuse and enable them to transition to more stable and independent living, in connection with prioritized access to 48 units of housing under the nonprofit's grants from the Supportive Housing Program and the Shelter Plus Care program. For information, contact: Dr. Kenneth A. Hetzler, MD, Executive Director, 72 Jaques Avenue, Worcester, MA 01610; (508) 860–1115.

• The Justice Resource Institute (JRI) will receive a $1,256,815 SPNS grant for a tenant-based rental assistance program, called TBRA Plus. The program will enable clients in many communities in Massachusetts outside Boston, to use scattered-site rental subsidies to access housing. Regional services will be established for low-income and homeless individuals and families with HIV/AIDS. Rental subsidies will be offered by the South Shore Housing Development Corporation for Plymouth and Bristol Counties, HAP, Inc. for Hampden and Hampshire counties, and Community Teamwork Inc. for northern Essex and Middlesex Counties. JRI is also collaborating with the North Shore Community Action Program (Peabody), the River Valley AIDS Project (Springfield), the Brockton Area Multi-Services, the Stanley Street Treatment and Resources (Fall River) the Community Counseling of Bristol County (Taunton) and Project Home/Center for Health and Human Services (New Bedford) for supportive services, including leveraged case management and permanent housing search efforts. The program will help 95 persons and their families with housing assistance during the three years of the grant. For information, contact: Ms. Laurie Bloom, 130 Boylston Street, Boston, MA 02116; (617) 457–8150.

New Hampshire

• The State of New Hampshire, Department of Health and Human Services, Office of Community Support and Long Term Care will receive a $520,448 grant in conjunction with the Merrimack Valley AIDS Project, the New Hampshire AIDS Foundation, and Manchester Neighborhood Housing. The program will provide community-based housing and supportive services including case management, for low and very low income persons and families living with HIV/AIDS in the greater Manchester area. An estimated 90 persons with HIV/AIDS and 35 family members will receive assistance. An additional 75 will receive supportive services and information will be provided to landlords, housing providers and nonprofits to help fight the stigma of AIDS and expand client access. Twenty-five units of rental housing will become available through this initiative. For information, contact: Ms. Phyllis Powell, 105 Pleasant Street, Rm. 117–C, Main Bldg., Concord, NH 03301; (603) 271–5059.

New York

• United Bronx Parents, Inc. will receive a $1,080,000 SPNS grant to renew a successful prior HOPWA grant for Casita Esperanza that is addressing the complex needs of persons with HIV/AIDS who have multiple diagnoses, including homelessness, mental illness and/or substance abuse issues. The project serves clients in four primarily Latino and African American Bronx neighborhoods of New York City. Approximately 240 persons will receive housing and services including medical attention, shelter, and assistance in locating other permanent housing. The project includes the use of 14 emergency housing units to address immediate needs and to engage clients in recovery services, the use of 28 clean and sober transitional housing units in the facility, the establishment of a free primary health care center and an outpatient mental health clinic and other on-site services. This project has been participating with Columbia University's Evaluation and Technical Assistance Center on the evaluation of current efforts with this high-need population under the Multiple Diagnoses Initiative that was developed by HUD and HHS in 1996. For information, contact: Ms. Lorraine Montengro, Executive Director, 773 Prospect Avenue, Bronx, NY 10455; (718) 991–7100.

• Greyston Health Services, Inc. in Yonkers, New York will receive a $1,271,870 SPNS grant for a HIV Mental Illness Chemical Addition Special Project that addresses a gap in appropriated care for persons with these needs. In coordination with the project sponsor, Maitri Center Inc., the project will purchase and rehabilitate six units of low income housing; provide a staff housing; supply emergency rental assistance funds; provide enhanced supportive services in day service programs; and offer enhanced environmental and crisis management services to maintain 24-hour assistance at the organization's Issan House, as 35-unit supportive housing facility for formerly homeless persons with AIDS. The program will serve 214 persons with HIV/AIDS in Westchester County.

For information, contact: Mr. Charles G. Lief, President, Greystone Health Services, 21 Park Avenue, Yonkers, NY 10703; (914) 376–3900.

Pennsylvania

• The Asociacion de Puertorriquenos en Marcha, Inc. will receive a $1,193,511 SPNS grant to continue La CASA (Community AIDS Services Advancement), a program of rental assistance, counseling and other services for clients in the mostly Latino neighborhood in north Philadelphia. The components of La CASA include assisting persons with HIV/AIDS and their families with coordination of services, 20 units of tenant based rental assistance, security deposits, housing counseling, case management, medical monitoring, emergency child care, and transportation within a bilingual/bicultural setting. The program will provide housing assistance for up to 50 households in Philadelphia for over three years, with an additional 30 persons living with HIV/AIDS receiving supportive services. The grant continues the organizations 1996 HOPWA award for this program and adapts the program by offering more intensive support for families where the parent, mostly women, are in early stages of recovery. For information, contact: Ms. Iris Caballero, 2147 N. 6th. Street, Philadelphia, PA 19122; (215) 236–8885.

Rhode Island

• The Rhode Island Housing and Mortgage Finance Corporation will receive a SPNS grant for $1,078,955 to provide housing assistance in cooperation with the treatment and care programs of AIDS Care Ocean State. In adapting prior efforts, grant funds will be used to rehabilitate a building to create Sober House, a sheltered environment providing intensive supportive services that address the challenges of relapse, including support following detox treatment. Six additional rental units will be made available to expand prior HOPWA funded housing programs. This program will serve an estimated 100 persons throughout the state over three years and 10 additional families/persons through the leasing program. For information, contact: Ms. Susan Boddington, 44 Washington Street, Providence, RI 02903; (401) 457–1286.

Texas

• The Houston Regional HIV/AIDS Resource Group, Inc., will receive a $783,333 SPNS grant to fund the continuation of a 1996 HIV Multiple Diagnoses Initiative project. Funds will be used to adapt this program by increasing crises interventions and increasing the number of first stage beds for clients who leave the stabilization programs at the University of Texas Houston Recovery Campus. This program will continue to provide short-term crisis housing and substance abuse treatment to 194 individuals over two years with assistance provided by the Bering Omega Community Service, Crisis Intervention and AIDS Foundation Houston as partners. The program will also expand to include admission on demand of recently incarcerated individuals from the Harris County Jail. The four sponsors will use a computerized database to connect persons to housing, offer a crisis hotline, and provide case management and referrals under a care plan for on-going support in connection with housing under the City's HOPWA formula programs and Supportive Housing Program projects. For information, contact: Mr. Michael J. Springer, Executive Director, 500 Lovett Blvd., Suite 100, Houston, TX 77006; (713) 526–1016.

• The Tarrant County, Community Development Division will receive a $861,622 SPNS grant to fund the ''Preservation and Expansion Project'' for the rehabilitation of a special care facility for persons with HIV/AIDS who are homeless. Funds will support Samaritan House in operating its 31-unit single room occupancy facility in northwest Fort Worth. The project will provide supportive services, a substance abuse recovery program, needed repairs to the housing facility, and a 15 permanent housing rental assistance vouchers to assist clients ready for independent living arrangements. The program expects that 110 persons will be served under this grant. For information, contact: Ms. Patricia Ward, 1509B South University, Suite 276, Fort Worth, TX 76107; (817) 338–9129.

Nation-wide HOPWA Technical Assistance AIDS Housing of Washington, Inc.

AIDS Housing of Washington, Inc., (based in Seattle), is collaborating with Bailey House, Inc., (New York City) and the AIDS Housing Corporation (Boston) to provide national HOPWA technical assistance to nonprofit organizations and State and local governments in planning, operating and evaluating housing assistance for persons who are living with HIV/AIDS and their families. The award of National HOPWA TA funds of $1,750,00.00 will allow the AIDS Housing of Washington (AHW) team to address each of the four National HOPWA goals that were established by HUD in the 1999 SuperNOFA.

AHW will provide assistance to help communities establish and enhance their Comprehensive Strategies for HIV/AIDS Housing, especially within the context of updating the five-year Consolidated Plan. In addition, the collaboration will promote the Sound Management of HOPWA Programs to uphold the public trust and coordinate activities that provide National HOPWA Information to help clients and communities better connect to available assistance. In connection with other providers, the AHW team will also be involved in helping grant recipients make Use of HUD Information Management Tools, including new information technology in reporting on program accomplishments. AHW is the prior recipient of the National HOPWA TA grant that was awarded in the 1997 competition and was the prime organizer for three national conferences on AIDS housing. Bailey House and the AIDS Housing Corporation are also recipients of HOPWA funds as Special Projects of National Significance that were awarded in prior competitions. Bailey House is offering management support to 75 AIDS organizations in New York City and collaborates with the World Institute for Disabilities in developing vocational education projects for persons with HIV/AIDS. AHC is a provider of housing development and technical assistance activities through out Massachusetts and in other communities in New England.

Under the 1999 grant, the AHW team will provide outreach to housing and service providers and governments in undertaking comprehensive needs assessment and planning, and will provide grantee program training, community consultations, host national and regional AIDS housing conferences and meetings, develop a Leadership Institute for AIDS housing providers, and disseminate information in publications and via the internet. The team will work with other consultants to provide specialized knowledge in program evaluations, fiscal system design and implementation, board and organizational development for nonprofits, and needs assessments and planning expertise. Communities in every State are expected to benefit from the project activities and prospective clients and the public will gain greater knowledge of the HOPWA program. This collaboration also will network with the Cooperation for Supportive Housing, the National Supportive Housing Technical Assistance Partnership and the Enterprise

Foundation, to draw upon the expertise and resources of theses providers of Supportive Housing and HOME technical assistance. The AIDS Housing of Washington collaboration will make its available resources to HOPWA grantees and program sponsors on a nation-wide basis over a three year period. For information, contact: Donald Chamberlain, Director of Technical Assistance, AIDS Housing of Washington, 2025 First Avenue, Suite 420, Seattle, WA 98121; Telephone No: (206) 448–5242, Fax No: (206) 441–9485, Email: donald@aidshousing.org, Website: www.aidshousing.org.

Center for Urban and Community Services, Inc.

The Center for Urban and Community Services, Inc. (New York City), in conjunction with its partners, the Hudson Planning Group (New York City), the Corporation for Supportive Housing (offices in New York and eight other States), Lakefront SRO (Chicago), and the Barry University School of Social Work (Miami Shores, FL), will also be awarded funds for HOPWA technical assistance activities. The grant of $250,000 will enable this team to focus technical assistance to HOPWA grantees, project sponsors and potential recipients over a one-year period. Based on their current project operations, the CUCS team will target HOPWA program activities to communities in the States that are East of the Mississippi River.

The organizations will primarily address two of the National HOPWA goals: helping communities create Comprehensive Strategies for HIV/AIDS Housing and facilitating the Sound Management of HOPWA Programs. The project will assist communities in updating their five-year strategies under their Consolidated Plan, including undertaking needs assessments through surveys of consumers. These five organizations will work together with other housing and health care providers to better integrate program operations, supportive services, property and financial management, operational capacity development, facility development and community planning in assisting the client population eligible under HOPWA. CUCS is currently providing technical assistance for programs that provide assistance to persons who are homeless under the Supportive Housing Technical Assistance grant with the Corporation for Supportive Housing and the Hudson Planning Group is a recipient of a HOWPA Special Project of National Significance for managed care activities in New York. For information, contact: Suzanne Wagner, Director of Training and Technical Assistance, Center for Urban Community Services, Inc., 120 Wall Street, 25th Floor, New York NY 10005 Telephone No:(212) 801–3313, Fax No: (212) 635–2191, Website: www.cucs.org.

Total for all 22 program grants	$22,464,110
Total for 2 Technical Assistance grants	2,000,000
Total	24,464,110

Dated: February 22, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 00–4641 Filed 2–25–00; 8:45 am]

BILLING CODE 4210–29–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 by Union Pacific Rail Road Company for the Sacramento Rail Yard Project, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The Union Pacific Rail Road Company (Union Pacific) 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. The Service proposes to issue a 2-year permit to Union Pacific that would authorize take of the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) incidental to otherwise lawful activities. Such take would occur during the remediation of contaminated soils at Union Pacific's 240-acre Sacramento Rail Yard (Rail Yard) in downtown Sacramento, Sacramento County, California. Remediation of the contaminated soils at the Rail Yard would result in the loss of 87 elderberry plants with 261 stems which provide habitat for the valley elderberry longhorn beetle.

We request comments from the public on the permit application, which is available for review. The application includes a Habitat Conservation Plan (Plan). The Plan describes the proposed project and the measures that Union Pacific will undertake to minimize and mitigate take of the valley elderberry longhorn beetle.

We also request comments on our preliminary determination that the Plan qualifies as a ''low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments should be received on or before March 29, 2000.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, W–2605, Sacramento, California 95825–1486. Comments may be sent by facsimile to 916–414–6710.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief of Conservation Planning Division, at the above address or call (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Please contact the above office if you would like copies of the application, Plan, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species 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; i.e., 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 Sacramento Rail Yard occupies approximately 240 acres and is located at 401 I Street in Sacramento, California. It lies immediately north of the present downtown area, near the confluence of the Sacramento and American Rivers. The Rail Yard has served as the principal locomotive maintenance and rebuilding facility since 1863. The Rail Yard has been designated a state Superfund site by the California Environmental Protection Agency, Department of Toxic Substances Control (Department), due to the presence of heavy metals, primarily lead, in the soil. To comply with the California Health and Safety Code, the Department has directed Union Pacific to remediate the site. The remedial actions for

contaminated soils at the Rail Yard include excavation, containment, treatment, recycling, and disposal technologies. These remediation activities will require the removal of all vegetation at the Rail Yard, including the elderberry (*Sambucus mexicana*) food plant of the valley elderberry longhorn beetle.

In 1998 and 1999, biologists surveyed the project area for special-status wildlife and plant species that could be affected by the project. Based upon those surveys, the Service concluded the project may result in take of one federally listed species, the threatened valley elderberry longhorn beetle.

Union Pacific has agreed to mitigate take of the valley elderberry longhorn beetle by the purchase of 146 habitat units for the beetle from a mitigation bank approved by the Service for such mitigation. One valley elderberry longhorn beetle mitigation unit may consist of as many as 5 elderberry seedlings and 5 additional associated native species, which are planted within an 1,800 square foot area. We determined that a total of 728 seedlings would be required to mitigate for the 261 elderberry stems greater than 1 inch that would be taken. Thus, the number of mitigation credits that Union Pacific would need to purchase is 146, which is determined by dividing the total number of required replacement elderberries by the number of elderberries in one unit. The 146 habitat units have been purchased from Wildlands, Inc., located in Placer County, California.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan to mitigate impacts of the project on the valley elderberry longhorn beetle. Two alternatives to the taking of listed species under the Proposed Action are considered in the Plan.

Under the No Action Alternative, no permit would be issued. However, while this alternative would avoid impacts to the elderberry plants at the Rail Yard, the No Action Alternative is unacceptable as it does not comply with the state of California's Health and Safety Code as well as the directive from the Department to remediate the contaminated soils.

Under the Reduced Take Alternative the proposed remediation efforts would be reduced or limited to certain portions of the Rail Yard, thereby allowing some undetermined number of elderberry plants to remain. Even though this alternative might avoid impacts to some of the elderberry plants on site, the likelihood of valley elderberry longhorn beetle occupancy in the remaining elderberries would be reduced as the area becomes more urbanized. Furthermore, this alternative does not comply with the laws of the state of California, which require a state-recognized Superfund site, such as the Rail Yard, to be remediated.

The Service has made a preliminary determination that the Plan qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Service's Environmental Action Statement, the Union Pacific Sacramento Rail Yard Plan qualifies as a ''low-effect'' 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 the soil remediation project at the Rail Yard.

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 (Floodplain 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 made a preliminary determination 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.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the Union Pacific Rail Road Company for incidental take of the valley elderberry longhorn beetle during soil remediation of the Rail Yard. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: February 18, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–4563 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–55–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 Tributary Point Parcel 9 Development Project, Sacramento County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The Weyerhaeuser Venture Company 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 Service proposes to issue a 2-year permit to the Weyerhaeuser Venture Company that would authorize take of the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) incidental to otherwise lawful activities. Such take would occur as a result of development on the Tributary Point Parcel 9 Project area in Sacramento County, California. Development would result in the loss of up to 2 elderberry plants with 6 stems that provide habitat for the valley elderberry longhorn beetle.

We request comments from the public on the permit application, which is available for review. The application includes a Habitat Conservation Plan (Plan). The Plan describes the proposed project and the measures that the Weyerhaeuser Venture Company would undertake to minimize and mitigate take of the valley elderberry longhorn beetle.

We also request comments on our preliminary determination that the Plan qualifies as a ''low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments should be received on or before March 29, 2000.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825–1846. Comments may be sent by facsimile to 916–414–6714.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief of Conservation Planning Division, at the above address or call (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Please contact the above office if you would like copies of the application, Plan, and Environmental Action Statement. 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; i.e., 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 proposed project area is Parcel 9 of the Tributary Point development, which corresponds to an unsectioned portion of Township 9 North, Range 7 East of the ''Folsom, California'' topographic quadrangle (United States Geological Survey, Photorevised 1980). The Tributary Point Parcel 9 development is located west of Hazel Avenue, south of Folsom South Canal, and north of U.S. Highway 50 in the unincorporated area of Rancho Cordova in Sacramento County, California.

Weyerhaeuser Venture Company, the owner of Parcel 9, is requesting an incidental take permit to authorize take for 2 years.

Parcel 9 is a 1.39-acre vacant lot which has been graded and supports utilities. The entire Tributary Point development consists of 14 improved lots. The applicant has sold all but two lots, and construction of retail, residential and office uses has occurred on eight lots. Current uses include a 216-unit apartment village, a 70,000 square foot, 3-story office building, 2 furniture stores, 2 fast-food restaurants and 2 gas station/convenience marts. Two additional lots have been sold to an extended stay hotel operator. A furniture store operator has expressed interest in Parcel 9.

Two elderberry shrubs, containing six stems greater than 1 inch in diameter at ground level, occur on the project site within the impact area as potential habitat for the federally-threatened valley elderberry longhorn beetle. The project site does not contain any other rare, threatened, or endangered species or habitat. No critical habitat for any listed species occurs on the project site. Construction of the proposed project would result in the removal of the two elderberry shrubs on site. No beetle exit holes were found in these two shrubs.

Under the Plan, mitigation for impacts to the valley elderberry longhorn beetle would conform to the Service's 1999 Mitigation Guidelines. The two elderberry shrubs affected by the proposed project would be transplanted to the Conservation Resources Laguna Creek Mitigation Bank, a Service-approved mitigation site, prior to or on March 31, 2000. Typically, a 1:1 ratio would be required as mitigation if transplantation occurs by February 15th, but because transplantation would occur past this deadline, a 2:1 ratio (or 12 elderberry plants to mitigate for impacts to six stems) is required. To fully comply with the Service's mitigation guidelines for the transplantation of elderberry shrubs past the typical February 15th deadline, the applicant has purchased 3 valley elderberry longhorn beetle mitigation units at the Laguna Creek Mitigation Bank. Purchase of these units will result in the planting of 15 elderberry plants to mitigate for impacts to six stems. The purchase of these mitigation units has been consummated with an agreement for sale of valley elderberry longhorn beetle units dated February 9, 2000, between Weyerhaeuser Venture Company and Conservation Resources, LLC.

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. Two alternatives to the Proposed Action were considered in the Plan. Under the No Action Alternative, no permit would be issued. However, the No Action Alternative is inconsistent with local development goals and would result in the undisturbed elderberry shrubs being left on the site in an isolated patch of open space with little habitat value. Another alternative would result in the development of another site instead of the described project site. The proposed project is an infill project and has minor or negligible environmental effects. The development of the present site is considered more desirable than the construction of the project on an open site in a less-developed area because the use of an alternative site may result in greater environmental effects.

The Service has made a preliminary determination that the Plan qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect for a habitat conservation plan is based on the following three criteria: (1) implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Service's Environmental Action Statement, the Tributary Point Parcel 9 Project Plan qualifies as a ''low-effect'' 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 development of the Parcel 9 Project area.

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 (Floodplain 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.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Weyerhaeuser Venture Company for the incidental take of the valley elderberry longhorn beetle from development of the Parcel 9 Project area. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: February 18, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–4564 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–1320–AC–KYES–34711]

Lease Modification Application for Coal Lease KYES 34711

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Public Hearing and Availability of Environmental Assessment.

SUMMARY: Eastern States hereby gives notice that a public hearing will be held for comments on the environmental assessment, maximum economic recovery, and the fair market value of the coal resources covered by an application for modification of Coal Lease KYES 3471. Appolo Fuels Incorporated filed the lease modification application in accordance with 43 CFR 3432. The potentially bypass coal resource to be mined by UNDERGROUND mining methods from the Poplar Lick and Stray ''C'' coal seams in the Kentucky Ridge State Forest (KY–LU–1, Tract 1101a) Bell County, Kentucky. This lease modification application is to add 160 acres to Federal lease KYES 34711 and State lease CLR–795. The tract would be accessed from underground and is north of private reserves leased to Appolo Fuels, Inc. The eastern and northern boundary extends to the outcrop of the coal seam and the western boundary is contiguous to Federal lease KYES 34711 and State lease CLR795. The 160-acre modification to the Federal lease KYES 34711 was delineated as a result an application by the lessee. The BLM geologic report estimates 737,300 Federal and 245,800 State tons in the coal reserve base of the lease modification area. Due to the thinness of the seam, the coal reserve base (as defined in 43 CFR 3480.0.5(a)(5)) does not include the Buckeye Springs seam. Mining on the existing lease tract and on adjoining private land will proceed with or without the Federal lease modification tract. The proposed action will protect the Federal and State interest by preventing the underground bypass of 307,200 tons of recoverable reserves, the loss of $607,000 royalty to the general funds, and by providing an overall $4,366,500 positive economic impact. Of the 307,200 tons, 259,200 tons are in the lease modification tract and 48,000 tons are in the existing lease. The 48,000 tons can only be mined from proposed portals.

We have found the quality range of the coal beds is as follows:

COAL QUALITY—DRY BASIS

Seam	DH#	ASH	Volatile	Fixed carbon	B.T.U.	Sulfur
Stray ''C''	AF–10	5.31	41.71	52.98	14,145	1.45
Poplar Lick	AF–10	40.18	26.22	33.60	9,025	0.70
	AF–11	8.17	37.09	54.74	13,714	1.28

Note: Percentages sum to more than 100 due to rounding. Dry basis calculated by mathematically removing water.

The purpose of the hearing is to obtain comments on the Environmental Assessment prepared on the following items:

1. The method of mining to be employed to obtain maximum economic recovery of the coal;
2. The impact that mining the coal in the proposed lease modification area may have on the surrounding area including, but not limited to, impacts on the environment; and
3. Factors affecting, and methods of determining, the fair market value of the coal to be mined.

The environmental assessment will be available for review on February 24, 2000, the Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Copies of the environmental assessment will also be available at the public hearing.

SUPPLEMENTARY INFORMATION: Written requests to testify orally at the March 24, 2000, public hearing should be received at Jackson Field Office, Eastern States, Bureau of Land Management, address set out above, prior to the close of business at 4:00 p.m., on March 21, 2000.

Both oral and written comments will be received at the public hearing, but speakers will be limited to a maximum of 10 minutes each depending on the number of persons desiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. In addition, the public is invited to submit written comments concerning the fair market value of the coal resource to the Bureau of Land Management. Public comments will be utilized in establishing fair market value

for the coal resources in the described lands. Comments should address specific factors related to the fair market value, including, but not limited to: the quantity and quality of the coal resources, the price that the mined coal would bring in the marketplace, the cost of producing the coal, the probable timing and rate of production, the interest rate at which anticipated income streams may be discounted, depreciation and other accounting factors, the expected rate of industry return, the value of the surface estate and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms and conditions, may be submitted at this time. These comments will be considered in the final determination of fair market value as determined in accordance with 43 CFR 3422.1. Should any information submitted as comments be considered to be proprietary, the information should be labeled as such and stated in the first page of the submission.

DATE AND TIME: The public hearing will be held on *March 24, 2000, at 5:00 p.m. EST.*

ADDRESSES: The public heading will be held in the conference room at the Days Inn, (606) 248–6860, 11252 N. 12th Street, Middlesboro, Kentucky 40965.

FOR FURTHER INFORMATION CONTACT: John Lewis, *John Lewis@jfo/es/blm.gov.* Bureau of Land Management, Jackson Field Office, 411 Briar Wood Drive, Suite 404, Jackson, Mississippi, 39206, (601) 977–5437 or Tim Best, *Tim Best@eso/es.blm.gov.* Bureau of Land Management, Eastern States 7450 Boston Boulevard, Springfield, Virginia 22153, (703) 440–1527.

Dated: February 23, 2000.

Walter Rewinski,

Deputy State Director, Division of Resources Planning, Use and Protection.

[FR Doc. 00–4601 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–00–1610–DH]

Notice of Availability (NOA) of the Finding of No Significant Impacts (FONSI) and the Proposed Lower Gila Resource Planning Area Amendment (Proposed Plan) and Final Environmental Assessment to the Lower Gila North Management Framework Plan and the Lower Gila South Resource Management Plan, La Paz, Yuma, Yavapai, Maricopa, Pinal and Pima Counties, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM, in response to the need to resolve pertinent issues and to enhance management of critical resources, has prepared a FONSI and proposed plan in compliance with the Federal Land Policy and Management Act of 1976, as amended, and section 102(2)(c) of the National Environmental Policy Act of 1969. An analysis of potential environmental impacts found that impacts would not be significant leading to a FONSI. Because of the FONSI, an environmental impact statement is not required to support the proposed plan.

DATES: Protests on the proposed plan must be postmarked no later than March 29, 2000.

ADDRESSES: Protests on the proposed plan must be sent to the Director (210), BLM Planning, Assessment & Community Support Group, 1849 C Street NW, MS: 1050–LS/BLM, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Hector Abrego, Team Leader, BLM, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027 or telephone (623) 580–5500.

SUPPLEMENTARY INFORMATION:

Description of the proposed action: Establishes five well-blocked public land management areas for long-term management of resources and public land uses. Land tenure adjustment: Identifies approximately 34,100 acres available for disposal, establishes guidelines for acquisition of high resource value lands, allows for exchanges within management areas for repositioning lands with high resource values and establishes the framework to dispose of federal minerals under nonfederal surface estate and to acquire nonfederal minerals estate under federal surface estate. Desert tortoise habitat management: Standardizes habitat management by incorporating the goals and objectives in ''Desert Tortoise Habitat Management on Public Lands: a Rangewide Plan'' (BLM 1988) and ''Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona'' (BLM 1990). Desert bighorn sheep augmentation and reestablishment: Expands areas where sheep augmentation and reestablishment may occur on a case-by-case basis. Wild horse and burro management: Establishes the Harquahala, Little Harquahala and Painted Rock herd areas as herd management areas. These areas, along with the existing Alamo Herd Management Area, will be managed to support populations of wild burros in a thriving natural ecological balance. Recreation management: Provides for resource-based recreational opportunities which range from recreational site facilities to remote primitive areas, establishes off-highway and special recreation vehicle designations and management, designates special recreation management areas, establishes camping stay limits and establishes guidance to address special uses and scarce opportunities. Oil and gas development: Establishes an orderly oil and gas exploration and development process and identifies 375,000 acres of wilderness as closed to oil and gas leasing.

Alternatives analyzed: A no action—current guidance alternative was analyzed in the plan amendment. Under this alternative, management of the six issues would remain status quo. No management areas would be established. Land tenure adjustment: Approximately 62,260 acres would remain available for disposal and approximately 10,735 acres of state lands are identified for acquisition. Desert tortoise habitat management: Management would be guided through ''Desert Tortoise Habitat Management on Public Lands: A Rangewide Plan'' (BLM 1988) and ''Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona'' (BLM 1990). Desert bighorn sheep augmentation and reestablishment: Reestablishment could occur only in the Black Mountains and augmentations would be authorized on a case-by-case basis. Wild horse and burro management: Continue managing burros and related issues on a case-by-case basis within the Harquahala, Little Harquahala and Painted Rocks herd areas. Burros in the Alamo Herd Management Area would be managed using valid existing decisions. Recreation management: The 14-day

camping stay will remain in effect and off-highway vehicles in Lower Gila North will remain undesignated (except for wildernesses, which are closed), off-highway vehicles in Lower Gila South will remain designated as limited to existing and/or designated roads, trails and vehicle routes and off-highway vehicles in the Barry M. Goldwater Range will remain limited to designated routes. Oil and gas development: Public requests for oil and gas exploration or development leases would be handled on a case-by-case basis and require a plan amendment for each request.

The proposed plan has a 30-day protest period as required by BLM planning regulations (43 CFR 1610.5–2). Any person who participated in this process and has an interest that may be adversely affected by the proposed decision may submit a protest. Following the protest resolution and the Governor's consistency review, the proposed plan will be approved and implemented. A decision record which documents the BLM's decision will become available.

Public reading copies may be reviewed at the following BLM locations:

1. Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona;
2. Arizona State Office, Public Room, 222 North Central Avenue, Phoenix, Arizona.

Dated: January 20, 2000.

Michael A. Taylor,

Field Manager.

[FR Doc. 00–3266 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–EU; N–62843]

Intent to Prepare an Amendment to the Paradise-Denio Resource Area Management Framework Plan, as Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM), Winnemucca Field Office intends to consider a proposal which would require amending an existing planning document. The BLM is proposing to amend the Paradise-Denio Resource Area Management Framework Plan, which includes public lands in Humboldt County, Nevada. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976. The lands identified for direct sale are described as:

Mount Diablo Meridian, Nevada

T. 43 N., R. 27 E.,
Sec. 2: S½NW¼;
Sec. 3: Lots 5, 6, 7, and 8;
Sec. 4: Lots 5 and 6.
T. 44 N., R. 27 E.,
Sec. 28: Lots 5, 6, and 7;
Sec. 33: NE¼, N½SE¼;
Sec. 34: NW¼, N½SW¼.
Totaling approximately 953.36 acres.

DATES AND ADDRESSES: For a period of 30 days, from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed plan amendment to: Terry Reed, Field Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, NV 89445.

Comments, including names and street addresses of respondents will be available for public review at the BLM Winnemucca Field Office, and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, at the above Winnemucca Field Office address or telephone (775) 623–1500.

Dated: February 17, 2000.

Terry A. Reed,

Field Manager, Winnemucca, Nevada.

[FR Doc. 00–4614 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet at the Cameron Park Inn.

DATES: Friday and Saturday, March 10–11, 2000.

ADDRESSES: 3361 Coach Lane, Cameron Park, CA. Take the Cameron Park Drive exit from Highway 50 and the hotel is right there.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. The Council will hear reports on the possibility of Monument designation of some BLM lands, a report from its recreation committee on recreation issues on BLM lands, a report on grazing issues, discuss land exchanges, and go on a field trip to the South Fork of the American River. The public is invited to attend this meeting which begins at 8 a.m. both days. Those wishing to participate in the field trip must provide their own transportation. Time will be set aside both Friday and Saturday for public comment. Anyone may discuss any public land issue with the council at that time. Written comments will be accepted at the meeting, or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

Dated: February 17, 2000.

Carol Bustos,

Acting Field Office Manager.

[FR Doc. 00–4544 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice Excluding the Alabama-Coushatta Tribal Leases From Valuation Under 30 CFR 206.172

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Alabama-Coushatta Tribe has requested that all gas produced from its leases be excluded from valuation under the rules of 30 CFR 206.172 (64 FR 43517, August 10, 1999). The Minerals Management Service (MMS) approves the request.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff; telephone, (303) 231–3432; FAX, (303) 231–3385; email, 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: 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 final rule permits an Indian tribe to request that some or all of its leases be excluded from valuation under 30 CFR 206.172 (64 FR 43517). If MMS, after consulting with the Bureau of Indian Affairs, approves the request, value is determined under 30 CFR 206.174 (64 FR 43520) beginning with production on the first day of the second month following the date MMS publishes notice in the **Federal Register**.

On December 13, 1999, by Tribal Resolution Number ACITC 99–52, the Alabama-Coushatta decided to exclude their production. MMS received the tribe's request on January 20, 2000.

As a result of the tribe's request and the publishing of this document, beginning April 1, 2000, gas production from leases on the Alabama-Coushatta Reservation must be valued under 30 CFR 206.174.

Dated: February 18, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–4562 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Renouncement, Notice of Availability of the Final General Management Plan and Final Environmental Impact Statement for Missouri National Recreational River (59-Mile District), Nebraska and South Dakota

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) is reannouncing the availability of a final environmental impact statement (FEIS) and general management plan (GMP) for the Missouri National Recreational River 59-mile district located in portions of Clay, Union, and Yankton counties, South Dakota; and Cedar, Dixon, and Knox counties in Nebraska.

The original NPS notice of availability for this document was previously published in the **Federal Register** (64 FR 56215, Oct. 18, 1999). A record of decision for the project was signed on December 17, 1999, and also was published in the **Federal Register** (64 FR 72359, Dec. 27, 1999). However, it recently was discovered that the FEIS was inadvertently not filed with the Environmental Protection Agency (EPA) as required by 40 CFR 1506.9.

Accordingly, the NPS is suspending the record of decision and implementation of the plan. The FEIS has been filed with the EPA. No action will be taken towards implementation of the GMP until 30-days after the EPA's notice of availability is published in the **Federal Register**.

DATES: The no action period for review of the FEIS will end 30-days after the EPA publishes its notice of availability in the **Federal Register**. A revised record of decision will be issued following the no action period.

FOR FURTHER INFORMATION CONTACT: Paul Hedren, Superintendent, Missouri National Recreational River, P.O. Box 591, O'Neill, Nebraska 68763, or by e-mail to MNRR_Superintendent@nps.gov, or call 402–336–3970.

SUPPLEMENTARY INFORMATION: The draft environmental impact statement and general management plan for the recreational river was on public review from October 5 to December 18, 1998. The FEIS responds to Public Law 95–625 (1978), which amends the Wild and Scenic Rivers Act by adding a 59-mile reach of the Missouri River below the Gavins Point Dam to the National Wild and Scenic Rivers System. The NPS prepared this FEIS to update a previous management plan written in 1980 by the Heritage Conservation and Recreation Service and only partially implemented. Cooperating agencies included the U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; Nebraska Game and Parks Commission; South Dakota Game, Fish, and Parks Department; South Dakota Region Three Planning; and Nebraska Lewis and Clark Planning District. The NPS's preferred alternative for the Missouri National Recreational River is identified in the FEIS as alternative 2. The preferred alternative would provide for maintenance and restoration of biologic values and would seek to minimize the effects of the mainstem dams. It also would provide for management activities that would emphasize the history and culture of the river and its surroundings. In this preferred alternative, as well as alternative 3, the Corps of Engineers (COE) and the NPS would manage the area through a cooperative agreement. The COE would function as the day-to-day manager of the water-related resources, while the NPS would administer the land-related resources. The agencies would work together where their responsibilities overlapped. Two other alternatives were also considered. The no-action alternative (alternative 1) would continue a current cooperative agreement and otherwise provides a baseline for comparison of the other alternatives; and alternative 3, providing increased recreational emphasis on the river. Partnerships with local entities would be sought to provide services in all alternatives.

The boundary in alternatives 2 and 3 is the same. It differs slightly from the existing boundary in alternative 1, chiefly by adding several historic sites. Both boundaries include important examples of the river's outstandingly remarkable resources.

Dated: February 16, 2000.

Catherine A. Damon,

Acting Regional Director, Midwest Region.

[FR Doc. 00–4630 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements, Notice of Intent; Niobrara National Scenic River, Nebraska

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan, Niobrara National Scenic River, Nebraska.

SUMMARY: The National Park Service will prepare a General Management Plan (GMP) and an Environmental Impact Statement (EIS) for the Niobrara National Scenic River (hereinafter, ''the Park''), Nebraska, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), and a court decision invalidating a similar 1996 GMP/EIS and ordering a new one. This notice is being furnished as required by NEPA Regulation 40 CFR 1501.7.

To facilitate sound planning and environmental assessment in the preparation of this EIS, the National Park Service intends to both validate information previously acquired for the 1996 GMP/EIS, and obtain suggestions and information from other agencies and the public on several court-driven issues to be addressed in the new EIS. The National Park Service will scope this GMP/EIS via the media, a newsletter, and through a World Wide Web page. Comments and participation in this scoping process are invited.

DATES: A project newsletter is being prepared, which is expected to be ready in February or March 2000. The newsletter will contain specific information about how to provide input to the scoping phase of this project. Availability of the newsletter will be announced through local and regional media outlets. The newsletter will be sent to all addressees of record in the planning of the park's 1996 GMP/EIS, and to others who request the newsletter. To request a copy of the newsletter and to be added to the project mailing list, contact the park superintendent at 402–336–3970 or by writing to one of the addresses below.

ADDRESSES: Written comments and information should be directed to Superintendent, Niobrara National Scenic River, P.O. Box 591, O'Neill, Nebraska 68763; or by email, niob__gmp@nps.gov.

FOR FURTHER INFORMATION CONTACT: Superintendent, Niobrara National Scenic River, at either of the above addresses or at telephone number 402–336–3970

SUPPLEMENTARY INFORMATION: A federal district court overturned the park's 1996 GMP/EIS in June 1999. The court did not invalidate the entire document, however, and specifically retained that section pertaining to the park's boundary. The broad array of issues identified in the 1996 GMP/EIS, including land ownership, landscape conservation, water resource protection, hunting, fishing, and trapping, and visitor education and protection appear valid but reaffirmation will be sought through scoping. The lawsuit prompting the court ruling particularly challenged National Park Service's 1996 preferred management alternative and the associated environmental analysis. Since completion of the earlier document several additional issues such as retention of the Cornell Dam, public use limits, adequacies of public accesses, and general public orientation and education have arisen. The NPS proposes to address these new issues as part of the GMP.

Specific examples of other issues that will be addressed in the GMP are: (1) The extent and manner in which partnerships can and will be employed to achieve management objectives, (2) identify appropriate access and development in the park, particularly balancing growing park use and resource protection; and (3) identity appropriate land protection strategies workable on a predominantly privately owned landscape. Other issues may be added to this list following completion of scoping.

The new GMP will set forth a management concept for the park; establish plans for resource conservation, public use, and development; and identify strategies for resolving issues and achieving management objectives. It is expected that the GMP will guide park management for a period of fifteen to twenty years.

The GMP/EIS will investigate alternatives ranging from no action to a variety of management approaches designed to guide public use and protect natural and cultural resources.

The environmental review of the GMP for the Niobrara National Scenic River will be conducted in accordance with requirements of NEPA (42 U.S.C. 4321 *et seq.*), NEPA regulations, and National Park Service procedures and policies for compliance with those regulations. The National Park Service estimates the draft GMP and draft EIS will be available to the public by November 2000.

Dated: February 15, 2000.

Catherine A. Damon,

Acting Regional Director.

[FR Doc. 00–4631 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) SRC Roll Call and Confirmation of Quorum.

(3) Welcome and Introductions.

(4) Review and Adopt Agenda.

(5) Review and adopt minutes from the March 29–30, 1999 meeting.

(6) Commission Purpose.

(7) Status of Membership.

(8) Public and Agency Comments.

(9) Old Business:

a. Review Secretary's response to subsistence hunting program recommendations:

1. Geographic Place Names Request.

b. Roster Regulation Proposed Rule Publication.

1. For Customary and Traditional Use Determinations: Unit 9E Brown Bear.

2. Cooperative Wildlife Studies: Unit 9E Moose and Caribou.

3. Aniakchak National Monument and Preserve Access Study Project Statement.

c. Status of Air Taxi/Outfitter Guide Concession Permit Program.

d. Request for resident zone community status for Perryville and Ivanoff Bay.

(10) New Business:

a. October 1999 SRC Chairs Workshop Report.

1. NPS Customary Trade Regulations.

2. Resident zone community one-year residency requirement.

b. Federal Subsistence Program Update.

1. Bristol Bay Regional Council Report.

2. Federal Subsistence Board Report.

c. Draft Subsistence Management Plan Review.

(11) Public and Agency Comments.

(12) SRC work session (draft proposals, letters, and recommendations).

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will begin at 1 p.m. on Thursday, March 9, 2000 and conclude at approximately 6 p.m. The meeting will reconvene at 9 a.m. on Friday, March 10 and adjourn at approximately 1 p.m.

LOCATION: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Deb Ligget, Acting Superintendent, or Donald Mike, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act. Note that under the Freedom of Information Act (FOIA), transcripts of any person giving public comments may be made available under a FOIA request.

Paul Anderson,

Deputy Regional Director.

[FR Doc. 00–4628 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces three public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, March 18, 2000 at 9:00 a.m.

Address: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

Annual Meeting of the Citizen Advisory Commission.

Date and Time: Immediately following the regular public meeting listed above.

Address: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

Meeting Date and Time: Thursday, June 15, 2000 at 7:00 p.m.

Address: New Jersey District Office, Route 615, Walpack, NJ.

The agenda will include reports from Citizen Advisory Commission committees including: Natural Resources and Recreation, Cultural and Historical Resources, Inter-governmental and Public Affairs, Construction and Capital Project Implementation, and Interpretation, as well as Special Committee Reports. Superintendent Bill Laitner will give a report on various park issues. The March 18, 2000, meeting will be followed by the Annual Commission meeting which involves election of officers. The meeting will be open to the public and there will be an opportunity for public comment on this issue.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: January 27, 2000.

William G. Laitner,

Superintendent.

[FR Doc. 00–4632 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Lake Clark National Park and Preserve and the Chair of the Lake Clark Subsistence Resource Commission announce a forthcoming meeting of the Subsistence Resource Commission for Lake Clark National Park. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call—Confirm Quorum.
(3) Introductions.
(4) Superintendent's welcome.
(5) Additions, corrections and agenda approval.
(6) Approval of SRC meeting minutes.
(7) SRC Purpose and Role.
(8) Status of Membership.
(9) Park Subsistence Coordinator's Report.
(10) Report on October 1999 Chair Workshop.
(11) Old Business.
(a) Status of Lake Clark Subsistence Management Plan.
(b) 1999 Federal Subsistence Board Action—Proposal #35 Unit 9B Moose.
(12) New Business.
(a) Update on 2000–2001 Federal Subsistence Board Proposals.
(1) Proposal #31—Unit 9B Brown Bear.
(2) Proposal #32—Unit 9B Black Bear/Brown Bears.
(3) Proposal #39—Unit 9B Beaver.
(13) Federal Subsistence Fisheries Management Report.
(14) Agency Reports and Public Comments.
(15) Election of Officers.
(a) Chair.
(b) Vice Chair.
(16) SRC Work Session—Prepare correspondence/recommendations.
(17) Set time and place of next meeting.
(18) Adjournment.

DATES: The meeting will begin at 10:00 a.m. on Tuesday, February 29, 2000 and conclude around 4:30 p.m. In accordance with 41 CFR 101–6.1015(b), we are providing less than 15 days notice in the **Federal Register** because of the following exceptional circumstances:

a. Winter conditions prevented the commission from meeting on February 3, 2000.

b. The need to convene the commission prior to the Bristol Bay Regional Subsistence Advisory Council meeting (March 2000).

LOCATION: The meeting will be held at the Nondalton Community Hall, Nondalton, Alaska. Phone (907) 294–2288.

FOR FURTHER INFORMATION CONTACT: Deb Liggett, Superintendent, or Lee Fink, Chief of Operations, Lake Clark National Park and Preserve, 4230 University Drive, Suite 311, Anchorage, Alaska 99508, Phone (907) 271–3751 or Karen Stickman, Subsistence Coordinator, 1 Park Place, Port Alsworth, Alaska 99653, Phone (907) 781–2218.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act. Note that under the Freedom of Information Act (FOIA), transcripts of any person giving public comments may be made available under a FOIA request.

Paul Anderson,

Deputy Regional Director.

[FR Doc. 00–4629 Filed 2–25–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Agenda for the March 29, 2000 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting, Golden Gate Club in the Presidio 10:00 a.m.–12:00 p.m.

10:00 a.m. Welcome—Neil Chaitin, Chairman, Opening Remarks—Neil Chaitin, Chairman, Approval of Minutes from Previous Meeting

10:15 a.m. Update—Haslett Warehouse, William Thomas, Superintendent

10:30 a.m. Staff Reports, Ships, Wayne Boykin, Operations, Marc Hayman, Collections, Tom Mulhern, National Maritime Museum Association, Kathy Lohan
11:30 a.m. Public Comments and Questions
11:45 a.m. Election of Officers
12:00 p.m. Agenda items/Date for next meeting

Michael R. Bell,
Acting Superintendent.
[FR Doc. 00–4634 Filed 2–25–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Adoption of Proposed Leasing Regulations/Guidelines for the El Portal Administrative Site Yosemite National Park, Mariposa County, CA; Request for Public Comment

SUMMARY: The National Park Service is responsible for the management and administration of the El Portal Administrative Site. To facilitate these activities the Superintendent of Yosemite National Park, acting on behalf of the Secretary of the Interior, has been authorized to issue leases for lands within the Administrative Site subject to terms, conditions, and guidelines as are appropriate to assure the proper administration, protection, and development of the site. The adoption proposed will establish the qualifications of persons and corporations who may be eligible to acquire a lease, the process used to establish lease fees, and the circumstances under which the Superintendent of Yosemite National Park may acquire unexpired leases.

Background

Sections 47–1 through 47–6 of Title 16, United States Code, govern the Superintendent's management and administration of the El Portal Administrative Site (''Site''). Section 47–1 states that in order ''to preserve the extraordinary natural qualities of Yosemite National Park'', the Superintendent is authorized to manage the Site such that ''utilities, facilities, and services required in the operation and administration of Yosemite National Park may be located on such site outside the Park.'' To effectuate this goal, the Superintendent has been authorized under Section 47–2 to issue leases directly or through a Contract Lease Manager subject to such terms, conditions, and guidelines as are appropriate to assure proper administration, protection, and development of the Site and the Park.

Before leases can be issued, however, the Superintendent must prepare suitable guidance regarding the issuance and management of leases. Section 47–5 states: ''Such regulations shall establish the qualifications of natural persons and corporations who may be eligible to acquire a lease and a sublease, the process to be used in establishing fees for such leases and subleases, and they shall set forth the circumstances under which the Secretary may elect to acquire any unexpired lease or sublease.'' Thus established is a guiding framework for the residential and commercial leasing of government-owned lands and structures within the Site. Also provided thereby is program funding, by establishing a Fair Rental Value for leased property, and means to determine an appropriate Permit Fee for permitted property within the El Portal Administrative Site. Funds collected will be used as directed in 16 U.S.C. 47–3.

FOR FURTHER INFORMATION CONTACT: The Office of Special Park Uses, P.O. Box 700, El Portal, California 95318, (209) 379–9238.

Reference: Public Law 85–922 of September 2, 1958, Public Law 90–409 of July 21, 1968 and Public Law 99–542 of October 27, 1986, as codified in Title 16, United States Code, Sections 47–1 through 47–6.

Comments: Written comments must be postmarked not later than April 25, 2000. Requests for a copy of the proposed leasing program, or written comments, should be addressed to: Superintendent, Yosemite National Park, c/o Office of Special Park Uses, P.O. Box 700, El Portal, California 95318.

Please confine written comments to issues or concerns pertinent to the proposal and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph subject to comment. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered. The public may inspect comments received on this proposal in the Office of Special Park Uses, between the hours of 8:00 a.m. and 4:30 p.m. on business days.

Dated: February 17, 2000.

James R. Shevock,
Acting Regional Director, Pacific West Region.
[FR Doc. 00–4633 Filed 2–25–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Agency Information Collection Activities: New Proposed Collection; Comment Request

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of information collection under review; New collection; survey of best practices for hiring and retention of female and minority law enforcement officers.

The Department of Justice, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 3, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Richard H. Ward, III, Deputy Director, Bureau of Justice Assistance, 810 7th Street, Washington DC 20531, or facsimile at (202) 305–1367.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of This Information

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Survey of Best Practices for Hiring and Retention of Female and Minority Law Enforcement Officers.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Bureau of Justice Assistance, United States Department of Justice.

(4) Affected public who will be as or required to respond, as well as a brief abstract: Primary: Local Law Enforcement Agency *Other:* None. 42 USC 3760 [Sec. 510.] Purposes (a)(4) providing financial assistance to public agencies and private nonprofit organizations for demonstration programs which, in view of previous research or experience, are likely to be a success in more than one jurisdiction.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The time burden of the 800 respondents to complete the survey is 35 minutes per application.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete survey is approximately 400 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: February 22, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–4610 Filed 2–25–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and section 113(g) of the Clean Air Act, (''Act'') 42 U.S.C. § 7413(g), notice is hereby given that on February 17, 2000, a proposed consent decree in *United States* v. *Pan American Grain Manufacturing Co., Inc.,* (''PAGM'') Civil Action No. 98–1197 (JP) was lodged with the United States District Court for the District of Puerto Rico.

The proposed consent decree resolves the United States' claims against PAGM for violations of the Act and the requirements or prohibitions of the State Implementation Plan for the Commonwealth of Puerto Rico (''SIP''), promulgated pursuant to Section 110 of the Act, 42 U.S.C. § 7410, regarding particulate emissions from PAGM's grain handling and processing facilities in the Guaynabo, Puerto Rico area. Under the terms of the proposed consent decree, PAGM will pay a civil penalty of $410,000.00 to the United States, complete performance testing to demonstrate full compliance with the SIP regulations at each of its facilities, comply with operation standards prescribed by the proposed consent decree, file quarterly reports regarding its compliance efforts, and maintain compliance with the Act and the applicable SIP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Pan American Grain Manufacturing Co., Inc.,* DOJ Ref. No. 90–5–2–1–2133.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Puerto Rico, Federico Degeteau Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, and at the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007. A copy of the proposed consent decree may also be obtained 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, payable to the Consent Decree Library in the amount of $9.50 (25 cents per page reproduction costs) for the proposed consent decree alone, or $72.00 for the proposed consent decree with all attachments.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–4592 Filed 2–25–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

February 22, 2000.

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, OSHA, 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 (OSHA); Labor.

Title: Personal Protective Equipment for General Industry (29 CFR part 1910).

OMB Number: 1218–0205.

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: 169,215.

Estimated Time Per respondent: Varies from five minutes (0.08 hour) to 29 hours.

Total Burden Hours: 608,871.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) Paragraph 1910.132(d) of the PPE standard requires employers to perform a hazard assessment of the workplace to determine if personal protective equipment is necessary. The hazard assessment is an important part of the process to assure that the PPE selected is appropriate for the hazards present in the workplace. Paragraph (d)(2) requires employers to certify that they performed a hazard assessment. The signed certification must include the date of the hazard assessment and the identification of the workplace evaluated (area or location).

Paragraph (f)(4) of 1910.132 requires employers to certify that employees received and understood PPE training. The training certification must include the name of the employee(s) trained, the date of training, and the subject of the certification (i.e., a statement identifying the document as a certification of training in the use of PPE).

The hazard assessment assures that the PPE selected is appropriate for the hazards present in the workplace. The certification record required with the hazard assessment verifies that the employer conducted the hazard assessment. The training certification verifies that employees received the necessary training involving the use of PPE. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: Personal Protective Equipment for Shipyard Employment (20 CFR at 1915, Subpart I).

OMB Number: 1218–0215.

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 500.

Estimated Time Per respondent: Varies from 5 minutes (0.08 hour) to 45 minutes (0.75 hour).

Total Burden Hours: 707.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Employers are required to assess their work activity to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. Employers must verify that the required occupational hazard assessment has been performed through a document that contains the following information: occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–4581 Filed 2–25–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Job Training Partnership Act, Title III–B: Skills Shortages, Partnership Training/System Building Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

This Notice Contains All of the Necessary Information and Forms Needed To Apply for Grant Funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces a competitive demonstration solicitation for grant applications (SGA) to respond to employers' identified skill shortages through the establishment or strengthening of regional consortia. Grants will be made to successful applicants which provide evidence of being positioned to plan and implement a successful strategy to respond to shortages of workers seeking employment with skills needed by specific employers in a regional labor market (including typical local commuting area). Successful applicants must also initiate a skill training design for preparing eligible dislocated workers, incumbent workers and new entrants into the workforce that will alleviate skill shortages within the region which the applicant represents and provide the necessary skill sets to those seeking new employment or reemployment.

The funding for this program will be the demonstration authority of the Secretary's National Reserve Account appropriated for Title III–B of the Job Training Partnership Act (JTPA) of 1982, as amended, and administered in accordance with 29 CFR parts 95 and 97, as applicable.

Applicants are also encouraged to be familiar with the provisions of the Workforce Investment Act of 1998 (WIA). As the Department moves toward implementation of WIA which becomes effective July 1, 2000, and for the next few years, it is anticipated that even greater emphasis will be placed on regional and unified planning and other initiatives to accommodate or address regional workforce development concerns. It is expected that the consortia established or strengthened as a result of the award of these demonstration grant funds will actively collaborate with the emerging structures of WIA implementation.

The Department encourages interested applicants to consult with other on-going programs such as grantees funded by the June 1998 $7.7 million dislocated worker technology demonstration and the June 1999 $10 million manufacturing technology demonstration program. Information regarding these demonstrations may be found at http://www.doleta.gov. In addition, experiences gained through current regional initiatives may provide insight into developing a regional consortia approach to addressing workforce development needs and strategies.

In addition to partnership-building activities to address skill shortages, the grants funded as a result of this SGA will support assessment of community employment needs (community audits), designing or adapting training curricula based upon specific ''just-in-time'' employer needs, and limited operational testing of a training design. Partnerships and systems for responding to skill shortages developed as a part of this demonstration will be expected to continue, and indeed improve and

expand, after the conclusion of this initiative.

One objective of this demonstration initiative is to inform local workforce investment boards and chief elected officials in the development of policies that respond effectively to area employers' needs for skilled workers. Of particular interest to the Department are broad-based strategies that address such issues as shortages in technology, health care, and H–1B visa-identified occupations. Consortia developed in response to this solicitation could be appropriate for applicants to apply for skill training grants established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). Eligible applicants for the ACWIA grants are limited by statute to Private Industry Councils (PICs) established under JTPA Section 102, local Workforce Investment Boards (WIBs) under Section 117 of the Workforce Investment Act of 1998 (WIA), and consortia of PICs or WIBs. For this reason, WIB and/or PIC participation in activities conducted under these grants is a requirement to show satisfactory progress toward achieving the objectives of this demonstration program.

DATES: The closing date for receipt of the application is Thursday, March 30, 2000. Applications must be received by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Reference: SGA/DFA–102; 200 Constitution Avenue, N.W., Room S–4203; Washington, DC 20210.

Hand Delivered Proposals. If proposals are hand delivered, they must be received at the designated address by 4:00 p.m., Eastern Standard Time on Thursday, March 30, 2000. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

Late Proposals. A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before the award is made and it:

- Was sent by U.S. Postal Service registered or certified mail not later than the fifth (5th) calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the deadline date specified for receipt of proposals in this SGA. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of an application received after the deadline date for the receipt of proposals sent by the U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper affixed by the U.S. Postal Service and on the original receipt from the U.S. Postal Service. The term ''post marked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Questions/clarifications should be faxed to B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance at (202) 219–8739 (this is not a toll free number). All inquiries should include the SGA/DFA–102 and contact name, fax and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration (ETA) Home Page at *http://www.doleta.gov.* Award notifications will also be published on the ETA Home Page.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of partnership system-building activities to assist entities in developing the capacity to plan and implement regional skill shortage training strategies. It is envisioned that these entities will be multi-jurisdictional, and may well be multi-State, serving a regional labor market area.

This announcement consists of five (5) parts:

- Part I—Background Summary: describes the authorities, the purpose and the goals of the solicitation for this demonstration program;
- Part II—Eligible Applicants and Application Process: describes the capabilities of organizations authorized to apply for funds under this program as well as some examples of the types of organizations which will be considered and the partnerships they represent, the application process and requirements for submitting an application (deadlines);
- Part III—Statement of Work: contains the Statement of Work for the projects that will be funded under this demonstration initiative;
- Part IV—Independent Evaluation and Reporting Requirements: provides for the independent evaluation of the grants awarded for this demonstration and describes the reviews that will be conducted by DOL of each of the projects; and notes the requirements for reports to DOL and the independent evaluator; and
- Part V—Rating Criteria for Award and Selection Process: describes the selection process, including the criteria which will be used in reviewing and evaluating all applications received by DOL as a result of this solicitation.

See Appendix ''C'' for Definitions

Part I. Background

A. Authority

Section 323(a)(6) of JTPA, as amended (29 U.S.C. 166(b)), authorizes the use for demonstration programs of funds reserved under section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under section 322 of JTPA (29 U.S.C. 1662a). In addition, the DOL FY 1999 Appropriations Act authorizes dislocated worker demonstration projects that provide assistance to new entrants in the workforce and incumbent workers.

B. Purpose

The growth in the U.S. economy and the increasing global competition that has occurred throughout the 1990's has been accompanied by significant restructuring actions regarding the organization and performance of work in many industries. These actions have redefined the job performance requirements in these industries and have resulted in the dual effects of substantial numbers of worker layoffs

and of reported shortages of workers skilled in other areas.

As a result, employers and employees alike are facing increasing challenges in their efforts to remain competitive. Increased competition, along with other factors such as reductions in the defense industry, relocation of facilities outside the United States, and technological advances in manufacturing processes, have resulted in significant reductions in the size of many employers' workforces. The increased adoption of technology has resulted in the realization that the skills of many workers are redundant and must be upgraded in order for them to be able to compete in the current economy and for them to be successful candidates for available jobs in the future. In an effort to encourage regional workforce investment leaders to address the challenge of keeping their citizens employed and competitive and ensuring the health of the businesses on which their community depends for its economic stability, this initiative will allow for the maximum flexibility in approaches to establishing and/or enhancing partnerships that will address skill shortages now and in the future.

Part II. Eligible Applicants and the Application Process

A. Eligible Applicants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. Eligible organizations include the following, both individually and as part of a consortium: Private Industry Councils (PICs), local Workforce Investment Boards (WIBs) or consortia of PICs or WIBs; employers; business and trade associations; labor unions; post-secondary educational institutions including community colleges; economic development agencies, and private-sector led groups including community- and faith-based organizations addressing the needs of specific cultures, among others.

Regional consortia may be interstate in composition to accommodate adequate coverage of a cohesive labor markets or regional communities, including typical commuting patterns. No minimum size for the geographic or labor market to be covered by this demonstration program has been established, and the smallest grants may cover single local workforce investment areas. A key goal of this initiative is to encourage regional approaches to cover the commuting area from which employers in the region draw or hire their employees.

B. Demonstrated Capacity

Awards will be made to applicants that demonstrate to the satisfaction of the Department the capacity in conjunction with the local workforce investment system(s) (under the policy direction of the local board(s) and chief elected officials) and other partners to—

1. Develop a collaborative, integrated regional approach for the involvement, design and implementation of a comprehensive skill shortage action plan. The basic design of the plan shall be sufficiently robust to respond to current and projected skill shortages in the region.
2. Collect information on current (real time) local employer based skill needs and the availability of workers who possess such skills in the labor market and available training resources to meet the established or developed standards of the local employer or industry;
3. Design a training strategy, that may include curricula, to respond to at least one specific skills shortage that currently exists in the region.
4. Test the plan on a small scale, by implementing the training strategy developed and placing those trained in related employment that meets or exceeds the outcome goals of the grant; and
5. Incorporate lessons learned into the local workforce investment system(s).

Note: As discussed later in this SGA, these areas of expertise are not viewed or presented by the Department as discrete or sequential activities, but rather to delineate the expected capacity of any successful candidate's application for funding under this Solicitation.

C. Financial Management Capability

The applicant must demonstrate to the satisfaction of the Department that it has the financial management capacity to receive federal funds in accordance with Sections 164 and 165 of the Job Training Partnership Act. A consortium organized for the purpose of responding to this SGA may designate one entity of the group as the fiscal agent to manage the funds in the event an award is granted.

D. Cooperation With DOL, Technical Assistance Contractor and the Independent Demonstration Evaluation Contractor

An applicant must commit to sharing on-going information with DOL and its independent evaluators. The applicant must also agree to participate with the DOL technical assistance contractor in its progress assessments. As part of the acceptance of a grant award the applicant agrees to participate in conference calls during the course of the demonstration and attend and conduct workshops at conferences and other meetings to assist with further guidance throughout the workforce investment system, as necessary and appropriate. A reasonable amount of grant funds may be earmarked for this purpose.

E. Partnerships

The establishment of creative partnership configurations that include representatives of employers with skill shortages and are broadly representative of community interest is strongly encouraged. It is highly recommended that applicants submit a statement (or chart) that shows how the actual or proposed configuration represents fully the community at large and how each partner adds value to the skill shortage assessment and planning process. Other federal partners, where present and appropriate, are suggested for inclusion in any consortium, such as the U.S. Department of Commerce Manufacturing Extension Program, Department of Housing and Urban Development neighborhood and community enhancement programs and others.

F. Support From Consortium Members

The partnerships that are being established are an important part of any application. Each applicant is encouraged to include letters of support signed by proposed consortium members, including the PIC Chair(s) or the local WIB chair(s) (if a PIC or local board is not the applicant, or if the proposal covers a consortia of PICs or local boards). Consideration should be given to demonstrations of support from representatives of key groups who are likely to have a significant impact on the likely success of this project in the region. Grant-funded consortium-building activities operating in the local workforce investment area should be viewed by the local board and chief elected officials as a mechanism to improve the capacity of the area to address skill shortages and to provide the types of training opportunities that result in improved outcomes for workers and an adequate supply of trained workers for employers.

The application must also describe a preliminary agreement of key regional stakeholders (beyond the required parties described above) to those activities to be undertaken the course of operation described in the application, as well as a description of other organizations or individuals who are likely to be added to the list of collaborators, and what they are expected to contribute to the initiative.

Proposal Submission

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) distinct parts, Part I and Part II.

Part I of the proposal shall contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix #A) and Budget Form (Appendix #B). The Federal Domestic Assistance Catalog number is 17.246. Applicants shall indicate on the SF 424 the organization's IRS status, if applicable. According to the Lobbying disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The individual signing the (SF) 424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

The budget (Appendix #B) shall include on separate pages a detailed breakout of each proposed budget line item found on the Budget Information Sheet, including detailed administrative costs. An explanation of how the budget costs were derived must be included. The Salaries line item shall be used to document the project staffing plan by providing a detailed listing of each staff position providing more than .05 FTE support to the project, by annual salary, number of months assigned to demonstration responsibilities, and FTE percentage to be charged to the grant. In addition, for the Contractual line item, list each of the planned contracts and the amount of the contract. Where a contract amount exceeds $75,000, a detailed backup budget to show how the amount of the contract was derived must be included. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount and in-kind contributions, including any restrictions that may apply to these funds.

DOL will convene a two-day grantee orientation meeting in Washington, D. C. Attendance will be mandatory for all grantees for this demonstration program. We anticipate this meeting to be scheduled within 45 days of the award of grants to allow sufficient time to have all project managers present as well as other appropriate representatives of the regional consortia in attendance. Travel for two or three individuals to attend this meeting should be included in the grant budget.

Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this document. The grant application is limited to 30 one-sided, double-spaced pages on 8.5 x 11 inch paper with 1-inch margins which *must* include the following:

I. Executive summary—(1 page)
II. Application narrative technical proposal
III. Time line implementation plan and the appendix

Funding/Period of Performance

It is anticipated that up to $10 million will be available for funding these demonstrations. It is expected that 15 to 25 awards will be made, depending upon the quality of the proposals received and the amount of funds requested and awarded. The maximum grant award will be $750,000.

Twenty percent of the grant amount, up to a maximum of $100,000 , will be made available upon announcement of the grant award. The funds will be released in phases: (1) Planning for up to possibly 6 months; and, (2) implementation—this phase will only take place pending approval. The remaining grant funds will be made available based upon achievement of progress benchmarks consistent with the purposes of the Job Training Partnership Act, the Workforce Investment Act and this demonstration initiative. No option year funding will be available for this demonstration program. Future funding will be the responsibility of stakeholders, including employers, local Boards and other members of the community.

The maximum duration of any project will be 24 months, beginning on the date of a signed award. This includes closeout time and preparation of the draft final report. Successful grantees will be expected to commence operations within 30 days of the award date. If the applicant anticipates that a period longer than the 30 days will be required prior to commencing operations, it should be stated in the application and provide an explanation for the expected delay.

Part III. Statement of Work

A. Background

On January 12, 1999, during his summit on 21st Century Skills for 21st Century jobs, Vice President Gore announced a major new skills shortage initiative to accomplish two purposes:

- To promote the creation of regional consortia to assess employers' need for skilled workers and workers' skills deficits, and
- To provide resources to established partnerships to provide technical skill training to incumbent and unemployed workers.

Traditionally, overall tight labor markets and even skill shortages are good for workers in that they can lead to rising wages, improved working conditions, and new opportunities for workers and new labor market entrants. However, problematic regional or sectoral industry skills shortages—those that occur when there is imbalance between worker supply and demand for a persistent period of time—can mean that particular goods and services are not provided and that the economy is operating less efficiently than it could. At the microeconomic level, i.e., for individual employers, the inability to find an adequate supply of workers even after offering higher wages and better working conditions can cause a loss of business and profits.

B. Purpose

This demonstration will support the creation of regional alliances for the development and implementation of skills training strategies focused on qualifying significant numbers of participants to work within the identified occupations at specific companies experiencing such shortages. This initiative acknowledges that communities and regions will be at different starting points in their responses to skill shortages. It is envisioned that this demonstration will be used to build a coalition of community-wide leaders to work with specific employers to identify skill shortages and then develop processes for ameliorating or eliminating them or to strengthen an existing partnership.

A major challenge, then, becomes how does a local workforce investment system work with employers to identify the skills they need, develop the necessary ''just-in-time'' training to respond to the need, and outreach to the workers who are being laid off soon enough to acquire the skills needed for the jobs that employers have. Another challenge to the community is how to encourage individuals currently in the workforce to continually upgrade their skills (life-long learning) so that if a layoff occurs the transition to a new job can be quicker and smoother—a benefit to the economic well-being of the community and the economic security of the family.

C. Activities Conducted as Part of Demonstration Program

There are four phases (or elements since they may run concurrently in some circumstances) in this initiative described below. Throughout the demonstration, it is expected that there

will be cooperation with and active collaboration and consultation with the regional workforce investment system(s). This means that if the region which is proposed to be covered by the application submitted in response to this solicitation covers more than one local area designated pursuant to JTPA or WIA, the cooperation and consultation must take place from the onset of the development of application with the appropriate representatives and organizations in each local area, and on a continuing basis as plans, policies and systems are developed and implemented under a funded project. If there are regional strategies such as those authorized under WIA Section 116(c) in place currently, DOL expects those relationships will be built upon for the purpose of this initiative.

1. Coalition Building

The first phase or element of a project will be the development and solidification of the coalition of all the partners—including community businesses (and business organizations), labor organizations, educational institutions—into a functioning entity.

Skill shortage assessment and planning is a dynamic process—reflecting the changing nature of business demands and labor market supplies. It is therefore anticipated that the partnerships established under this rubric would be open-ended and invite additional members—in particular from private industry—as emerging needs are perceived or additional sectors of industry are considered for further strategic planning.

A significant aspect of coalition building is the resources that partners can bring to the table and contribute to the partnership. DOL is not requiring a match for this competition. However, a major emphasis of this effort is to create entities and relationships which can sustain themselves once the partnership building grant has expired, and a key aspect of that sustainability will be the amount of resources—both cash and in kind—that can be generated by the participants in the partnership. Sustainability is an important consideration for the full implementation of the action plan, beyond the scope of this grant, that will be developed as part of this project and which is discussed immediately below.

2. Plan Development

The second phase or element of the project will involve activities to assess specific employer skill needs and to measure the gaps between the skills needed by industry and the skills held by dislocated and incumbent workers in the region. The application must identify what is known regarding the skill shortage needs of the employers, the present skill needs of the workforce and the training resources available to meet these needs. The selection of the assessment tools necessary to add to the existing body of knowledge including data sources, survey instruments, interview protocols, etc., as well as measurement processes, is a key aspect of the development of a strategy to address skill shortages.

The plan will enumerate the data sources that are used to support the statement of skill shortages. Coalitions are encouraged to research widely and be inclusive in utilization of data. Resources for general skill shortage information include data generated by the Bureau of Labor Statistics (BLS) (such as the Current Population Survey (CPS) and the Occupational Employment Statistics (OES) survey), by regional and local trade associations, and by national and regional business associations (such as the U.S. Chamber of Commerce). However, the action plan will also be required to deal with current and short term needs of local employers identified, in part, as a result of initiatives developed as a result of this demonstration program such as community audits, evaluated in the context of the skills of workers currently seeking reemployment or employment. Regional and local hiring patterns as provided by local industry and trade associations are also extremely valuable information in terms of any sustained skills shortage.

An analysis of the data information developed will result in a formulation of a training strategy that will be agreed to and signed off by all of the partners in the coalition and signed off on by the local board(s) if it is not an active member of the coalition. The certification by the local board in the latter instance will attest that this proposed specific training strategy is not inconsistent with and does not conflict with the activities of the workforce investment system and does not constitute the development of a parallel workforce investment system. Activities that may be part of the action plan include the identification, design and/or adaptation of appropriate training curricula to meet the needs of skill shortage occupational areas or to reflect the employment demands of key regional businesses or industries.

3. Operational Testing and Assessment

The third phase of the project (which may, in fact, occur concurrently with other phases or other elements) will be to test the plan and the training strategy by training eligible individuals described in this SGA in the skills identified as a result of the first two elements of this demonstration program. Thus, although planning and capacity/partnership building are the primary objectives, grantees will be required to test any new curricula they develop and, in a limited trial fashion, to implement the action plan that they formulate. The test is required to see if the strategy developed can be operationalized, and if not, what changes need to be made. This test should be conducted to work out whatever imperfections there are in the action plan, so that upon completion of this grant period, the partnership is prepared to successfully implement the action plan on a fully operational basis. Most of the training to be conducted in this test period, will be relatively of an intensive or compressed nature.

a. Operational Activities. Applicants must describe training activities like those authorized under JTPA Sec. 314 which will be conducted as part of the testing under this demonstration. The description should include how and through what entity(ies) trainees will be outreached and selected; what entity will have operational responsibility for the training and case management activities; the expected outcomes (jobs) for the trainees, including wage goals. Because the application will likely not know what skill training will be provided as part of the demonstration, the description of the training activities to be funded as part of the test will at first need to be more conceptual. Information should describe how training providers will be selected; how curricula will be developed or modified; how eligible individuals will be identified or recruited; and the types of assessments (including employer assessments) that will be used to identify candidates who would be likely to be able to be trained in the identified skill.

b. Participant Services. Three (3) categories of individuals who may be trained with any funds awarded as a result of this demonstration are eligible dislocated workers, incumbent workers and new entrants.

The application will describe at what points during the operation of a demonstration the training is likely to occur. In other words, testing of a training concept or process is not limited to a period of time in any project that other ''phases'' or ''segments'' have been completed.

Prior to the release of additional funds, the applicant must identify the entities responsible for the following:

- Determining eligibility,

• Selecting individuals for training or referral to employers participating in the demonstration for screening;

• Case management and other services (such as orientation to employer expectations, internships, supportive services, etc.,) that will be available to maximize the trainees' success in completing the training and

• Developing and filling job openings identified as part of the employers' participation in this demonstration.

• Addressing contingencies for trainees who encounter difficulties and for whom alternative reemployment strategies must be developed outside the demonstration.

• Developing opportunities for work-based training which may or may not be in conjunction with classroom training (if not held on site or not a type of contextual training). The application must discuss how will internships or other hands-on training will be made part of the curricula.

• Arranging for trainees to receive credit toward some kind of credential that provides evidence of accomplishment in the event a participant later changes jobs.

Other categories of individuals may be served through processes developed under projects implemented as a result of this solicitation, using resources other than demonstration grant funds to support training expenses.

4. Internal Monitoring and Evaluation/ Next Steps

a. Project Benchmarks

A time line (appendix to the application) must be provided of implementation and project performance benchmarks covering the period of performance of the project. The monthly schedule of planned implementation activities and start-up events (including benchmarks such as completion of lease arrangements for space, selection of an employer or community advisory group, advisory group meetings, hiring of staff, completion of data collection survey, design of customer satisfaction measures, development of a participant selection policy, initiation of customer satisfaction activities for employers and participants).

b. Quantitative projections

A chart indicating quarterly projections of cumulative expenditures should be included with the grant application. A chart providing planned participant activity levels—enrollments, assignment to training, entered employment (or retained employment) and terminations—will be required prior to the release of the balance of the grant funds. It is recognized that expenditure projections also relate to participant activity will be subject to change as the consortia has more data with which to plan.

It is expected that there will be ongoing reports (at least quarterly, although monthly during the early stages of the project are recommended) by the demonstration project director to the consortia signatories. Further, it is expected that there will be sufficient opportunity to review decisions made and strategies implemented if circumstances change or initial project design proves to be unproductive or insufficiently productive to proceed further. These reports and an active interest on the part of the key leadership in the Region and the entities involved will serve as a progress review and oversight function to ensure continuous improvement of the strategy and its implementation.

As indicated in the coalition building section and reemphasized here, part of this initiative also will be to explore the resources that the newly joined partners in the regional consortia can bring to the table. DOL is not imposing a matching requirement on this procurement. One of the key questions that has emerged with regard to this partnership initiative revolves around the issue of sustainability, i.e., how will these newly emerging partnerships keep themselves going once Federal funding abates? Clearly, one of the root factors in this area will be whether the partnership has managed to establish a viable financial base, as well as the leadership to ensure that the community can build a ''just-in-time'' response to the needs of the employers and the workers, and continually improve the systems to meet this long-term commitment. At the end of the grant period, the grantee will be expected to prepare an assessment of the activities undertaken as part of the project, in particular providing an assessment of whatever operational testing was carried out under the authority of the project. That assessment will comprise a portion of the final report for the project. This requirement is in addition to the evaluation report that will be prepared by the independent evaluator.

D. Outcome Goals

Outcome goals for this demonstration program include, but are not limited to the:

1. Formation of region skills alliances to collaborate in implementing integrated strategies in response to employer needs;

2. Identification of ways to best respond to reported skill shortages;

3. Testing the viability of conducting on-going community audits to help avoid future skill shortages and to assist in community- or regional-wide planning for adjusting to economic change;

4. Development of a broad based consortium which will continue after the conclusion of this demonstration.

5. Development of a process for collecting information and responding to employer needs which can be used by local workforce investment boards and chief elected officials as a basis for policy development for the local one stop system.

6. Providing American workers the skills they need to access quality jobs that provide for economic self-sufficiency and long-term employability security.

In addition, the operational phase(s) of the program should demonstrate connections between training provided to participants and the industries where participants are employed. Unless otherwise provided for in the grant, it is expected that 95% of the participants placed in jobs will find employment with those businesses or industries for which the training strategy is implemented. For dislocated workers, the wage replacement rate is expected to be 90% or better; for incumbent workers and new entrants, the wage rates will be consistent with requirements in the proposal, and any subsequent negotiations, taking into consideration each application's description of these populations that will be trained as part of any funded project.

E. Staffing

Each grantee will be expected to hire a full-time project manager who will begin within 30 days of the grant award to ensure that an appropriate level of effort is committed to the success of the initiative. A tentative staffing plan should be provided listing each position with a brief description of the position and the percentage of time to be devoted to the demonstration project. The individual with primary accountability for the implementation of the demonstration should be identified, with the information provided as to where this key individual will be placed in the organizational structure and to whom he/she will report.

Part IV. Independent Evaluation and Reporting Requirements

As part of the agreement for the receipt of funds under this solicitation, each Grantee is required to provide reports and documents as well as

participate in evaluation and review activities described below. DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and participant data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

A. Independent Evaluation

DOL will contract for an independent evaluator of all phases of projects funded under this Solicitation. The purpose of the evaluation is to inform the system on all phases of the demonstration program in order that others who subsequently establish such partnerships to address skill shortages may learn from grantees' experiences. Each Grantee is required to participate in this effort.

B. Quarterly Financial Reports

Each grantee must submit to the Grant Officer's Technical Representative (GOTR) identified in each grant agreement within the 30 days following the end of each quarter, three copies of a quarterly Financial Status Report (SF 269) until such time as all funds have been expended or the period of availability has expired.

C. Progress Reports

The grantee must submit brief narrative progress reports. The reports will be submitted monthly during the early organizational and planning phase of the project and quarterly when additional funding has been released. These reports are due 15 days following the end of each reporting period during which the project is operational (funded). The quarters end March 31, June 30, September 30 and December 31.

D. Other Documents or Reports To Be Submitted to DOL

1. The grantee must submit a copy of the signed partnership agreement upon completion of the agreement, or when modified thereafter. The agreement shall include a written statement of operating principles and procedures defining roles and decision-making processes for each member of the partnership, as appropriate, as well as the overall principles and procedures of the partnership. It must include the frequency of meetings and how the review and oversight function will be conducted.

2. The grantee must submit a copy of the signed action plan upon completion of the plan, and when modified thereafter.

3. Final Report. A draft final report which summarizes project activities and results of the demonstration shall be submitted no later than 15 days after the expiration date of the grant. The grantee's assessment of operational testing activities under the grant is to be included. The final report shall be submitted in 3 copies no later than 60 days after the grant expiration date. It is expected that this report includes information on challenges to the system and how those challenges were overcome as well as what worked best and what did not work as well, or did not work at all.

Part V. Rating Criteria for Award and Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed in the SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award grants with or without discussions with the offerors. In situations without discussions, an award will be based on the offeror's signature on the Standard Form (SF) 424, which constitutes a binding offer. The Government reserves the right to make awards under this section of the solicitation to ensure geographical balance. The Grant Officer will make final award decisions based upon what is most advantageous to the Federal Government in terms of technical quality, responsiveness to this Solicitation (including goals of the Department to be accomplished by this solicitation) and other factors.

Rating Criteria

A. Overall Statement of Problem and Objectives (5 points)

A concise statement clearly setting forth the problem(s) to be addressed and the objectives for accomplishing the purposes of the grant.

B. Regional Characteristics (15 points)

1. Region Description. The applicant must provide a clear statement describing the region or area that the partnership will encompass. The description must enumerate concisely the economic conditions of the region. Socioeconomic and demographic data may be used to buttress the discussion. Judicious use of relevant statistical information is encouraged. This must identify the characteristics that make this area a cohesive region.

2. Employer Characteristics. A discussion of the general business environment, including some emphasis on small and medium-sized businesses, the characteristics of the major employers in the region and in particular, identification of those employers—both major and small and medium-sized—that have experienced skill shortages. The application should include a discussion of the nature of the skills shortages as presently known and the extent to which additional areas of information needed to develop a response strategy and action plan and what is the nature of those shortages.

3. Identified Data Needs. The extent to which the applicant identified the additional information regarding the employer community necessary for the development of an action plan and training strategy.

C. Strength of the Consortium (15 points)

1. Partners and Roles. The applicant should enumerate who the partners are in this endeavor and how they will link together-i.e., what role each will play. This may be presented in chart form. The Department is interested in a broad representation of organizations and entities that are identified as able to contribute to this effort to address reported employer skills shortages in a timely and responsive manner. The application must clearly differentiate between actual and prospective partners.

2. Private Sector Involvement. This section should articulate ties to the private sector, including ties with small- and medium-sized businesses and small business federations and businesses with skill shortages. Provide in detail the role of the private sector-employers, employer associations and training providers (where appropriate) in developing the application.

3. Resources provided by partners. A discussion of what resources, actual and leveraged, each partner will bring to the partnership. (This topic should also be discussed from a cost/dollar perspective, under the cost effectiveness criterion.) Although ETA has not imposed a matching requirement upon this procurement, applicants are strongly encouraged to enumerate in substantial detail exactly what assets the partners propose to contribute. Identify additional sources of support to be pursued if the grant is funded.

4. Role of training institutions. The development of a training strategy to equip individuals in the Region with the skills to address the skill shortages identified is important to the outcomes of the overall demonstration. This training may be accomplished through customized training contracts or

through the Individual Training Account mechanisms established by the local workforce investment systems. In selecting a training approach, applicants will need to consider the replicability of the approach for other workforce investment systems as well as the sustainability of the approach under the WIA program design developed in the local area. The rationale on which consideration of the selection process will take occur or the approach most likely to be selected should be discussed. Note: There is no particular approach that is favored by DOL. However, since the sustainability of the project will depend to some extent on the local or regional WIA program training designs, it will be important to recognize the philosophy of WIA training in developing the project's training rationale.

5. Sustainability of the partnership and strategies. To be highly rated under this criterion, applicants must provide a detailed discussion of how the partnership will sustain itself once the Federal grant funding has expired. Clearly, establishing a strong resource base is a significant factor in resolving that question.

D. Prospective Target Population (20 points)

1. Characteristics of the target population. The description of the characteristics of those individuals the plan envisions serving should be clear and sufficiently detailed to determine the potential participants' service needs. If the individuals to be served will be drawn from one eligible group of participants (by industry, working status, etc.) the application should so state and provide the rationale for that group's selection. Describe the extent to which target populations will be drawn from groups under represented in the targeted industries/occupations.

2. Documentation of available participants. Documentation should be provided showing that a significant number of eligible incumbent and dislocated workers are available for participation within the project area.

E. Strategy and Service Plan (20 points)

1. Collection and Data Analysis. The extent to which the applicant provides information about the approach to data collection and analysis, specifically citing rationale for methodology selected for data collection, responsibilities assigned regarding collection and analysis, and timeliness of data collection and analysis as it relates to development of an action plan and training strategy.

2. Strategy. The extent to which the proposed strategy approach addresses:

a. identification of the region or geographical area within the region to be served,

b. the relationship of the employers' skill shortages and employment needs, including an assessment of the current workforce's skills in the skill shortages identified or confirmed as a result of the data collection and analysis, and

c. the employment and training needs of the targeted population to assure that the required demonstration outcomes are achieved.

3. Geographic, neighborhood or industry concentration. Applicants are strongly encouraged to include under represented communities and populations particularly those that may reside in Empowerment Zones and Enterprise Communities (EZ/ECs) in the region, or industries, and/or areas in the community or region that have been targeted for other assistance that together with funds from this initiative may result in sufficient concentration of resources to achieve even greater goals than those established for this demonstration.

4. Participant Services. While this Solicitation envisions only limited operational testing of the action plan, it is expected that some participants will be served during the period of this start up grant. Applicants must describe with clarity the participant focus of projected activities (from outreach/recruitment, assessment, case management, and supportive services to job search and placement activities) that will emanate from the action plan. It is expected that the appropriate mix of services will be tailored to the characteristics of the target population.

F. Previous Experience and Management Plan (15 points)

1. Previous individual staff experience and experience of partner organizations. Applicants should provide a detailed discussion of specific experience in the activities contemplated by the Solicitation. The kinds and quality of experience the regional skills alliance (including the applicant and other partners) has had in economic planning including the use of economic and demographic data to identify skill shortage occupations. The level and quality of experience the applicant and other partners have in curriculum planning and development. The quality of the experience the partners bring to the demonstration regarding occupational skill training.

2. Staffing. The application should include resumes of key staff who will be expected to play a key role in the first six months of the project implementation. As noted above, it may well be that the individual staff members do not have substantive experience in partnership building activities. Therefore, it will be acceptable to demonstrate that the key staff has substantial background in economic planning and other activities (*e.g.,* curriculum development) contemplated as part of the coalition building effort for this initiative.

3. Management Plan. The application should include a management plan for how this grant will be administered. The structure under which the project will operate must be carefully described and must identify the lines of authority for accountability for the achievement of the project goals. The required time line will indicate the key benchmark achievements identified by the applicant and the timeframe for their accomplishment. It is recommended that the time line include such benchmarks as the selection and hiring of staff, finalization of an MOU with all demonstration project partners, selection of the methodology for gathering and analyzing necessary data to determine the occupational areas of skill shortages and employer needs, the identification of training needs and appropriate curricula, initial testing of training to meet employer skill shortage needs, formation of any subcommittees to focus on particular aspects of the demonstration activity, establishment of policies for the selection of participants and employers, approval of training strategy, assessment of customer satisfaction and assurance of continuous improvement efforts, and schedule for review of progress reports. This list is not meant to be inclusive, but rather to illustrate some activities to be accomplished that could serve as benchmarks for oversight review and for negotiation with DOL in determining the appropriate time for the release of the balance of demonstration grant funds.

G. Cost Effectiveness (10 points)

Applicants will provide a detailed cost proposal including a detailed discussion of the expected cost effectiveness of their proposal. This discussion should be couched in terms of the reasonableness of the cost in relation to the activities planned, including such factors as the geographic area covered by the proposed project, the number and range of the partners, the operational testing of the action plan (in particular, training). Expenses should be identified that will be incurred in terms of establishing and/or strengthening the collaborative,

cooperative partnership. The cost benefits of assessing community needs and curriculum development should also be addressed. Benefits can be described both qualitatively in terms of the value of established cooperative relationships and skills attained and quantitatively in terms of wage gains and cost savings resulting from collaborative efforts and activities.

In view of the fact that there will be relatively little actual provision of services to individuals, proposals will have to discuss costs and benefits, to some extent, in terms of projected participants. This may, of necessity, involve a certain amount of hypothetical model building.

However, it is anticipated that applicants would have a fully completed and tested action plan which is ready to be fully implemented upon completion of this grant, so that the model building could produce some excellent guide posts for the successful applicant to use in carrying out this grant.

Signed in Washington, DC, this 22nd day of February, 2000.

Laura Cesario,

Grant Officer.

Appendix ''A''—Standard Form (SF) 424

Appendix ''B''—Budget Information Sheet

Appendix ''C''—Definitions

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, State and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION *APPENDIX "B"*

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits****: Indicate the rate and amount of fringe benefits.*

3. ***Travel****: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

APPENDIX "C"

Definitions That Will Apply to This Demonstration Program.

1. **Community Audit.** A mechanism used by a community or region that collects "real-time data" from regional employers regarding actual and projected short term and longer term labor surpluses and needs, to enable the regional workforce development system (the entire community) to plan effectively for expected events-- both positive and negative--in order to improve the functioning of the market and minimize the overall negative impact on the community.

2. **Consortium.** A group of entities (agencies or organizations) representing key policy makers within a Region (as identified in the application, consistent with the definition herein) which has a common interest in developing strategies and processes to respond to skill shortages within the Region. At a minimum, the consortium must include the local workforce development board chairs, or their representatives (speaking on behalf of the board), and chief elected officials, or their representatives, within the Region who will use the outcomes developed as part of this demonstration to develop or direct policy decisions for the workforce investment system.

3. **Contextual Learning.** A combination of compressed work and class-based learning strategies that may include integrated basic skills, literacy, and vocational training.

4. **Chief Elected Officials.** Those elected officials whose responsibilities are defined in JTPA and the Workforce Investment Act.

5. **Customized Training.** Training and or curricula that is developed for specific employers' specific hiring needs in a collaborative fashion by the employer, the education system, the local workforce investment system. It may be entirely work-based, entirely classroom or a combination of the two. The cost of the training must be leveraged from a variety of sources, including the employer, the education system and this demonstration program.

6. **Eligible Dislocated Worker.** An individual who meets the definition at JTPA Section 301(a)(1)(A), (B), and (D), or Sec. 314(h). See also "employed dislocated worker."

7. **Employed Dislocated Worker.** An individual who meets the definition of an eligible dislocated worker at JTPA Sec. 301(a)(1)(A),(B), and (D), or WIA Sec. 101(9) and who has not yet been laid off or has been dislocated and has accepted a temporary, income-maintenance job at a wage of less than 90% of layoff wage; and requires training to qualify for a "skills shortage job" identified in the Region's plan under this demonstration program.

8. **H1-B Visa Skill Shortages.** Those skill shortages identified by the Immigration and Naturalization Service (I&NS) for which employers are permitted to apply to bring into the U.S.

foreign workers to meet demands when the supply of workers with such skills in the local labor market are insufficient. A list of the occupations certified by the Department of Labor under the H1-B program for non-immigrant visas may be found on page 44549 of the Federal Register, Volume 64, Number 157, Monday, August 16, 1999.

9. **Incumbent Worker.** An individual who is currently employed at small or medium-sized businesses (see definition) whose job skills do not meet the current or future needs of the company if it is to remain competitive by keeping workers employed, averting layoffs, and upgrading workers' skills. As a result, the company has identified such workers as being at risk of being laid off in the future (5 year projection).

10. **Independent Evaluation.** A process and outcome evaluation conducted by a contractor hired by DOL. The evaluation will be designed to identify the lessons learned and the variety of effective models developed in order to maximize the value of systems tested and inform the workforce investment system.

11. **Local Workforce Investment Areas.** Those geographic areas designated by the Governor of each State under the Workforce Investment Act (WIA) of 1998 (or service delivery areas under JTPA).

12. **Local Workforce Investment Boards.** Boards are authorized under Section 117 of the Workforce Investment Act (WIA) of 1998. More than half of the membership of each local board must be key officials from the private employers.

13. **Memorandum of Understanding or Cooperative Agreement.** A living and growing agreement that is a critical element of the establishment and on-going development of a regional skills alliance process. The initial agreement to be submitted with an application, at a minimum, articulate the outcomes and action plant to occur if a project is funded. It must include the affected local workforce development board chairs and the chief elected officials in the Region for which application is made must be parties to the agreement. This agreement shall include the role each organization will take in implementing the demonstration strategy as well as any monetary and in-kind contribution by each signatory organization.

14. **New Entrants.** Eligible individuals in this category include-young adults aged 18 years and over; welfare recipients; disabled individuals and others who have limited work histories but for whom the type of customized training envisioned under this demonstration will lead to self-sufficiency.

15. **Private Industry Council (PIC).** The policy making local entity as described in JTPA Sections 102 and 103.

16. **Performance Outcomes.** A determination of how many participants enter jobs for which the training was conducted and the wage received as a result of the training, both in terms of

prior wage for incumbent workers and dislocated workers, and in relationship to self-sufficiency for new entrants to the workforce. Other performance factors will be negotiated for each grant depending upon the design of the demonstration project and shall include factors for planning and implementation of strategies to respond to area employers' skill shortages and consistent with the goals articulated in this SGA.

17. **Region.** An area which exhibits a commonality of economic interest. Thus, a region may comprise several labor market areas, one large labor market, one labor market area joined together with several of adjacent rural districts, special purpose districts, or a few contiguous PICs or local boards. If the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.

18. **Regional Planning.** A process described in WIA Section 116(c).

19. **Self-Sufficiency for:**

Dislocated workers. The wage of the job for which the individual is trained will pay at least 95% of the worker's layoff wage within one year of entering employment as a result of the training received.

New entrants. The wage of the job for which the individual is trained will at a minimum exceed the lower living standard for the family size as published by the DOL.

20. **Skills Shortage.** Those specific vocational skills that employers have identified as lacking in sufficient numbers to meet their needs. A labor shortage occurs when the demand for workers possessing a particular skill is greater than the supply of workers who are qualified, available and willing to perform those skills. Problematic skills shortages occur when there is an imbalance between worker supply and demons for a significant amount of time for which the labor market does not, or is unable, adjust in a timely manner.

21. **Small and Medium-sized Business.** A business with 500 or fewer full-time employees.

22. **Unified Plan.** A State plan authorized under WIA Section 501(b), containing coordination principles strongly encouraged by the Department.

[FR Doc. 00–4580 Filed 2–25–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Centralia Mining Company

[Docket No. M–2000–001–C]

Centralia Mining Company, 1015 Big Hanaford Road, Centralia, Washington 98531 has filed a petition to modify the application of 30 CFR 77.1605(k) (loading and haulage equipment; installations) to its Centralia Coal Mine (I.D. No. 45–00416) located in Lewis County, Washington. The petitioner proposes the following alterative method as it relates to access to dike/impoundments. The petitioner proposes to: (i) Install locked gates at entrance points to dike/impoundment access; (ii) post warning signs that the dike impoundment is not bermed; (iii) install at least three delineators along the perimeter of the elevated roadway to indicate that both directions of travel of the reflective surfaces along each elevated shoulder is visible to the driver and spaced at intervals to indicate the edges and attitude of the roadway; and (iv) post a speed limit of 10 mph for elevated unbermed portions of the roadway. In the event surface traction is impaired by weather conditions, corrective measures will be taken for improvement. The petitioner asserts that application of the standard will result in diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. Sidney Coal Company, Inc.

[Docket No. M–2000–002–C]

Sidney Coal Company, Inc., 115 North Big Creek Road, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1902(d)(1) (underground diesel fuel storage-general requirements) to its Mine #1 (I.D. No. 15–07082) located in Pike County, Kentucky. The petitioner requests a modification of the standard to permit its underground fuel storage facility to remain at the present location and for safety concerns, make the following changes and adjustments so that: (i) The fuel tank is offset 35 feet from any track or transportation; (ii) the storage facility is out of direct line of flatcars, mantrips and other equipment that is moving up or down the slope; (iii) the facility is ventilated directly into the return air course. In addition, the petitioner would equip the facility with a fire suppression system and other safety features, fireproof the facility, inspect the facility on a daily basis, and add a carbon monoxide sensor. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. Big Ridge, Inc.

[Docket No. M–2000–003–C]

Big Ridge, Inc., 29 West Raymond Street, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Big Ridge Mine (I.D. No. 11–02997) located in Saline County, Illinois. The petitioner proposes techniques and procedures to plug and mine in close proximity to, or through oil and gas wells and to notify the District Manager or designee: prior to mining within 300 feet of the well; in sufficient time to have an opportunity to have representatives present, and; when a specific plan is developed for mining through each well. The petitioner proposes The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

4. Aracoma Coal Company

[Docket No. M–2000–004–C]

Aracoma Coal Company, P.O. Box 484, Omar, West Virginia 25670 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Aracoma Alma Mine No. 1 (I.D. No. 46–08801) located in Logan County, West Virginia. The petitioner proposes to use a 2,400 volt continuous mining system in by the last open crosscut and within 150 feet from pillar workings using the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

5. Independence Coal Company, Inc.

[Docket No. M–2000–005–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Cedar Grove Mine No. 1 (I.D. No. 46–08603) located in Raleigh County, West Virginia. The petitioner proposes to use air coursed through the conveyor belt entry to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

6. Marrowbone Development Company

[Docket No. M–2000–006–C]

Marrowbone Development Company, P.O. Box 119, Naugatuck, West Virginia 25685, has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Eastern Mingo Coal Company Drautz Mine (I.D. No. 46–08815) located in Mongo County, West Virginia. The petitioner proposes to use 2,400-volt AC continuous mining equipment at its Drautz Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

7. Sidney Coal Company, Inc.

[Docket No. M–2000–007–C]

Sidney Coal Company, Inc., 115 North Big Creek Road, P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) for its following subsidiaries: Clean Energy Mining Company, Mine #1 (I.D. No. 15–10753); Freedom Energy Mining Company, Mine #1 (I.D. No. 15–07082); Pegs Branch Energy Mining Company, Mine No. 1 (I.D. No. 15–17541); Rockhouse Energy Mining Company, Rockhouse Mine #1 (I.D. No. 15–17651); and Solid Energy Mining Company, Mine #1 (I.D. No. 15–07475) all located in Pike County, Kentucky. The petitioner proposes to use electronic total station surveying instruments in or inby the last open crosscut or in the return airway, take gas checks at 20 minute intervals upwind of the location of the instrument and prior to turning the equipment on or off, change the batteries in or inby the last open crosscut or in return air, train all miners before they enter the mine on how to use the equipment, and use the equipment only in areas where methane concentration levels are below one percent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

8. Island Creek Coal Company

[Docket No. M–2000–008–C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road,

Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1100–2(b) (quantity and location of firefighting equipment) to its VP–8 Mine (I.D. No. 44–03795) located in Buchanan County, Virginia. The petitioner proposes to install a waterline in an entry adjacent to the conveyor belt entry on retreating longwall equipped with fire hydrants spaced no more than 310 feet apart. The petitioner is currently operating under a granted petition for modification (M–94–68–C) allowing for hydrants spaced no more than 270 feet apart in these entries. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

9. Performance Coal Company

[Docket No. M–2000–009–C]

Performance Coal Company, P.O. Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Upper Big Branch Mine-South (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to use air coursed through the belt haulage entry to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

10. Aracoma Coal Company

[Docket No. M–2000–010–C]

Aracoma Coal Company, P.O. Box 484, Omar, West Virginia 25670 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Aracoma Alma Mine No. 1 (I.D. No. 46–08801) located in Logan County, West Virginia. The petitioner proposes to use air coursed through the belt haulage entry to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

11. Alex Energy Coal Company

[Docket No. M–2000–011–C]

Alex Energy Coal Company, P.O. Box 857, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Jerry Fork Eagle Mine (I.D. No. 46–08787) located in Nicholas County, West Virginia. The petitioner proposes to use air coursed through the belt haulage entry to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 29, 2000. Copies of these petitions are available for inspection at that address.

Dated: February 14, 2000.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–4545 Filed 2–25–00; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–4 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with a request for comments and announcement of negotiation period.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of petitions to adjust the royalty rates for the cable statutory license. The Office seeks comments on the petitions, announces the deadline for filing Notices of Intent to Participate in a CARP proceeding to adjust the rates, and announces the dates of the 30-day negotiation period.

DATES: Comments on the petitions, and Notices of Intent to Participate, are due no later than April 6, 2000. The 30-day negotiation period begins on April 10, 2000, and ends on May 10, 2000. Written notification of the status of settlement negotiations is due no later than May 11, 2000.

ADDRESSES: If sent by mail, an original and five copies of the comments on the petitions, Notice of Intent to Participate, and written notification of status of settlement negotiations should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, title 17 of the United States Code, grants a statutory copyright license to cable television systems for the retransmission of over-the-air broadcast stations to their subscribers. In exchange for the license, cable operators submit royalties, along with statements of account detailing their retransmissions, to the Copyright Office on a semi-annual basis. The Office then deposits the royalties with the United States Treasury for later distribution to copyright owners of the broadcast programming retransmitted by cable systems.

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d). Royalty fees are based upon the gross receipts received by a cable system from subscribers receiving retransmitted broadcast signals. Section 111(d) subdivides cable systems into three categories based on their gross receipts: small, medium and large. Small systems pay a fixed amount without regard to the number of broadcast signals they retransmit, while medium-sized systems pay a royalty within a specified range, with a maximum amount, based on the number of signals they retransmit. Large cable systems calculate their royalties according to the number of distant broadcast signals which they retransmit to their subscribers.[1] Under this

[1] For large cable systems which retransmit only local broadcast stations, there is still a minimum

formula, a large cable system is required to pay a specified percentage of its gross receipts for each distant signal that it retransmits.

Congress established the gross receipts limitations that determine a cable system's size, and provided the gross receipts percentages (*i.e.,* the royalty rates) for distant signals. 17 U.S.C. 111(d)(1). It also provided for adjustment of both the gross receipts limitations and the distant signal rates. 17 U.S.C. 801(b)(2). The limitations and rates can be adjusted to reflect national monetary inflation, changes in the average rates charged by cable systems for the retransmission of broadcast signals, or changes in certain cable rules of the Federal Communications Commission in effect on April 15, 1976. 17 U.S.C. 801(b)(2)(A), (B), (C) and (D). Prior rate adjustments of the Copyright Royalty Tribunal made under section 801(b)(2)(B) and (C) may also be reconsidered at five-year intervals. 17 U.S.C. 803(b). The current gross receipts limitations and rates are set forth in 37 CFR 256.2. Rate adjustments are now made by a Copyright Arbitration Royalty Panel (CARP), subject to review by the Librarian of Congress.

Section 803 of the Copyright Act provides that the gross receipts limitations and royalty rates may be adjusted every five years beginning with 1995, making this a royalty adjustment year, upon the filing of a petition from a party with a ''significant interest'' in the proceeding. If the Librarian determines that a petitioner has a ''significant interest'' in the royalty rate or rates in which adjustment is requested, the Librarian must convene a CARP to determine the adjustment. 17 U.S.C. 803(a)(1). Section 251.63 of the Library's rules provides that ''[t]o allow time for the parties to settle their differences concerning * * * rate adjustments, the Librarian of Congress shall * * * designate a 30-day period for negotiation of a settlement. The Librarian shall cause notice of the dates for that period to be published in the **Federal Register**.'' 37 CFR 251.63(a).

II. Petitions

In this window year for filing petitions to adjust the cable rates and gross receipts limitations, the Library has already received two. Both petitions come from copyright owner groups: the first filed on behalf of the National Basketball Association, the National Hockey League, Major League Baseball, and the National Collegiate Athletic Association (collectively, the ''Joint Sports Claimants''), and the second filed on behalf of Program Suppliers.

Both petitioners seek adjustment of the cable rates, and both assert they have a significant interest in the adjustment based upon their longtime status as recipients of royalty fees submitted under the cable statutory license. Consistent with 17 U.S.C. 803(a)(1), the Library seeks comment as to whether Joint Sports Claimants and Program Suppliers have a significant interest in the adjustment of the cable rates. Comments are due no later than April 6, 2000.

III. Negotiation Period and Notices of Intent To Participate

As discussed above, the Library's rules require that a 30-day negotiation period be prescribed by the Librarian to enable the parties to a rate adjustment proceeding to settle their differences. 37 CFR 251.63(a). The rules also require interested parties to file Notices of Intent to Participate with the Library. 37 CFR 251.45(a). Consequently, in addition to requiring parties to file comments on the Joint Sports Claimants' and Program Suppliers' petitions, the Library is directing parties to file their Notices of Intent to Participate on the same day, April 6, 2000.[2] Failure to file a timely Notice of Intent to Participate will preclude a party from further participation in this proceeding.

The 30-day negotiation period shall begin on April 10, 2000, and conclude on May 10, 2000. Those parties that have filed Notices of Intent to Participate are directed to submit to the Library a written notification of the status of their settlement negotiations no later than May 11, 2000. If, after the submission of these notifications, it is clear that no settlement has been reached, the Library will issue a scheduling order for a CARP proceeding to resolve this rate adjustment proceeding.

Dated: February 22, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–4609 Filed 2–25–00; 8:45 am]

BILLING CODE 1410–33–P

royalty fee which must be paid. This minimum fee is not applied, however, once the cable system carries one or more distant signals.

[2] The Library is changing its practice to require Notices of Intent to Participate to be filed prior to the start of the 30-day negotiation period, rather than at the end. The purpose of the change is to identify the participants to the proceeding before the negotiation period in order to facilitate complete settlements among all interested parties.

NATIONAL WOMEN'S BUSINESS COUNCIL

Sunshine Act Meeting

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 105–135 as amended, the National Women's Business Council (NWBC) announces a forthcoming Council meeting and joint meeting of the NWBC and Interagency Committee on Women's Enterprise. The meetings will cover action items worked on by the National Women's Business Council and the Interagency Committee on Women's Enterprise included but not limited to procurement, access to capital and training.

Date: March 14, 2000.

Address:

Joint Meeting

The White House/Old Executive Office Building/Indian Treaty Room, (17th & Penn. Entrance) Washington, DC, 10:30 am to 12:30 pm.

Note: No admittance without prior official clearance. Please have a photo ID.

Date: March 15, 2000.

Address:

Council Meeting

The Hay Adams Hotel/Concorde Room, (16th & H Streets, NW) Washington, DC, 8:00 am to 2:00 pm.

Status: Open to the public.

Contact: National Women's Business Council, 409 Third Street, SW, Suite 210, Washington, DC 20024, (202) 205–3850.

Note: Please call by March 10, 2000.

Gilda Presley,

Administrative Officer, National Women's Business Council.

[FR Doc. 00–4818 Filed 2–24–00; 3:30 pm]

BILLING CODE 6820–AD–M

NUCLEAR REGULATORY COMMISSION

Docket No. 50–247

Consolidated Edison Company of New York, Inc., Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–

26 issued to Consolidated Edison Company of New York, Inc (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would revise Technical Specifications (TSs) associated with the degraded voltage trip and the under-frequency reactor trip surveillance tests. For the degraded voltage trip, the proposed amendment would revise TS to specify detailed operator actions to be taken if the minimum conditions could not be met rather than simply stating ''Cold Shutdown.'' The 6.9 kV under-frequency and reactor trip surveillance tests currently combine voltage and frequency testing under one item. The proposed TS amendment would separate the 6.9 kV voltage testing from the frequency testing and specify separate test requirements. In addition, the proposed TS amendment would require more frequent testing of the 480 volt emergency bus undervoltage reactor trip.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This proposed change is administrative in nature. This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change would not involve a significant increase the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This proposed change is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the poposed amendment involve a significant reduction in the margin of safety?

No. This proposed change is administrative in nature. Since there are no changes to the operation or the physical design of the facility, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical specification Bases are not affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below. By March 29, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Brent L. Brandenburg, Assistant General Counsel, Consolidated Edison Company of New York, Inc., 4 Irving Place—1822, New York, NY 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors.

For further details with respect to this action, see the application for amendment dated July 26, 1999, as supplemented on January 20, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 22nd day of February 2000.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 00–4582 Filed 2–25–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[License 02–08779–01—Docket 30–03583]

Department of the Interior, Geological Survey, WRD, Arizona District: Termination of Material License; Finding of No Significant Impact and Notice of Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Material License 02–08779–01. This would allow the United States Geological Survey (USGS) to discontinue licensed maintenance activities for a radioactive 2.5 Ci ^{241}Americium—Beryllium (Am-Be) well logging source that it was unable to retrieve from an artesian well (#10) in the San Bernardino National Wildlife Refuge (SBNWR), Arizona. As a condition for the license termination, USGS would need to satisfactorily implement abandonment procedures for the well logging source as described in 10 CFR 39.15(a)(5).

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action would terminate USGS's Material License 02–08779–01. With this termination, the USGS would be able to discontinue licensed maintenance activities for a 2.5 Ci ^{241}Am-Be well logging source that was determined to be irretrievable from well #10 in the San Bernardino National Wildlife Refuge.

The Need for the Proposed Action

The proposed action would determine if the license should be terminated. USGS previously took action to fulfill its obligation under NRC regulations to implement abandonment as described in 10 CFR 39.15(a)(5) by attempting to seal the source in place with cement. However, follow-up visual examination of the well with a downhole camera produced no evidence that the cement plug actually formed. The radioactive source has been underwater in the well for almost 12 years and USGS has conducted periodic sampling. During that time, the intermittent monitoring by USGS has not conclusively indicated whether or not water from the well has been contaminated by the source.

USGS has requested permission from the NRC to cease its monitoring activities and end USGS responsibilities related to the Am-Be source. Because of uncertainties related to the condition of the stainless steel source container, the effectiveness of a cement plug already installed, the impact additional attempts to recover the source may impose, and concerns about the potential for future contamination, NRC decided to prepare an environmental assessment (EA) to analyze three alternatives for final disposition of the Am-Be source: (1) Abandonment in place; (2) source retrieval; and (3) the no-action alternative.

Alternatives

Two of the three alternatives, abandonment in place and source retrieval, could ultimately result in license termination. The recommended alternative is abandonment of the source in place subsequent to compliance with NRC requirements for abandonment. Another potential alternative for final disposition of the source is undertaking an additional attempt at source retrieval by overdrilling the borehole and overcoring the cement plug. Denial of the license termination, the no-action alternative, is also available to NRC, but could require that monitoring continue indefinitely.

Background

The SBNWR is located approximately 30 km (19 miles) east of Douglas in southeastern Arizona immediately north of the Mexican border. The nearest city in Mexico is Agua Prieta, approximately 35 km (21 miles) to the southeast. The 930-ha (2,300-acre) SBNWR lies near the center of the San Bernardino Valley, a surface water drainage basin that straddles the U.S.-Mexican border.

In 1986, the U.S. Fish and Wildlife Service (FWS) requested that USGS log an artesian well (Well 10) that feeds Twin Pond within the SBNWR to assess the water production capacity of the well. Water from the well initially flows into a pond containing three federally threatened or endangered fish species and water from this pond, in turn, feeds an adjacent pond/wetland containing an endangered plant species.

The USGS used a radioactive sealed source to conduct well logging for the purpose of quantifying the water production capacity of the artesian well. The source is composed of ^{241}Am (originally 2.53 Ci) and Be compressed into a cylindrical pellet, within a double-walled stainless steel container. The radioactive material in the source, ^{241}Am (half-life of 432 years), emits alpha radiation which dislodges neutrons from Be. The Am-Be source is part of a larger neutron emission/detection tool commonly used in well logging. On July 15, 1986, the Am-Be neutron well-logging source was ''lost'' by USGS in Well 10. The Am-Be tool was torn from the logging cable as it was being returned to the surface during a logging run and the logging probe containing the source fell back down the well.

Three series of attempts were made to recover the source between July 15, 1986, and October 21, 1987. During these recovery attempts, the logging probe was damaged and the source was separated from the body of the well logging tool. USGS declared the source irretrievable on October 20, 1987. After this decision was reached, and in accordance with 10 CFR 39.15(a)(5), a 0.76 m^3 (1 yd^3) cement plug was emplaced around and above the source (that was presumed to be at the bottom of the well) and an inverted tricone drill bit with a 5-ft drill pipe subassembly was placed in the well at the top of the cement to prevent intrusion into the source.

On March 30, 1988, USGS returned to the site to inspect the well. Video logging of the well produced no evidence of the cement plug previously installed by USGS, and found the bottom of the well at a depth of 176 m (577 ft)—some 14 m (46 ft) deeper than the well depth sounded after emplacement of the cement and drill bit in 1987. The unexpected depth at which the well bottom was located after source abandonment and the lack of cement at the depth where it was expected to be encountered might be explained in two ways: (1) the fact that the original total drilled depth of the well is unknown, and (2) the possibility that drill cuttings or collapsed borewall material may have formed a bridge in the well at the 178 m (583 ft) depth.

The USGS has sampled the Well 10 water for ^{241}Am. Three samples collected in 1989 and 1990 indicated only traces of ^{241}Am in the well water, while the last four samples taken in 1990 did not show the presence of ^{241}Am. Based on the results of sampling for ^{241}Am in the well, USGS believes that continued monitoring is unwarranted.

Environmental Impacts

Because of the limited scope of activities, the EA focuses on geology/hydrology and impacts to ecological resources, and human health which might result from three alternatives for final disposition of the Am—Be source. The proposed alternatives would not (1) cause appreciable changes in employment at the site, (2) affect previously undisturbed areas, or (3) expand the developed area of the site. For these reasons, no significant impacts on socioeconomic, historic or archaeological resources would result from the proposed alternatives.

The Recommended Alternative: Abandonment in Place

The recommended alternative would abandon the radioactive source in place consistent with the requirements of 10 CFR Part 39.15. This regulation requires sealing the source in place with a cement plug, installing a mechanical device to prevent inadvertent intrusion, and posting a permanent sign with detailed descriptions of the source and borehole conditions.

The installation of a cement plug in the bottom portion of the well would provide for the positive sealing of the well below a depth of 152 m (500 ft) to isolate the source from the upper part of the well. The plug would prevent future mixing of ^{241}Am in water at the bottom of the well and would further reduce the likelihood of contaminant migration up the well column. Pressure grouting of the bottom of the well using low pressure pumps would force cement down into the low permeability region of the well, encapsulating the lost Am'Be source, the drilling subassembly and bit (intrusion preventer) previously placed in the well, and filling the wellbore to the desired level. Emplacement of this plug would effectively seal the logging source and drill bit assembly in place permanently and seal any ^{241}Am contamination which might leak from the source within the inactive groundwater flow zone.

This action would eliminate the possibility of potential mixing of contaminated water at the well bottom with the discharging artesian flow. With completion of the cementing of the well base, any contaminant release scenario would be by diffusion of the contaminant upward through approximately 30 m (100 ft) of cement grout or through the native silts and clays of the geologic formation surrounding the well. The combination of very low groundwater flow in this region and geochemical retardation processes would contain the americium from the source beneath the useable aquifer. Therefore, under this alternative no adverse impact would be expected to either the water quality of Well 10 or other wells in the area. After plugging the basal portion of the well, continued discharge of the artesian flow to the ponds and wetlands could continue.

Under this alternative, near-term ecological impacts would be minor and temporary, involving only minimal disturbance to the well site. Based on a Department of Energy (DOE) methodology for evaluating radiation effects on aquatic biota, no effects would be expected. Therefore, there is little potential for effects on any of the species of fish present in Twin Pond. As the ^{241}Am in solution sorbs to sediments, the concentration in water would become markedly less, and dose to fish would decrease even more. At such low levels, effects to other pond biota less sensitive than teleost fish would not be expected.

Because well 10 is located approximately 30–35 km (19–21 miles) from the nearest population centers, Douglas, Arizona, and Agua Prieta, Mexico, respectively, the EA finds there is little potential for an individual to have direct contact with Well 10 water.

Another route the EA examined for exposure to Well 10 contamination would be through the use of water from wells drilled into the same aquifer for drinking or irrigation. Because the geology and hydrology of the site and nearby region are complex and not thoroughly understood, several perspectives on human risk are presented to provide a picture of the potential risk.

As a bounding analysis, the EA evaluates the possibility that if, after many years, a contaminated plume of water could reach a hypothetical agricultural well about 1,000 m (3,300 ft) from the original contaminated source, the approximate annual dose would be less than 3 μSv/yr (0.3 mrem/yr), well below any Environmental Protection Agency and NRC regulatory limit of concern. Because home use pumping rates would not provide the ''pressure relief'' considered with the agricultural well, it is unlikely that water from the deep, slowly moving water would be taken up in the home well. Therefore, essentially no radiation dose would be received for the case of a home well.

Source Retrieval Alternative

Under this alternative, Well 10 would be re-drilled to a larger diameter and all liquids and solids removed would be contained and disposed of off-site. If the source has already been breached, the drill cuttings, particularly those from the deeper part of the well, would be expected to be contaminated with Am released from the source. If the source has not been breached, the potential exists that it could be breached during the retrieval process resulting in ^{241}Am being dissolved in the drilling fluid and the water.

An accidental breach of the source container while conducting this alternative would be completely or at least partially controlled by the containment procedures that would be implemented. However, the potential for an accidental release from a breached source is a negative factor for this alternative. This could result in occupational doses and the potential for this area to be restricted from public access.

As a bounding scenario for this assessment, the EA has assumed that the entire contents of the source are lost directly into Twin Pond. Using a DOE methodology for evaluating radiation effects on aquatic biota, adverse effects could be expected.

No-action Alternative

Under the no-action alternative, the potential would remain for discharge of ^{241}Am contaminated water or particulate material from Well 10 into the adjacent ponds and wetlands. In addition, in the future, someone could inadvertently drill into the source in an effort to redevelop the well. Estimation of the likely concentrations that would be expected to result from this discharge suggests that the discharge would occur at low concentration over a long period of time since the ^{241}Am is expected to adsorb to soil and other particulate materials in the ground or in the well. Under this condition, no acute water quality, ecological, and human health effects would be expected. However, because the Am-Be source would not be sealed in the lower part of the well, continued monitoring would be necessary to ensure that unexpected contaminant concentrations do not occur in water or pond sediment.

Agencies and Persons Consulted

The FWS was consulted on the proposed action with respect to Section 7 of the Endangered Species Act of 1973. The State Historic Preservation Officer for the State of Arizona was consulted with respect to Section 106 of the National Historic Preservation Act.

Conclusion

The assessment of the recommended alternative, abandonment in place, indicates it would not result in adverse water quality or human health impacts and would produce only temporary and minor ecological impacts associated with emplacement of the cement plug. The potential exists that the source could be breached during the alternative of attempting source retrieval by overdrilling the borehole resulting in ^{241}Am being dissolved in the drilling fluid and the water and, therefore, additional effects could be expected. While not terminating the license would be unlikely to produce significant adverse impacts, it would require continued monitoring to ensure that unexpected contaminant concentrations do not occur in water or pond sediment.

The NRC staff concludes that provided USGS satisfactorily implements abandonment procedures for the well logging source as described in 10 CFR 39.15(c), the environmental impacts associated with the proposed license termination allowing the USGS to discontinue licensed maintenance activities for the 2.5 Ci;^{241} Am-Be well logging source are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an EA related to the termination of Material License 02–08779–01. Based on the EA, as previously summarized, the Commission has concluded that environmental impacts that would be created by the proposed action would not have a significant effect on the quality of the human environment and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

Copies of the EA, NUREG/CR–6648, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001. The document is also accessible electronically through the ADAMS Public Legacy Library component on the NRC website, *HTTP://www.nrc.gov,* the ''Public Electronic Reading Room.''

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this license termination may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (Department of the Interior, Geological Survey, WRD, Arizona District, 520 N. Park Ave., Suite 221, Tucson, AZ 85719); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, ''Information Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 14th day of February, 2000, For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–4583 Filed 2–25–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27140]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 18, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for pubic inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 14, 2000, 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 the 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 March 14, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9597)

Alliant Energy Corporation (''Alliant Energy''), 222 West Washington Avenue, Madison, Wisconsin 53703, a registered holding company, and its public utility subsidiary companies, Wisconsin Power & Light Company (''WP&L''), 222 West Washington Avenue, Madison, Wisconsin 53703, IES Utilities, Inc. (''IES''), Alliant Tower, 200 First Street, S.E., Cedar Rapids, Iowa 52401, and Interstate Power Company (''IPC'', and together with WP&L and IES, ''Operating Companies''), 1000 Main Street, P.O. Box 769, Dubuque, Iowa 52004–07691, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 43, 45, 54 and 90 under the Act.

WP&L and IES currently have in place separate programs under which each company sells its customer accounts receivable (''Receivables'') to Ciesco, L.P. (''Ciesco''), an accounts receivable financing conduit managed by Citicorp North America, Inc. (''Citicorp''), a subsidiary of Citibank N.A. (''Citibank''). The purpose of the programs is to enable the three utilities to accelerate cash receipts from the Receivables, reducing the need for more costly sources of working capital.

WP&L and IES, together with IPC, intend to enter into a new receivables financing program that will replace the existing program, which expires on March 31, 2000. In connection with the new program, the Operating Companies propose to organize special purpose subsidiaries (''Subsidiaries'') to engage in the business of acquiring Receivables from the Operating Companies and selling them at a discount to Ciesco or Citibank.[1]

Under the proposal, each Operating Company would organize a Subsidiary as a single-member, nominally capitalized limited liability company, which would acquire its parent Operating Company's Receivables under separate receivables sale agreements. The Subsidiaries will not conduct any other business or own any other assets. The Subsidiaries would form a jointly owned, nominally capitalized limited liability company (''Newco''), which would acquire the Receivables from the Subsidiaries under the new terms and conditions, under a receivables purchase and sale agreement. Newco, in turn, would sell an undivided percentage ownership interest in the pool of Receivables to Ciesco or Citibank, as the case may be, under separate receivables purchase and sale agreements.

Each Subsidiary will purchase the Receivables from its parent Operating Company at a discount. This discount will take into account Ciesco's and Citibank's cost of funds, as the case may be, and program fees and administrative and servicing costs, all of which would be passed through by Newco, and the historical default experience on accounts receivable originated by the Operating Company.

The purpose of forming the Subsidiaries is to isolate the Receivables from the Operating Company which has originated them such that, in accordance with generally accepted accounting principles, the sale of the Receivables to the Subsidiaries qualifies for treatment as an asset sale by the Operating Companies rather than as a loan secured by the Receivables. This allows the Receivables to be removed as assets from the Operating Companies' books. Through Newco, the Operating Companies will be able to consolidate their Receivables into a larger pool and eliminate duplicate structuring and administrative costs that would be associated with creating and maintaining separate programs with Ciesco. Alliant Energy Corporate Services, Inc. (''Services''), a service company subsidiary of Alliant Energy, will be designated the initial Collection Agent under each receivables sale agreement. It, however, will subcontract with the Operating Companies to perform the duties of the Collection Agent, and, in that capacity, each of the Operating Companies will continue to bill its customers and service their accounts. The originating Operating Company, as subcontractor to Services, will be entitled to receive an agent's fee of ¼ of 1% per annum on the average daily amount of capital invested by Ciesco in its Receivables.[2] In addition, Alliant Energy proposes to provide credit support under certain circumstances in favor of Ciesco, Citicorp and Citibank. Specifically,

[1] Citibank will acquire the Receivables in the event Ciesco is unable to issue commercial paper to fund the purchase of Receivables.

[2] Ciesco or Citibank, as owner of the Receivables, would be obligated to pay the agent's fee; however, that payment will be passed through to the Operating Companies out of the collections on the Receivables.

Ciesco, Citicorp and Citibank would have limited recourse against Alliant Energy, under an agreement with Alliant Energy (''Agreement''), for defaulted Receivables. The recourse limit for defaulted Receivables is calculated under the Agreement by multiplying the amount of capital invested by Ciesco by a percentage equal to the greatest of: (a) Three times the maximum amount of Receivables of any single customer of an Operating Company that may be financed under the program (''Concentration Limit''), expressed as a percentage of the pool of Receivables sold by Newco in any particular period; [3] (b) three times the greatest 12-month rolling average default ratio for the Receivables for the twelve months ending immediately on the date of calculation; and (c) 9%.

In addition, Ciesco, Citicorp and Citibank would have recourse against Alliant Energy for Ciesco's (or Citibank's) expenses incurred in (a) funding the purchase of Receivables and (b) paying the Collection Agent fee, to the extent that those expenses are not paid out of collections. Alliant Energy is liable also for (a) failure to transfer to Newco or Ciesco a first priority ownership interest in the Receivables; (b) the breach by an Operating Company, a Subsidiary or Newco of its representations, warranties and covenants; and (c) certain indemnity obligations.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4554 Filed 2–25–00; 8:45 am]

BILLING CODE 8010–01–M

[3] The Concentration Limit has been set initially at three percent, but may be adjusted by mutual agreement.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 28, 2000.

A closed meeting will be held on Thursday, March 2, 2000 at 3:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, March 2, 2000 are: Institution and settlement of injunctive actions; and a litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 23, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–4663 Filed 2–23–00; 4:29 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42441]; File No. SR–Amex–99–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Exchange Rule 108

February 18, 2000

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Amex filed an amendment to the proposed rule change on July 13, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael Walinskas, Associate Director, Division of Market Regulation, Commission, from William Floyd-Jones, Assistant General Counsel, Amex, dated July 8, 1999 (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the original filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the 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 self-regulatory organization 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 self-regulatory organization 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 Amex proposes to amend rule 108 (''Priority and Parit at Openings'' by adding Commentary .02 to modify procedures applicable to proprietary orders sent by market makers in other ITS participant markets to the Amex by means of the Common Message Switch (''CMS'') and Amex Order File (''AOF'') or through a floor broker before an ITS pre-opening notification or indication of an anticipated opening price range is issued by the Exchange specialist.

The proposed procedures are comparable to those in effect for pre-opening orders sent by ITS participants to another market that has issued a pre-opening notification or indication. The ITS Plan provides that, after a specialist issues an ITS pre-opening notification or an indication through the consolidated tape of an opening price range for a security, market makers on other ITS Participants must route orders for execution at the opening prices only through ITS and not by other means (paragraph (c)(4) of Exhibit A relating to the ''Pre-Opening Application Rule'').[4]

[4] The ITS Plan's Pre-Opening Application rule (paragraph (b)(i)(B)) provides that, if the Consolidated Tape Association Plan or the Exchange's rules require or permit that an ''indication of interest'' be furnished to the consolidated tape before an opening, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the specialists, initiate the ITS Pre-Opening process, and, if applicable, substitute for and satisfy specified pre-opening notification

Continued

The execution of such orders is subject to the provisions of Exhibit A of the ITS Plan. Current pre-opening procedures on the Amex, however, allow market makers on other ITS participant markets to enter orders into CMS and AOF or through a floor broker for their own account *before* an indication or ITS pre-opening notification is issued, and to then received an execution in full at the opening price (or the re-opening price following a halt or suspension in trading). This contrasts with ITS Plan procedures that would apply if the order were entered *after* the indication or pre-opening notification.

Proposed Rule 108, Commentary .02 would set forth procedures that apply to an order for the account of market makers on another ITS participating market center entered on the Exchange before the Amex specialist issues an ITS pre-opening notification or an indication through the consolidated tape. Paragraph (a) would provide that the Amex specialist would not be required to execute such orders if they would add to the imbalance at the opening or reopening, but the specialist could execute all or part of such orders in his or her discretion, and any portion not executed at the opening or reopening would be canceled. Paragraph (b) would provide that, if such orders would offset the imbalance, the specialist may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down to avoid allocation of odd-lots. Where orders have been received from more than one market maker, the Amex specialist would allocate the remaining imbalance among them in proportion to the amount that each obligated itself to take or supply. For purposes of paragraph (b), multiple market makers, in the same security in the same market would be deemed to be a single market maker. [5] Paragraph (d) provides that proprietary orders from market makers in other ITS participant markets shall be marked and identified as such.

Orders originating from a market maker on another ITS Participant can add to the imbalance of buy or sell orders at openings or reopenings, and satisfying such orders in full can significantly increase the burden and market risk of the Amex specialist. (Openings and reopenings in Amex securities are virtually always conducted by the Amex specialist, rather than regional exchange specialists or over-the-counter market makers.) Even when orders of market makers in the other ITS participant markets offset the imbalance, the Amex specialist is subject to additional market risk if such specialist is foreclosed from participating in the opening by the need to accommodate the orders.

In order to facilitate orderly openings and reopenings in a manner similar to procedures for openings and reopenings in the ITS Plan, the Exchange proposed to treat the orders of market makers in other ITS participant markets entered prior to an indication or pre-opening notification in a manner comparable to the manner such orders would be handled pursuant to the ITS Plan if they were entered after an indication or pre-opening notification. Orders of market makers in other ITS participant markets would be executed in accordance with current procedures if the Amex specialists fails to issue a notice or indication before the opening or reopening.

The following examples illustrate the operation of the proposed rule and its benefits. Assume under the current procedures that prior to the opening, the Amex specialist is long 50,000 shares and receives customer orders to sell 25,000 shares at the market. The Amex specialist in this example opens the stock down a quarter point and takes the 25,000 shares into inventory. Now assume that market maker in another ITS participant market sends an order to the Amex to sell 10,000 shares for its principal account. The Amex specialist now has orders to sell 35,000 shares at the market and, due to the increased selling pressure, opens the stock down half a point and takes all 35,000 shares into inventory. As a result of the increased size of the sell side order imbalance, the customer orders on the Amex receive an inferior fill to what they would have received if the specialist did not have to execute the principal order of the market maker.

Under the Exchange's proposed procedures, if the Amex specialist sends an ITS pre-opening notification or indication, the specialist would not be required to execute the 10,000 share principal order from the market maker that added to the 25,000 share sell side imbalance. As a result, the customer orders on the Amex would receive a better execution than under the current procedures where the specialist is required to accommodate the interest of the market maker. Under the proposed procedures, the customer sell orders on the Amex in the example would be executed down a quarter point from the prior close rather than down a half a point as they would be under the current procedure. The Amex specialist, moreover, would not acquire the additional 10,000 shares of inventory, leaving him or her better able to accommodate additional sell side interest.

Similar benefits would accrue to investors in situations where the orders of market makers in other ITS participant markets offset the imbalance. Assume in this hypothetical that the specialist is short 50,000 shares and receives customer orders to sell 25,000 shares at the market prior to the open. In this example, the specialists normally would be willing to buy 25,000 shares down an ⅛ from the prior close to partially cover the short position. Now assume that a market maker in another ITS participant market sends a principal order to the Amex to buy 20,000 shares. Under the present procedures, the market maker order would be executed in full, and the specialist would be entitled to only 5,000 shares, reducing his or her ability to accommodate subsequent buy side interest since the specialist already has a substantial short position in the stock. Under the Exchange's proposal, however, if the specialist sent an ITS pre-opening notice or an indication, the specialist and market maker would be entitled to buy 12,500 shares. The Exchange does not believe that its proposed rule change will create any disincentive for specialists to send ITS

requirements in the Pre-Opening application Rule. These provisions are also included in Amex Rule 232(b)(i)(B).

[5] These provisions are comparable to those in the ITS Plan, Exhibit A, Paragraph (b)(ii)(c)–(E). *See also* Amex Rules 232(b)(ii)(c)–(E), NASD Rule 5240(f)–(h), NYSE Rule 15(c)(ii)(C)–(E), CHX Chapter XXXI Section 3(a)(II)(C)–(E), CSE Rule 14.3(f), (h) & (i), PCX Rule 5.20(b)(8)(ii)(C)–(E), and Phlx Rule 2000(c)(ii)(C)–(E). The ITS Plan establishes the following protocol for the execution of ITS commitments received after a pre-opening notification or indication:

(C) *Allocation of Imbalances*—Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the Exchange specialist may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the specialist shall allocate the remaining imbalance (which may be greater than 50 percent if the specialist elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself to take or supply as principal at the opening price in his pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph (b), multiple responding market makers in the same Eligible Listed Security in the same Participant market shall be deemed to be a single responding market maker.

(D) *Treatment of Obligations to Trade*—In receiving a pre-opening response, an Exchange specialist shall accord to any obligation to trade as agent included in the response the same treatment as he would to an order entrusted to him as agent on the Exchange at the same time such obligation is received.

(E) *Responses Increasing the Imbalance*—An Exchange specialist shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

pre-opening notifications because these would continue to be sent in accordance with the terms of the ITS Plan which is not being altered.

2. *Basis*

The Exchange believes that the proposal is consistent with Section 6(b)[6] of the Act, in general, and Section 6(b)(5)[7] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and is not designed to permit unfair discrimination between customer, issuers, brokers or dealers.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Amex–99–16 and should be submitted by March 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4558 Filed 2–25–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42439; File No. SR–CBOE–99–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Maintenance Standards for the Dow Jones High Yield Select Ten Index

February 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 1999, the 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

FEBRUARY 18, 2000. I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The CBOE proposes to clarify certain procedures regarding the maintenance of the Dow Jones High Yield Select 10 Index, a narrow-based index previously approved by the Commission[3] as the underlying index for options contracts that are currently listed and trading on the Exchange.

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.

A. Self-Regulatory Organization's Statement of the Purpose, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE currently lists and trades European-style, cash-settled options on the Dow Jones High Yield Select 10 Index (''Index''), and equal weighted index composed of the ten highest yielding stocks from the 30 stocks in the Dow Jones Industrial Average. The Index was designed to replicate a popular contrarian strategy that assumes that the ten highest yielding stocks in the DJIA are oversold and therefore, undervalued relative to the other stocks in the average. The Index is reconstituted annually and the stocks comprising the index are retained for a full year.

Normally, the Index represents a subset of the DJIA. However, Dow Jones can, at its discretion, change the components of the DJIA at any time, and in some cases remove stocks that also happen to be components of the Index. The strategy upon which the Index is based, and the convention followed by investors and money managers, calls for the portfolio to be held for a full year even if certain components are no longer part of the DJIA.

The maintenance procedures set forth in SR–CBOE–97–63 state that if it becomes necessary to remove a stock from the Index, it will be replaced by the stock in the DJIA which has the highest yield of the stocks not already in the Index. This passage was intended to describe the actions that CBOE would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (order approving SR–CBOE–97–63).

take if the shares of an Index component became unavailable for trading, either due to a corporate action such as a takeover or merger, or due to bankruptcy. However, no distinction was made between this type of component change and a discretionary component change in the Dow Jones Industrial Average, in which the shares of a company removed from the DJIA continue to trade.

CBOE, therefore, proposes to clarify its maintenance procedures under which component changes can be made to the Index. Specifically, if it becomes necessary to remove a stock from the Index in the event that its shares cease to trade and a proxy for those shares is not available, it will be replaced by the stock in the DJIA that has the highest yield of the stocks not already in the Index. If a stock is removed from the DJIA at the discretion of Dow Jones, but its shares continue to trade, that stock will remain in the Index until the time of the annual re-balancing.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) [4] 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. Date of Effective of the Proposed Rule Change and Timing for Commission Act

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 person 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 submission 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 between 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 provision 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–99–60 and should be submitted by March 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4555 Filed 2–25–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42443; File No. SR–CBOE–99–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Customer Communications

February 18, 2000.

I. Introduction

On June 18, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' 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, CBOE seeks to permit the use of non-standardized worksheets in customer communications. Notice of the proposal was published in the **Federal Register** on December 8, 1999.[3] The Commission received no comment letters on the filing and this order approves the proposal.

II. Description of the Proposal

CBOE proposes to amend Exchange Rule 9.21 (''*Communications to Customers*''), which governs communications between Exchange members and their customers and other members of the public, to eliminate the requirement that standard forms of options worksheets be uniform within a member organization (*i.e.,* for specific types of options and strategies). Following the recommendations of the Commission's Special Study of the Options Market,[4] the options exchanges amended their rules to require uniform options worksheets. In 1991, the options exchanges further amended and clarified their rules by publishing the *Guidelines for Options Communications* (''Guidelines''),[5] which explained the customer communications rules of the options exchanges and the interpretations of these rules. Among other things, the Guidelines helped clarify the options exchanges' rules about using options worksheets and stated, in part, that ''[s]tandard forms of worksheets must be uniform within a particular member organization. * * *'' CBOE now proposes to remove this requirement.

CBOE notes that the proposal will allow a member organization or its associated person to tailor worksheets to specific prospective or existing clients, to utilize worksheets that may be commercially available, or to use Exchange or other industry developed worksheets. Member organizations may still decide to require within their written supervisory procedures that options worksheets be standardized within their respective organizations. However, CBOE states that worksheets will continue to be subject to the content and approval requirements of material deemed sales literature, as required by existing Exchange Rule 9.21.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42186 (November 30, 1999), 64 FR 68707.

[4] *See* Report of the Special Study of the Options Market, Chapter V, page 130 (December 22, 1978); Securities Exchange Act Release No. 15575 (Feb. 22, 1979) (Order implementing certain recommendations contained in the Commission's Special Study of the Options Market).

[5] *See* Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File Nos. SR–Amex–90–38; SR–CBOE–90–27; SR–NASD–91–02; SR–NYSE–90–51; and SR–PSE–90–41).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[6] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[7] 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 the proposal is consistent with the Act because it provides flexibility to CBOE member firms while still providing for investor protection. In particular, the proposal provides flexibility to CBOE members and their associated persons by allowing them to create options worksheets that match the investment objectives of their clients. At the same time, however, the proposal provides for investor protection by continuing the requirement that a registered options principal first approve the worksheet before its use.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–99–27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4556 Filed 2–25–00; 8:45 am]

BILLING CODE 8010–01–M

SECURIIES AND EXCHANGE COMMISSION

[Release No. 34-42442; File No. SR–CHX–99–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Price Improvement for Securities That Trade in Minimum Variations of 1/64th of $1.00

February 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on October 20, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Items of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Rule 37, Article XX, governing price improvement, to add an algorithm providing for price improvement in the case of issues trading in minimum variations of 1/64th of $1.00. Specifically, the Exchange proposes to amend Article XX, Rule 37, adding section 37(g). The text of the proposed rule change is as follows: Additions are *italicized.*

ARTICLE XX

Regular Trading Sessions

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37.

(g) *Derivative SuperMAX*

Derivative SuperMAX shall be a voluntary automatic execution program within the MAX System. Derivative SuperMAX shall be available for securities that trade on the Exchange in minimum price variations of 1/64th of $1.00. A specialist may choose to enable this voluntary program within the MAX system on a security-by-security basis. If Derivative SuperMAX has been enabled for a particular security and the maximum order has been set at an amount that is less than or equal to 599 shares (or such greater amount designated by the specialist and approved by the Exchange), Derivative SuperMAX shall be automatically enabled. If the security is eligible for Derivative SuperMAX and the specialist in such security has chosen to engage Derivative SuperMAX for such security, all small agency market orders in that security will automatically be executed in accordance with the Derivative SuperMAX algorithm set forth below. For purposes of this subsection (g), the term ''small agency market order'' small mean an agency order from 100 shares up to and including 599 shares (or such greater amount designated by the specialist and approved by the Exchange).

(1) *Pricing.*

(a) *If a small agency market order to buy or sell is received in a security in which Derivative SuperMAX is enabled, such order shall be executed at the ITS Best Offer (for a buy order) or the ITS Best Bid (for a sell order) if (i) the spread between the ITS Best Bid and the ITS Best Offer in such security at the time the order is received is less than 1/64th of a point, or (ii) the order does not meet the criteria set forth in (b) below.*

(b) *If a small agency market order to buy or sell is received in a security in which Derivative SuperMAX has been enabled, and the spread between the ITS Best Bid and the ITS Best Offer in such security at the time the order is received is greater than or equal to 1/16th of a point, such order shall be executed at 1/64th of a point lower than the ITS Best Offer (for a buy order) or 1/64th of a point higher than the ITS Best Bid (for a sell order).*

(2) *Operating Time.*

Derivative SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (Central Time) until the close of a Primary Trading Session. A specialist may enable or remove Derivative SuperMAX for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from Derivative SuperMAX with the approval of two members of the Committee on Floor Procedure.

(3) *Timing.*

Orders entered into Derivative SuperMAX shall be immediately executed (i.e., without any delay) upon completion of the algorithm.

(4) *Other.*

Any eligible order in a security included in Derivative SuperMAX, which is manually presented at the specialist post by a floor broker must also be guaranteed an execution by the specialist pursuant to the criteria set forth in (1) above. In the event that a contra side order which would better a Derivative SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the Derivative SuperMAX criteria must be adjusted to the better price.

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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

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[6] 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).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

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 primary purpose of the proposed rule change is to afford specialists a viable means of offering customers price improvement for securities that trade in minimum variations of 1/64.

A. *Background.* On May 22, 1995, the Commission approved a proposed rule change to adopt CHX Rule 37(d), Article XX, to allow Exchange specialists, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[3] That approval order contemplated that CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under the rule.

Presently, three existing CHX programs within the MAX system, SuperMAX, Enhanced SuperMAX and Super MAX Plus, use computerized algorithms to provide automated price improvement. The Commission approved each of these price improvement programs on a permanent basis.[4] These programs were created for securities that trade in minimum variations of 1/16 to provide for price improvement of 1/16 of a point when the spread is 1/8 or greater.

Under this proposal, the CHX would add a new program, Derivative SuperMAX, as a fourth program within the MAX system, to provide for price improvement for securities trading in minimum variations of 1/64. The Exchange believes that it is important to remain competitive in an increasingly technologically advanced marketplace with an influx of new products trading in minimum variations of 1/64. In order to do so, the Exchange is proposing Derivative SuperMAX, a new price improvement algorithm that will afford CHX specialists the opportunity to offer customers price improvement for all securities at the minimum increment, even those securities that trade in 1/64 increments.

B. *Proposal.* As stated above, the Exchange proposes to create a new price improvement algorithm, to be called Derivative SuperMAX. Derivative SuperMAX will become part of the existing voluntary price improvement programs in which specialists may choose to participate. Participation will be on a security-by-security basis and will be limited to securities that trade in minimum variations of 1/64 of $1.00.

Under Derivative SuperMAX, which would be available only for those securities trading in minimum variations of 1/64 of $1.00, small agency market orders (*i.e.,* orders from 100 shares up to and including 599 shares (or such greater amount designated by the specialist and approved by the Exchange)) would be eligible for price improvement if the market for the security is quoted with a spread of 1/16 of a point or greater. The new algorithm would provide 1/64 of a point price improvement from the ITS BBO. However, under the proposal, if a superior priced order was manually presented at the specialist's post, the incoming order to be executed pursuant to Derivative SuperMax would have to be executed at the superior price.

C. *Timing of Effectiveness of System Changes.* The addition of Derivative SuperMAX would become operative shortly after approval of this proposed rule change, on a date to be determined by the Exchange. The Exchange will announce this date in a Notice to Members issued within 30 days of the date of Commission approval of the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the 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 at the Commission's Public Reference Room. Copies of such filings sill also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–24 and should be submitted by March 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4557 Filed 2–25–00; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995)(order granting approval to File No. SR–CHX–95–08).

[4] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (File No. SR–CHX–98–9) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (order approving revised SuperMAX Plus algorithm).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42450; File No. SR–NYSE–99–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Rescind Exchange Rule 390; Commission Request for Comment on Issues Relating to Market Fragmentation

February 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to rescind Exchange Rule 390. The proposal is described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to request comments on the proposed rule change from interested persons. In addition, the Commission is requesting comment in Item IV below on a broad range of issues relating to market fragmentation.

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Commission's Introduction

Subject to many exceptions, NYSE Rule 390 prohibits members and their affiliates from effecting transactions in NYSE-listed securities away from a national securities exchange. The Rule's restrictions on off-board trading frequently have been criticized as an inappropriate attempt to restrict competition among market centers. Two Exchange Act rules already restrict the scope of Rule 390.[3] On October 27, 1999, Chairman Levitt, in congressional testimony given on behalf of the Commission, cited Rule 390 as an example of a rule that introduced unnecessary costs and distorted competition and that should not be part of the future of the securities markets.[4] Subsequently, the NYSE submitted a proposed rule change to rescind the Rule.

The Commission's congressional testimony also noted that its staff was preparing a release that would request the public's views on whether fragmentation—the trading of orders in multiple locations without interaction among those orders—was a problem in today's markets and, if so, what steps should be taken to address it.[5] The elimination of off-board trading restrictions raises at least the potential for increased fragmentation of the trading interest in exchange-listed equities.[6] The proposed rescission of Rule 390 will allow NYSE members to act as over-the counter market makers or dealers in all NYSE-listed securities. As a consequence, a significant amount of order flow that currently is routed to the NYSE may be divided among a number of different dealers in the over-the-counter market, where there may be a reduced opportunity for order interaction.

The 1975 Amendments to the Exchange Act[7] created a framework for fostering transparency and competition in our securities markets. As a result, today, equity market centers compete with one another in an environment where quotes and transaction prices are widely available to all market participants. Linkages among competing market centers help ensure that brokers can access the best quotes available in the market for their customers. Market centers (including exchange markets, over-the-counter market makers, and alternative trading systems) have an incentive to offer improvements in execution quality and to reduce trading costs in order to attract order flow away from other market centers. This competition among market centers encourages ongoing innovation and the use of new technology. Within an individual market center, investor orders may interact directly without the intervention of intermediaries, allowing investors to obtain executions at better prices than otherwise would be available.

The Commission is concerned, however, that customer limit orders and dealer quotes may be isolated from full interaction with other buying and selling interest in today's markets. As a result, vigorous quote competition may go unrewarded. For example, a customer today may enter a limit order to buy at a price higher than the current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Rule 19c–1, 17 CFR 240.19c–1; Exchange Act Rule 19c–3, 17 CFR 240.19c–3.

[4] Testimony of Arthur Levitt, Chairman, SEC, Concerning Market Structure Issues Currently Facing the Commission, before the Subcommittee on Securities, Committee on Banking, Housing and Urban Affairs, U.S. Senate (Oct. 27, 1999) at 14–15.

[5] *Id.* at 16.

[6] In addition to the NYSE, the American Stock Exchange LLC (''Amex'') and the Chicago Stock Exchange, Incorporated recently have moved to rescind their off-board trading rules. The Commission's staff has sent letters to the other national securities exchanges urging them to review any off-board trading restrictions they may have and to consider measures to rescind those restrictions.

[7] Pub. L. No. 94–29, 89 Stat. 97 (1975).

quote, thus setting a new best price in the market. Even though the customer offers to pay more than any other market participant, market centers holding sell orders have no obligation to route a sell order to fill the price-setting buy order. Rather, they can trade as principal with their order flow by matching the price-setting buy order. To the extent that the price-setting customer's limit order remains unexecuted and subsequent buying interest is filled at the customer's price, the customer's order has been isolated, and the incentive of customers to improve prices potentially compromised. Similarly, where a dealer improves the current bid, and then watches transactions occur at the price it set without attracting order flow, the incentive to quote aggressively may be substantially inhibited.

Other practices have contributed to an environment in which vigorous quote competition is not always rewarded. Broker-dealers that trade as principal with customer order flow may use part of their trading profits to buy order flow from certain retail firms, giving the firm the opportunity to trade with the retail orders without competing for them on the basis of quotes. Broker-dealers that have access to retail customer order flow and that own or are affiliated with market-making operations have a similar ability to trade as principal with their retail customers without quoting aggressively. These order flow arrangements may discourage quote competition by isolating investor order flow from investor limit orders and dealer quotes displayed in other market centers. Even when wholesale and internalizing broker-dealers execute trades at prices better than the national best bid and offer (''NBBO''), these superior transaction prices are often in part determined by formulas dependent on the NBBO.

The Commission therefore believes that the proposed rescission of Rule 390 presents an opportune time to consider the effects of fragmentation on the securities markets. In particular, the Commission is evaluating whether the national market system will continue to meet the needs of investors by: (1) Maintaining the benefits of vigorous quote competition and innovative competition among market centers; (2) encouraging and rewarding market participants (including both investors and dealers) who contribute to public price discovery by displaying trading interest that is widely accessible and can be easily executed by other market participants; (3) assuring the practicability of best execution of all investor orders, including limit orders, no matter where they originate in the national market system; and (4) providing the deepest, most liquid markets possible that facilitate fair and orderly trading and minimize short-term price volatility.

The Commission believes that it would be beneficial to obtain the views of the public on these issues in order to conduct a systematic and balanced evaluation of fragmentation concerns—both in the equities and options markets.[8] Accordingly, this release, after setting forth the NYSE-prepared submissions in Items I, II, and III below, includes a Commission discussion of market structure issues and a broad request for comments on market fragmentation in Item IV.

I. NYSE's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the rescission of NYSE Rule 390.

II. NYSE's Statements Concerning the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change, the burden of the proposed rule change on competition, and any comments it received on the proposed rule change from members, participants, or others. The text of these statements, which were prepared by the NYSE, is set forth in Items A, B, and C below.

A. NYSE's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to rescind Exchange Rule 390, which has operated to preclude, among other matters, NYSE member firms from internalizing their agency order flow by trading as dealer or principal against it. The Exchange believes that the anti-internalization concerns addressed by Rule 390 are significant enough that they should not be addressed by a series of similar rules of individual market centers, such as the NYSE's Rule 390. Rather, the Exchange urges that the Commission, in approving the rescission of Rule 390, adopt a market-wide requirement as described more fully below that broker-dealers not be permitted to trade against their customer orders unless they provide a price to the order that is better than the national best bid or offer against which the order might otherwise be executed.

Rule 390, the Exchange's ''Market Responsibility Rule,'' was adopted in 1976 in the wake of the 1975 Amendments to the Exchange Act to replace a predecessor rule. The rule was intended to maximize the opportunity for investors' orders to interact with one another in agency auction markets and be executed without dealer intervention. Accordingly, Rule 390 as originally adopted prohibited members and member organizations, and any non-member broker or dealer in a control relationship with them (''affiliated persons''), from effecting any transaction in any listed stock in the over-the-counter market, either as principal or agent. Pursuant to Exchange Act Rule 19c-3, which was adopted in 1980, Rule 390 currently applies only to stocks listed on the Exchange as of April 26, 1979, otherwise known as ''covered securities.'' In accordance with Exchange Act Rule 19c-1, Rule 390 was amended in 1978 to permit members to trade as agent in the over-the-counter market with another person, except where the member was also acting as agent for such other person (''in-house agency cross''). Rule 390 contains ten specific exceptions for unique or away from the current market situations, and permits members, member organizations, and affiliated persons to trade in a foreign over-the-counter market outside of Exchange trading hours.

Thus, the principal restrictions in Rule 390 today are two-fold:

(i) A member, member organization, or affiliated person may not trade as principal in the over-the-counter market in a covered security with an agency order; and

(ii) A member, member organization, or affiliated person may not effect an in-house agency cross in the over-the-counter market in a covered security.

The Exchange believes that the restriction against in-house agency crosses of market and marketable limit orders does not raise the same concerns as the restriction against proprietary internalization. With respect to markets linked by the Intermarket Trading System, one side or the other of an agency cross transaction receives an

[8] The equities and options markets differ in several important respects, and the specific nature of the tools needs to address fragmentation may vary between them. For example, all trading of listed options occurs on national securities exchanges—there is no off-board trading by over-the-counter market makers. In addition, the pricing of an option contract, as a derivative instrument, significantly differs from the pricing of a stock. Nonetheless, the fundamental goals of the Exchange Act, including the efficient execution of transactions at fair prices, are equally applicable to both types of markets. The Commission is raising for comment the issues of options market fragmentation in this release, but also is addressing these issues in the specific context of multiple trading of options. *See, e.g.,* Securities Exchange Act Release No. 43029 (Oct. 19, 1999), 64 FR 57674 (ordering the options markets to develop a linkage plan for multiply-traded options).

improved price, if the cross is executed at either the national best bid or offer, and both sides of the cross receive an improved price if the cross is executed between the national best bid and offer.

If a broker-dealer is trading as principal against agency orders, however, the Exchange believes that serious concerns arise about whether agency orders are being afforded an opportunity to receive the best possible price that may be available. Typically, broker-dealers internalize agency market orders by buying from sell orders at the bid price, and selling to buy orders at the offer price. While such agency orders may be receiving the national best bid or offer price, they do not interact with other public orders, and they are often denied the opportunity to receive any degree of price improvement, such as, for example, an execution at the offer price (in the case of a sell order) or an execution at the bid price (in the case of a buy order), or an execution between the bid and offer prices. In an agency auction market such as the Exchange, a member seeking to trade with an agency order must first expose the order to the market for possible price improvement before consummating the transaction. In any event, continuous interaction among broker-agents in an agency auction market frequently results in customers receiving better prices than the national best bid or offer.

The Exchange believes that broker-dealer internalization also raises concerns about market fragmentation, as public orders are denied the opportunity to interact with one another. Such interaction creates the most efficient pricing mechanism based on an equilibrium between public supply and demand. The Exchange believes that broker-dealer internalization results in the most objectionable of all forms of market fragmentation: the execution of ''captive'' customers'' orders in such a manner as to insulate them from meaningful interaction with other buying and selling interest. This not only decreases competitive interaction among markets and market makers, but also isolates segments of the total public order flow and impedes competition among orders, with no price benefit to the orders being internalized. The Exchange believes that internalization, as typically conducted, always involves broker-dealer intervention as principal, usually excludes ''captive'' orders from opportunities for price improvement, and is rife with conflicts of interest, as a broker-dealer can seize a trading opportunity to trade with a captive customer order at an unimproved price (e.g., buying from a sell order at the bid price), and then immediately offer what was just purchased at a higher price, thereby capturing a virtually riskless dealer turn by exploiting its own agency order flow.

Section 11A(a)(1) of the Exchange Act [9] expresses the Congressional mandate that investor protection and the maintenance of fair and orderly markets require assurance of economically efficient execution of securities transactions in the best market for those transactions, and, consistent with these considerations, for investors' orders to be afforded the opportunity to be executed without the participation of a dealer. The Exchange believes that this Congressional mandate can be most reasonably effectuated, and public investors best served, if internalization/dealer intervention is limited to those situations where public investors, rather than the broker-dealers handling their orders, are given improved prices, and in essence are permitted to capture the bid/offer spread instead of the broker-dealer.

Accordingly, the Exchange believes it would be appropriate for the Commission to adopt a new rule, pursuant to its authority under Section 11A, providing that broker-dealers may trade as principal with their own customer orders only where:

(i) In the case of a customer market or marketable limit order to buy stock, the broker-dealer sells to its customer only at the price of the national best bid, or sells to its customer at a price that is between the national best bid and offer, and

(ii) in the case of a customer market or marketable limit order to sell stock, the broker-dealer buys from its customer only at the price of the national best offer, or buys from its customer at a price that is between the national best bid and offer.

The Exchange believes that such requirements would assure that investors receive the fairest pricing of their internalized orders, and would eliminate broker-dealer conflicts of interest in trading against their own customer order flow to capture the spread.

2. Statutory Basis

The Exchange believes that the basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [10] that a national securities exchange have rules that are 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. The rescission of Rule 390 and the Exchange's request that the Commission adopt an industry-wide customer price protection rule serve to support the perfection of a free and open market and a national market system.

B. NYSE's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. NYSE's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Commission's Request for Comment on Market Fragmentation

As noted in the Introduction, the Commission believes that it will be helpful to provide the public with an opportunity to submit their views, data, and proposals on market fragmentation. The markets for listed equities currently reflect a fairly low degree of fragmentation. In September 1999, for example, 74.4% of the trades and 83.9% of the share volume in NYSE-listed equities were executed on the NYSE. [11] Similarly, approximately 68.7% of the trades and 70.5% of the share volume in Amex-listed securities were executed on the Amex.[12] Thus, a large proportion of the order flow in listed equity securities currently is routed to a single market center with rules that provide for

[9] 15 U.S.C. 78k-1(a)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] Source: NYSE.

[12] Source: Amex.

extensive interaction of investor buying and selling interest in a security, but only one market maker—the specialist. In 1998, for example, specialists acted as either the buyer or seller in 25.3% of the share volume executed on the NYSE.[13] Aside from the primary exchanges, trades in listed equities are executed on the regional exchanges (14.5% of NYSE-listed trades in September 1999) and by over-the-counter market makers (11.1% of NYSE-listed trades in September 1999).[14] These percentages could change after the rescission of off-board trading restrictions such as NYSE Rule 390.

In the market for Nasdaq equities, in contrast, trading interest is much more divided among different market centers. It is primarily a dealer market, in which multiple market makers compete for order flow. In September 1999, for example, there was an average of 11.4 market makers per Nasdaq issue.[15] In addition, a number of alternative trading systems (''ATSs'') operate electronic limit order books for the trading of Nasdaq equities. In September 1999, nine of these ATSs collectively accounted for 28.0% of trades in Nasdaq equities.[16]

The NYSE's request for rulemaking set forth in Item II.A.1 above relates to a specific type of fragmentation—the internalization by integrated broker-dealers of their agency market and marketable limit orders. The Commission, however, is interested in receiving comments on the full spectrum of fragmentation issues. Accordingly, this Item IV first provides an overview of the current market structure and a discussion of the Commission's regulatory role in overseeing the national market system. The public then is requested to evaluate the current market structure and comment on six potential options for Commission action to address fragmentation.

A. Overview of Current Market Structure

Section 11A(a) of the Exchange Act sets forth findings and objectives that are to guide the Commission in its oversight of the national market system. For purposes of evaluating market structure, these findings and objectives can be summed up in two fundamental principles:

(1) the interests of investors (both large and small) are preeminent, especially the efficient execution of their securities transactions at prices established by vigorous competition;[17] and

(2) investor interests are best served by a market structure that, to the greatest extent possible, maintains the benefits of *both* an opportunity for interaction of all buying and selling interest in individual securities and fair competition among all types of market centers seeking to provide a forum for the execution of securities transactions.

Market centers compete to offer innovative services and reduced trading costs to attract order flow from other market centers. Market center competition may contribute to economically efficient execution of securities transactions in other ways as well.[18] At the same time, the existence of multiple market centers competing for order flow in the same security may isolate orders and hence reduce the opportunity for interaction of all buying and selling interest in that security. This may reduce competition *on price,* which is one of the most important benefits of greater interaction of buying and selling interest in an individual security. Price competition also may be enhanced by competition among market centers when this involves multiple dealers competing for order flow based on displayed quotations. Consequently, although the objectives of vigorous competition on price and fair market center competition may not always be entirely congruous, they both serve to further the interests of investors and therefore must be reconciled in the structure of the national market system.

1. Investor Interests and Competition on Price

The secondary securities markets exist to facilitate the transactions of investors. Investors should have confidence that their brokers will deal with them fairly and that their orders will be routed to market centers where they will be executed efficiently and at prices that are set by vigorous competition. In fulfilling their intermediary role, organized markets reduce the costs that every investor would otherwise incur to find contra-parties to their securities transactions and to negotiate a price. Fair and efficient securities markets thereby benefit investors by reducing their transaction costs, as well as the economy in general by establishing prices for the allocation of capital among competing uses.

Accordingly, one of the principal Exchange Act objectives for the national market system is to assure the ''economically efficient execution of securities transactions.''[19] Investors transaction costs can be divided into two categories—explicit costs, which are separately disclosed to investors, and implicit costs, which often can be greater, though less visible, than explicit costs. Most of the explicit transaction costs of investors are paid directly to the brokers who provide them with access to the securities markets. A broker's commissions will reflect, among other things, the membership and market fees that it pays to market centers and others to obtain the execution, clearance, and settlement of customer transactions.

Implicit costs, in contrast, are reflected in the execution price of a transaction and are less visible to investors than explicit costs. Implicit costs include, for example, the effective spread between bid and asked prices[20] paid by those investors who submit market orders and are willing to pay a premium for immediate liquidity. With market orders, investors direct their broker to buy or sell at the best price reasonably available in the market at the time the order is submitted. In contrast, limit orders—orders to buy or sell a security at a specified price or better—enable investors to control the prices at which they are willing to trade. For example, use of a limit order can assure that investors do not receive an execution at a price that is far different

[13] NYSE, *1998 Fact Book* 18.

[14] Source: NYSE.

[15] NASD, <http://www.marketdata.nasdaq.com (visited Dec. 11, 1999). There was an average of 47.5 market makers in the top 1% of issues by daily dollar trading volume, 24.0 market makers in the next 9% of issues, and 4.9 market makers in the bottom 10% of issues. *Id.*

[16] *Id.* In calculating the market share of ATSs, the NASD adds the orders executed internally on an ATS and the orders routed to an ATS for execution. Orders routed out to another market participant are not included.

[17] Section 11A(a)(1)(C) of the Exchange Act, for example, provides that one of the five principal objectives of the national market system is to assure an opportunity for investor orders to be executed without the participation of a dealer. This objective is conditioned upon two of the other Section 11A(1)(C) objectives of assuring the efficient execution of transactions and the execution of investor orders in the best market. The order two objectives are fair competition among broker-dealers and among market centers and the public availability of information concerning quotations and transactions.

[18] Market centers compete to provide, among other things, trading services that are fast, cheap, reliable, and as error free as possible as one means of attracting order flow.

[19] Section 11A(a)(C)(i) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(C)(i).

[20] The effective spread for a transaction does not necessarily equal the quoted spread. The quoted spread is the difference between the best *displayed* bid and the best *displayed* offer. The effective spread is twice the difference between the *transaction* price and the mid-point of the best displayed bid and the best displayed offer at the time of execution. If an investor's transaction is executed at the best displayed bid or offer, the effective spread will equal the quoted spread. If the transaction is executed at a better price than the best displayed bid or offer, the effective spread will be less than the quoted spread.

from what they expected if the market moves rapidly between the time the order is placed and the time the order is executed.

Investors who submit market orders therefore tend to be price-takers—they demand immediate liquidity and are willing to pay a premium to assure that they obtain an execution of their order. That premium is the effective spread, and it can constitute a substantial transaction cost for investors who submit market orders (as well as ''marketable'' limit orders).[21] For example, if the quoted spread in a security is 3/16ths and an investor submits a market order to buy 500 shares that receives an automatic execution at the displayed quotation, the total ''round-trip'' premium for liquidity will be $93.75 (assuming a subsequent market order to liquidate the position that also is executed at the displayed quotation in a 3/16ths market).[22]

Investors need not, however, always be price-takers and accept whatever prices the other side of the market is offering at the moment. They can participate in price competition by submitting limit orders to obtain *better* prices than the market is offering. These non-marketable limit orders can be priced between the quotes, at the quotes, or outside the quotes.[23] A between-the-quotes limit order improves the market for a security by offering immediate liquidity at a price that reduces the quoted spread. An at-the-quote limit order improves the market by adding more size at the best displayed price. For investors, the primary benefit of participating in price competition and submitting a non-marketable limit order is the opportunity to earn, rather than pay, the effective spread. One of the most significant risks of a non-marketable limit order is that the market will move away and the order will not be executed, thereby causing the submitter of the order to lose a potential profit or to incur a loss that would have been avoided by submitting a market order that was executed. For example, a Commission analysis of NYSE trading found that 90.9% of marketable limit orders were filled, 74.0% of between-the-quotes limit orders were filled, and 45.5% of at-the-quote limit orders were filled.[24] Despite the risk of submitting a limit order and missing an execution, many small investors recognize the advantage of being a price-setter rather than a price-taker and use limit orders to effect their trades. For example, an analysis of NYSE trading by the Commission's Office of Economic Analysis in 1996 found that customer limit orders accounted for 50% of customer trades of 100–500 shares and 66% of customer trades of 600–1000 shares.[25]

Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest.[26] For example, a significant implicit cost for large investors (who often represent the consolidated investments of many individuals) is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled. Consequently, large investors often seek ways to interact with order flow and participate in price competition without submitting a limit order that would display the full extent of their trading interest to the market. Among the ways large investors can achieve this objective are: (1) To have their orders represented on the floor of an exchange market; (2) to submit their orders to a market center that offers a limit order book with a reserve size feature; or (3) to use a trading mechanism that permits some form of ''hidden'' interest to interact with the other side of the market.[27] A market structure that facilitates maximum interaction of trading interest can produce price competition *within* displayed prices by providing a forum for the representation of undisclosed orders.

Whatever their particular trading strategy, investors that participate in price competition by offering immediate liquidity in a security are seeking primarily to interact with investor order flow on the other side of the market. Assuring an opportunity for this type of direct interaction between investors without the intervention of a dealer is one of the principal objectives of the national market system.[28] Thus, an evaluation of the efficiency of the securities markets from the standpoint of investor interests must encompass not only the size of the effective spread paid by market order investors, but also the opportunity for other investors to earn, rather than pay, the effective spread by providing, rather than seeking, immediate liquidity. Moreover, a market structure that provides a full and fair opportunity for interaction of

[21] A ''marketable'' limit order has a limit price that makes it immediately executable at the time of entry (for example, a limit order to buy at a price that is equal to or higher than the best displayed ask price or a limit order to sell at a price that is equal to or lower than the best displayed bid price). By submitting a marketable limit order, an investor still is willing to accept the best price that the other side of the market is offering at the time and therefore likely will pay the effective spread as a premium for immediate liquidity. Unless expressed otherwise, use of the term ''market orders'' subsequently in this release also includes marketable limit orders.

[22] The $93.75 figure in the text is calculated by multiplying 3/16ths by 500 shares to reflect both the initial buy order and subsequent sell order to liquidate the position. *See* notes 55–56 below and accompanying text for a description of the average quoted spreads in NYSE-listed and Nasdaq equities.

[23] For example, if the national best bid and offer for a security is 10 and 10 3/16, a between-the-quotes limit price could be either 10 1/16 or 10 1/8, an at-the-quotes limit price would be 10 for a buy order and 10 3/16 for a sell order, and an outside-the-quotes limit price would be less than 10 for a buy order and greater than 10 3/16 for a sell order.

[24] SEC, *Report on the Practice of Preferencing* (April 11, 1997) (''Preferencing Report''), at Table V–17. The percentage given in the text reflect trading on the NYSE in October 1996 when the minimum tick size on the NYSE was 1/8th. Another risk of limit order trading is commonly referred to as ''adverse selection''—limit orders on average are more likely to be executed when the market is moving against them. One measure of this cost of limit order trading is the difference between the price of an executed limit order and the price of the security at some time in the future. *See id.* at 158–159 & Tables V–21, V–22 (for listed equity markets, comparing execution price of limit orders to the same-sided quote five minutes after the execution took place).

[25] Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (''Order Handling Rules Release''), at n.50. The analysis encompassed all NYSE customer trades that originated from orders routed through SuperDot, the NYSE's automated order delivery system. During 1998, SuperDot processed an average of 770,325 orders per day. NYSE, *1998 Fact Book* 23. An analysis of SuperDot order flow after the initiation of trading in 1/16th increments in June 1997 found that limit orders represented 68.2% of total SuperDot orders. William J. Atkinson & Peter G. Martin, Office of Economic Analysis, SEC, *Halving the Minimum Tick Size on the NYSE* (April 1999), at 26.

[26] In theory, short-term price swings that hurt investors on one side of the market can benefit investors on the other side of the market. In practice, professional traders, who have the time and resources to monitor market dynamics closely, are far more likely than investors to be on the profitable side of short-term price swings (for example, by buying early in a short-term price rise and selling early before the price decline).

[27] Although they often may negotiate the terms of a block transaction directly with a dealer, many large investors also seek to take advantage of opportunities to interact with order flow on the other side of the market. For example, one analysis of trading on the NYSE found that approximately 80% of the total dollar volume of block trades in stocks comprising the Dow Jones Industrial Average were executed in the intraday downstairs market without upstairs facilitation. Ananth Madhavan & Minder Cheng, *In Search of Liquidity: Block Trades in the Upstairs and Downstairs Markets,* 10 Review of Financial Studies 175, 178 (1997).

[28] Section 11A(a)(1)(C)(v) of the Exchange Act provides that the national market system should assure an opportunity for investors' orders to be executed without the participation of a dealer. This objective is explicitly conditioned on its being consistent with the national market system objectives of efficiency and best execution of investor orders. It is not conditioned on consistency with the objective of fair competition among different types of market centers. Thus, dealer participation in securities transactions is warranted only to the extent that it leads to more efficient execution of securities transactions or the best execution of investor orders.

investor trading interest may, by enhancing price competition, reduce the transaction costs of investors who submit market orders.[29]

Dealers also may contribute to price competition by displaying firm quotations that improve the market for a security. Indeed, one of the most significant benefits of providing an opportunity for multiple dealers to participate in the national market system (often through competing market centers) is provided by their willingness to step in and supply liquidity at prices that will absorb temporary imbalances in the trading interest of investors.[30] Dealers that contribute to price competition in this way can help dampen short-term price volatility and thereby reduce transaction costs for investors.

2. Market Center Competition, Internalization, and Payment for Order Flow

Assuring fair competition among market centers is another of the principal objectives for the national market system.[31] Market centers (including exchange markets, over-the-counter market makers, and alternative trading systems) compete to provide a forum for the execution of securities transactions, particularly by attracting order flow from brokers seeking execution of their customers' orders. One of the results of this competition among market centers, however, can be fragmentation of the buying and selling interest for individual securities.

In concept, market centers can be divided into two categories—agency and dealer. An agency market center provides a mechanism for bringing buyers and sellers together (such as by matching investor market orders to buy with investor limit orders to sell) and charges fees for its services. A dealer market center, in contrast, executes trades as principal against incoming orders and receives its compensation primarily in the form of trading profits. In practice, most market centers include agency and dealer elements.[32] For example, the NYSE is primarily an agency market, but incorporates a single market maker for each security—the specialist—that has direct access to order flow, subject to affirmative and negative market-making obligations. Although over-the-counter market makers are not required to accept limit orders,[33] many in fact do accept such orders and may match them with market orders, thereby acting as an agent.[34] The extent and nature of investor buying and selling interest in a particular security ultimately may determine whether transactions in that security are executed by market centers primarily as agents or as dealers. For example, dealer transactions may predominate in securities for which there is limited investor trading interest or that attract few limit orders for any reason. Conversely, agency transactions may predominate in actively-traded securities for which investor limit orders effectively establish the market.

In a market system with many competing market centers, brokers play a critical role in deciding where to route their customer orders. Market centers offering trading services compete to attract order flow from brokers, who generally have discretion to choose the market center because non-institutional customers rarely direct where their orders are to be executed.[35] As a result, broker order-routing practices can decisively affect the terms of the competition among market centers.

The competition among market centers can take many forms, such as offering fast and reliable executions, low transaction fees, and innovative trading services. In addition, a market center may offer direct or indirect economic inducements to brokers in return for the broker agreeing to route all or part of its order flow to the market center. These inducements have taken many forms, but can be divided into two major categories—internalization and payment for order flow. Internalization is the routing of order flow by a broker to a market maker that is an affiliate of the broker. An integrated broker-dealer, for example, internalizes orders by routing them to the firm's market-making desk for execution. In this context, the economic inducement for routing order flow is inherent in the common ownership of the broker and market maker.

The other category of economic inducement for a broker to route order flow to a particular market center is payment for order flow. This is essentially a catch-all category that encompasses many different direct and indirect economic inducements. For example, a market maker may pay brokers an agreed upon amount per share or enter into explicit profit-sharing arrangements with brokers. Payment for order flow is defined in Exchange Act Rule 10b–10(d)(9)[36] as follows:

> any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer . . . including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense, or financial obligation.

From a broker's perspective, one of the primary motivations for internalization and payment for order flow arrangements is the opportunity to share in the profits that can be earned by a market maker trading as principal against a substantial flow of market orders. Under internalization and payment for order flow arrangements, such orders are routed to a particular market maker that will have an opportunity to execute the orders as principal without facing significant competition from investors or other dealers to interact with the directed order flow. Moreover, the linkages among market centers that are currently in place do not require that market orders be routed to the market center that is displaying the best prices, even

[29] *See* notes 51–53 below and accompanying text (Commission's adoption of an Exchange Act rule requiring the display of limit orders, by enhancing price competition, led to a narrowing of quoted and effective spreads in the trading of Nasdaq equities).

[30] *See e.g.,* S. Rep. No. 94–75, 94th Cong., 1st Sess. 14 (1975) ("One of the fundamental purposes underlying the national market system contemplated by S. 249 is to enhance the competitive structure of the securities markets in order to foster the risk-taking function of market makers and thereby to provide free market incentives to active participation in the flow of orders.").

[31] Section 11A(a)(1)(C)(ii) of the Exchange Act provides that the national market system should assure "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets."

[32] Some alternative trading systems restrict their activities to operating a limit order book without privileged dealer participation.

[33] *See e.g.,* Securities Exchange Act Release No. 35751 (May 22, 1995), 60 FR 27997 ("Manning II"), at n.19 and accompanying text. Although over-the-counter market makers are not required to accept limit orders, they also are not permitted to refuse to accept certain limit orders in a manner that unfairly discriminates among customers.

[34] *See* Order Handling Rules Release, note 25 above, at n.365 and accompanying text (market maker that holds a customer limit order on one side of the market, priced better than the market maker's own quote, and a customer market order on the other side of the market cannot execute both orders as principal, rather than crossing the two orders, and thereby deprive the market order customer of the better price).

[35] Individual customers that trade very frequently, such as day-traders, often do choose the market center to which they want their orders routed.

[36] 17 CFR 240.10b–10(d)(9).

if that price represents an investor limit order.[37] As a result, a market maker with access to directed order flow often may merely match the displayed prices of other market centers and leave the displayed trading interest unsatisfied.[38] The profits that can be earned by a market maker trading at favorable prices with directed order flow can then be shared with the brokers that routed the orders.[39]

3. Current Market Structure Components that Address Fragmentation

To address the potentially adverse effects of fragmented buying and selling interest in individual securities, the national market system for listed equities and Nasdaq equities[40] currently incorporates three components: (1) Price transparency; (2) intermarket linkages to displayed prices; and (3) the duty of best execution owed by brokers to their customers.

a. *Price Transparency.* Price transparency is a minimum essential component of a unified national market system. All significant market centers are required to make available to the public their best prices and the size associated with the prices.[41] This information includes not only the best quotations of market makers, but also the price and size of customer limit orders that improve a market center's quotations.[42] The market centers provide quote and trade information through central processors that are responsible for collecting and disseminating the market information for different types of securities. The processors consolidate the information of individual market centers, determine the national best bid and best offer for each security (''NBBO''), and disseminate the information to broker-dealers and information vendors. Thus, the best displayed prices for a particular security are made available to the public, thereby helping to assure that investors are aware of such prices no matter where they arise in the national market system.

b. *Intermarket Linkages to Displayed Prices.* Another component of the national market system designed to address fragmentation is the establishment of systems that link the various market centers trading a security and provide access to the market center with the best displayed prices. The market centers that trade listed equities currently are linked through the Intermarket Trading System (''ITS''), which is linked to the NASD's Computer Assisted Execution System (''CAES''). The ITS linkage handles a relatively small proportion of trading in listed equities. In September 1999, for example, ITS volume represented 2.2% of total NYSE-listed trades.[43] The ITS linkage has weaknesses that must be addressed, including restricted ECN access and slow and inefficient execution procedures. The specific features needed in an intermarket linkage system may depend to a significant extent on whether the Commission adopts one or more of the intermarket trading rules discussed in Item IV.C.2 below. The Commission intends to address issues concerning the ITS linkage in tandem with its consideration of whether action is needed to address market fragmentation.

The market centers that trade Nasdaq equities currently are linked by the NASD's SelectNet system, by telephone, and through private links. In September 1999, approximately 30% of trades in Nasdaq equities were routed through SelectNet.[44] The Commission recently approved a proposed rule change by the NASD to establish a revised order delivery and execution system for Nasdaq National Market securities—the Nasdaq National Market Execution System. The system will provide, among other things, automatic execution for customer and market maker orders up to 9900 shares.[45]

As the intermarket linkage systems are currently constituted, they provide *access* to the best displayed prices, but a market center is not *required* to route its incoming market orders to a market center that is displaying the best prices. Instead, the market center to which an order is initially routed is permitted to match the best price and execute the order internally. Indeed, the executing market center need not ever have displayed the best price.

Thus, the current market structure allows price-matching rather than requiring that orders be routed to the market center that is displaying the best price, thereby isolating the orders of different market centers. Moreover, there is no intermarket time priority—the market center that was first to display the best price will not necessarily receive any order flow. Thus, the market participant (whether investor or dealer) who publicly displays an order or quotation at a better price than anyone else is offering is not entitled to any assurance that the order or quotation will interact with the next trading interest on the other side of the market. In Item IV.C.2.e below, comment is requested on whether the first trading interest to improve the NBBO should be entitled to intermarket time priority.

In addition, the current market structure does not provide intermarket priority for investor limit orders over market makers' trading against customer order flow. Instead, market makers are permitted to trade ahead of investor limit orders held by another market center (that is, execute trades as principal at the limit order price without satisfying the limit order itself). Moreover, market makers are permitted to trade ahead of an investor limit order held by another market center even if the limit order was displayed prior to any market maker's quotation at the price. From the standpoint of the investor who submitted the limit order, the risk of not obtaining an execution (the most significant risk of limit order trading) is increased when the investor's

[37] Intermarket linkages (that is, linkages among multiple market centers trading the same security) are discussed in Item IV.A.3.b below.

[38] Some dealers offer formulas that provide executions inside the best displayed prices for certain types of orders.

[39] A practice that is somewhat similar to internalization and payment for order flow in the OTC market is preferencing on an exchange market. In 1997, the Commission issued a report on the practice of preferencing in listed equities at the Boston Stock Exchange and the Cincinnati Stock Exchange. *See* Preferencing Report, note 24 above. If found that the practice, subject to the regulatory protections adopted by the exchanges, had not diminished the quality of executions that could be obtained at the exchanges, but noted that its findings should not be taken to mean that adverse effects could not arise in the future. In particular, the Commission stated that preferencing programs would require reconsideration if 'a significant increase in the amount of preferencing activity as a percentage of overall national market system activity'' resulted in the decline in execution quality on the national market system. *Id.* at 172. The number of preferenced trades in the study represented a small percentage of the total trades in the listed market. *Id.* at Table V–1. The rescission of NYSE Rule 390 raises the potential for a significant increase in the percentage of order flow in the listed markets that is subject to arrangements similar to preferencing.

[40] The options markets are not included in this discussion because substantial multiple trading of options has only recently begun, and they have not yet established intermarket linkages between market centers. In addition, the options markets have not been subject to a variety of national market system rules. The Commission, however, has ordered the options markets to develop a linkage plan for multiply-traded options. Securities Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674.

[41] *See, e.g.,* Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1; Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4; NASD Rule 4613; NYSE Rule 60.

[42] Customers can request that their orders not be displayed. Exchange Act Rule 11ac1–4(c)(2).

[43] Source: NYSE.

[44] NASD, <http://www.marketdata.nasdaq.com> (visited Dec. 11, 1999).

[45] Securities Exchange Act Release No. 42344 (Jan. 18, 2000), 65 FR 3987.

limit order is isolated and denied an opportunity to interact with investor orders that are executed by a market maker as principal. In contrast, on an *intra*-market basis, market makers generally are not permitted to execute a trade as principal while holding a customer limit order at the execution price.[46] Further, in exchange markets (for example, the NYSE), the specialist usually is unable to trade ahead of any public order at the same price. In Item IV.C.2.d below, comment is requested on whether market makers should be prohibited from trading ahead of previously displayed and accessible investor limit orders, no matter where such orders are held in the national market system.

c. *Broker's Duty of Best Execution.* In accepting orders and routing them to a market center for execution, brokers act as agents for their customers and owe them a duty of best execution. The duty is derived from common law agency principles and fiduciary obligations. It is incorporated both in self-regulatory organization rules and, through judicial and Commission decisions, in the antifraud provisions of the federal securities laws. The duty requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.[47]

A broker's duty of best execution applies to both customer market orders and customer limit orders. In the past, much of the focus of best execution concerns has been directed to brokers' handling of market orders, for which obtaining the best price is the single most significant factor. Although the Commission has stated that a broker does not necessarily violate its duty of best execution by internalizing its agency orders or receiving payment for order flow,[48] the duty also is not necessarily satisfied by routing orders to a market center that merely guarantees an execution at the NBBO (as is often done by market centers that internalize or offer payment for order flow). Some market centers offer the potential for ''price improvement'' to market orders—an execution at a price more favorable than the NBBO. On the NYSE, for example, brokers on the floor may hold undisplayed orders (such as a large order from an institutional investor that likely would move the market if displayed). The NYSE's floor provides an opportunity for this undisplayed trading interest to interact with incoming orders and can lead to executions at prices better than those displayed in the NYSE's quotes. In addition, some over-the-counter market makers offer an opportunity for price improvement for market orders. A broker must take these price improvement opportunities into consideration in deciding where to route its customers' orders.[49]

Price is not the sole factor that brokers can consider in fulfilling their duty of best execution with respect to customer market orders. The Commission has stated that a broker also may consider factors such as: (1) The trading characteristics of the security involved; (2) the availability of accurate information affecting choices as to the most favorable market center for execution and the availability of technological aids to process such information; and (3) the cost and difficulty associated with achieving an execution in a particular market center. [50]

With respect to customer *limit* orders, brokers also may assess the foregoing non-price factors in fulfilling their duty of best execution. A critical factor for non-marketable limit orders, however, is that they be routed to the market center that provides the greatest likelihood of execution. The importance of this factor is a corollary to the greatest risk of using limit orders as compared with market orders—that they will not be executed and will miss the market. Determining the market center that provides the greatest likelihood of execution is not, however, a straightforward matter. It will depend on a variety of factors, including the depth of the limit order books in the various market centers (or the number of limit orders already held by a market maker) and the flow of incoming orders that will satisfy the existing limit orders with time priority. Moreover, a broker may not have access to information concerning these factors that is sufficient to make a reasoned decision. Thus, obtaining best execution of customer limit orders under the current market structure can be a difficult task for brokers.

B. Commission's Regulatory Role in Overseeing the National Market System

Section 11A of the Exchange Act charges the Commission with maintaining and strengthening a national market system for securities. In fulfilling this responsibility, the Commission has not attempted to dictate the ultimate structure of the securities markets. Instead, it has sought to establish, monitor, and strengthen a framework that gives the forces of competition sufficient room to flourish and that allows the markets to develop according to their own genius. The Commission remains committed to allowing the forces of competition to shape market structure in the first instance.

In implementing this strategy, the Commission has acted when necessary to address practices that inhibit or distort competition and stand in the way of the development of fairer and more efficient trading mechanisms. For example, in 1996, after an extensive investigation of the over-the-counter market, the Commission adopted rules that included a requirement for the display of customer limit orders that improve the market for a security (''Order Handling Rules'').[51] Some believed that the Order Handling Rules would weaken competition between different types of market centers. The Commission, however, determined that the rules, by providing greater price transparency and enhancing public price discovery, would both foster quote competition among market makers and introduce new price competition from customer limit orders.[52] This determination has been confirmed by the narrowing of quoted spreads and reduction in transaction costs in the Nasdaq market after implementation of the Order Handling Rules. For example, one study of the implementation noted that ''[o]ur results confirm that many of the objectives of the SEC have been met. We find that quoted and effective spreads narrow by approximately 30 percent, with the largest benefit accruing to investors in stocks with relatively wide spreads prior to the implementation of the new SEC rules.'' [53]

[46] *See, e.g.,* NYSE Rule 92(b) (prohibiting members from trading ahead of customer limit orders held by the member); Manning II, note 33 above (prohibiting market makers from trading ahead of their customer limit orders in Nasdaq securities); NASD Rule 6440(f)(2) (prohibiting members from trading ahead of their customer limit orders in listed equity securities traded in the over-the-counter market).

[47] *See* Order Handling Rules Release, note 25 above, section III.C.2.

[48] *See id.* at n.360 and accompanying text.

[49] *See id.* at nn.356–357 and accompanying text.

[50] *See* Preferencing Report, note 24 above, at 89 n.207.

[51] Order Handling Rules Release, note 25 above.

[52] *Id.* at nn.48–64, 75–89 and accompanying text.

[53] Michael J. Barclay et al., *Effects of Market Reform on the Trading Costs and Depths of Nasdaq Stocks,* 54 J. Finance 1, 3, 16 (Feb. 1999) (''We find that effective spreads decline across all trade sizes, but the decline is particularly dramatic for smaller trades.''); *see also* Hendrik Bessembinder, *Trade Execution Costs on NASDAQ and NYSE: A Post-Reform Comparison,* 34 J. Finance & Quantitative Analysis 387, 400 (Sept. 1999) (''The different results observed here for 1997 as compared to the

Because the securities markets are subject to an existing regulatory scheme that shapes the competition among market centers and among brokers, it is the Commission's task continually to monitor market conditions and competitive forces and to evaluate whether the structure of the national market system as it evolves is achieving its Exchange Act objectives. To achieve these objectives at times requires cooperation between market centers, or the establishment of market-wide standards that benefit the overall market, rather than particular market participants. In these cases, leaving market structure developments to the action of individual market centers, without consideration of the needs of the broader market, could result in a market structure that is deficient for investors and capital formation.

Congress directed the Commission, with the benefit of the public's comments and careful deliberation, to remove barriers to competition and to provide investors with the fairest and most efficient markets possible. As noted in the Introduction, the Commission is concerned that the fragmentation of trading interest among competing market centers not inappropriately isolate orders, interfering with vigorous price competition, public price discovery, the best execution of investor orders, and market liquidity. After reviewing the comments submitted in response to this release, the Commission will consider whether it is necessary to take regulatory action to address market fragmentation.[54]

C. Requests for Comment

The Commission requests the views and data of commenters in general on whether fragmentation is now, or may become in the future, a problem that significantly detracts from the fairness and efficiency of the U.S. markets and, if so, on specific proposals to address the problem. To assist commenters, this Item IV identifies and requests comment on a variety of issues relating to market fragmentation that have been the subject of debate in recent months, as well as six potential options for addressing fragmentation.

The Commission wishes to emphasize that it is concerned with the entire range of securities in the markets, not just the very top tier of actively-traded issues. Accordingly, commenters should consider the applicability of their views and proposals in terms of the most actively-traded issues (for example, the top 200 equity issues), the middle tiers, and the bottom tiers that are much less actively traded. Although equity issues in the top tier generally have quoted spreads of 1/16th, these spreads are substantially narrower than the quoted spreads of the majority of issues. For example, the average NYSE volume-weighted quoted spread for all 3114 of its listed companies in 1998 was $0.15.[55] Similarly, although the average volume-weighted quoted spread for the top 1% of Nasdaq equities by market capitalization was less than $0.10 in September 1999, the average quoted spread for the next 19% of issues was greater than $0.20, and the average *relative* spread (quoted spread as a percentage of stock price) for the next 80% of Nasdaq issues ranged from approximately 1% to 8%.[56] In this regard, the Commission does not believe that its task is to ascertain whether the current quoted or effective spreads reflect an ''optimum'' or ''ideal'' level of efficiency. Rather, the relevant question is much more pragmatic — whether the efficiency of the markets for all or any particular category of securities could be substantially improved through market structure changes. Ultimately, only fair and vigorous competition can be relied upon to set efficient prices.

Finally, commenters should be aware that decimal pricing of securities will be introduced to the markets in the coming months and a reduced quoting increment could significantly change current market dynamics. For example, quoting in penny increments could lead to a narrowing of quoted and effective spreads which could, in turn, make internalization and payment for order flow less attractive to market makers. It also could increase the ability of professionals with ready access to the markets to step ahead of publicly displayed trading interest merely by improving prices by a very small amount, which could discourage investor use of public limit orders. Commenters should consider the extent to which their comments will be affected by the initiation of decimal pricing.

1. Effect of Fragmentation on the Markets

a. *Fragmentation in General.* To what extent is fragmentation of the buying and selling interest in individual securities among multiple market centers a problem in today's markets? For example, has fragmentation isolated orders, hampering quote competition, reducing liquidity, or increasing short-term volatility? Has fragmentation reduced the capacity of the markets to weather a major market break in a fair and orderly fashion?

Is fragmentation in the listed equity markets likely to increase with the elimination of off-board trading restrictions, such as NYSE Rule 390?

In the existing over-the-counter market, what are the incentives for investors and dealers to quote aggressively?

If fragmentation is a problem, are competitive forces, combined with the existing components of market structure that help address fragmentation (price transparency, intermarket linkages to displayed prices, and a broker's duty of best execution), adequate to address the problem?

Will the greater potential provided by advancing technology for the development of broker order-by-order routing systems, or for informed investors to route their own orders to specific market centers, address fragmentation problems without the need for Commission action?

b. *Internalization and Payment for Order Flow.* What proportion of order flow currently is subject to internalization and payment for order flow arrangements in the listed equity and Nasdaq equity markets? Will the proportion increase in the listed equity

1994 estimates [of average realized spreads] suggest that the new SEC order-handling rules have benefited small NASDAQ traders the most.''); Jeffrey W. Smith, *The Effects of Order Handling Rules and 16ths on Nasdaq: a Cross-Sectional Analysis,* NASD Working Paper 98–02 (Oct. 29, 1998), at 17 (''The OHR [Order Handling Rules] and 16ths had a major spread-reducing effect on Nasdaq stocks * * * For most stocks, the OHR had a much larger role in reducing spreads than did 16ths, accounting for roughly 85% of the reduction.'') (available at <http://www.academic.nasdaq.com>); *cf.* Justin Schack, *Cost Containment,* Institutional Investor, Nov. 1999, at 43 (study of the trading costs of 150 large institutions found that ''the average cost of executing a trade on the Nasdaq Stock Market fell by 23 percent in 1998, to 29.9 basis points from 39 basis points, the third straight year of decline'').

[54] The Exchange Act grants the Commission ample authority to address market fragmentation. Section's 6, 15A, and 19 provide substantial authority to assure that the rules of the self-regulatory organizations further the national market system. Section 11A(a)(3) authorizes the Commission to require the self-regulatory organizations to act jointly in establishing the national market system. In addition, Section 11A(c)(1)(E) grants the Commission rulemaking authority to assure that brokers route their customer orders in a manner consistent with the establishment and operation of a national market system. Finally, Section 15(c)(5) grants the Commission rulemaking authority to establish standards for over-the-counter market makers that are necessary or appropriate to remove impediments to, and to perfect the mechanism of, a national market system.

[55] NYSE, *1998 Fact Book* 20. It should be noted that, because of price improvement opportunities, the average *effective* NYSE spread will be less than the average *quoted* spread. *See* note 20 above for a definition of the effective spread.

[56] NASD, <http://www.marketdata.nasdaq.com) (visited Dec. 11, 1999>.

markets as a result of the elimination of off-board trading restrictions?

Is it possible for a non-dominant market center to compete successfully for order flow by price competition, without using internalization and payment for order flow arrangements? If not, is the inability to obtain access to order flow through price competition a substantial reason for the existence of internalization and payment for order flow arrangements?

To what extent can brokers compete as effectively for retail business based on execution quality (or implicit transaction costs), as opposed to commissions (or explicit transaction costs) and other services?

Do investor market orders that are routed pursuant to internalization and payment for order flow arrangements receive as favorable executions as orders not subject to such arrangements? Even if these orders subject to internalization and payment for order flow arrangements receive comparable executions, does the existence of such arrangements reduce the efficiency of the market as a whole (by, for example, hampering price competition) so that its market orders receive less favorable executions than they otherwise would if there were no internalization or payment for order flow?

Even if internalization and payment for order flow arrangements increase the fragmentation of the markets, are any negative effects of increased fragmentation outweighed by benefits provided to investors, such as speed, certainty, and cost of execution?

c. *Best Execution of Investor Limit Orders.* Does increased fragmentation of trading interest reduce the opportunity for best execution of investor limit orders? Are brokers able to make effective judgments concerning where to route limit orders so as to obtain the highest probability of an execution?

Does the opportunity for brokers to share in market maker profits through internalization or payment for order flow arrangements create an economic incentive to divide the flow of investor limit orders from investor market orders among different market centers? If so, does this adversely affect the opportunity for investor limit orders to be executed fairly and efficiently?

Is it consistent with national market system objectives (such as efficiency, best execution of investor orders, and an opportunity for investor orders to meet without the participation of a dealer) for market makers to trade ahead of previously displayed investor limit orders held by another market center (that is, trade as principal at the same price as the limit order price)? Does this practice significantly reduce the likelihood of an execution for limit orders by reducing their opportunity to interact with the flow of orders on the other side of the market? Does the practice offer any benefits that outweigh whatever adverse effects it might have on limit order investors?

2. Possible Options for Addressing Fragmentation

If action to address fragmentation is determined to be necessary or appropriate to further the objectives of the Exchange Act, a variety of approaches could be considered. Six options are briefly described below, followed by requests for comment that relate specifically to each one. The options could apply either individually or in some combination with one another. If commenters believe fragmentation should be addressed, they also are encouraged to submit any additional options for addressing fragmentation that they consider feasible.

a. *Require Greater Disclosure by Market Centers and Brokers Concerning Trade Executions and Order Routing.* The Commission could require greater disclosure by market centers and brokers concerning their trade executions and order routing. Such disclosures could enable investors to make more informed judgments concerning the quality of executions provided by their brokers, as well as enable brokers and the general public to make more informed judgments concerning the quality of trade executions at all market centers.

For example, all market centers could be required to provide uniform, publicly available disclosures to the Commission concerning all aspects of their trading and their arrangements for obtaining order flow. These disclosures could include the nature of their order flow (for example, the ratio of limit orders to market orders), their effective spreads for market orders for different types of securities (for example, securities that have different levels of trading), their percentage of market orders that receive price improvement, their speed in publicly displaying limit orders, their fill rates for different types of limit orders (for example, those with between-the-quotes and at-the-quotes limit prices), and their average time-to-fill for different types of limit orders. In addition, market centers could be required to make available comprehensive databases of raw market information that will allow independent analysis and interpretation by brokers, academics, the press, and other interested parties.

Brokers, in turn, could be required to provide disclosures to their customers (and to the Commission for public availability) concerning the proportion and types of orders that are routed to different market centers, their arrangements with market centers for routing customer orders, and the results they have obtained through these arrangements.

What would be the advisability and practicality of this option? Would it effectively address the problems presented by market fragmentation?

Is there an effective and practical way to provide clear and useful disclosure to retail customers concerning execution quality? If not, does the difficulty of providing such disclosure preclude brokers from competing effectively on the basis of execution quality?

b. *Restrict Internalization and Payment for Order Flow.* The Commission could restrict internalization and payment for order flow arrangements by reducing the extent to which market makers trade against customer order flow by matching other market center prices. Market makers would thereby be less assured of the profits that can be earned by trading against directed order flow and that are used to fund the economic inducements offered to brokers for their customers' order flow. For example, the NYSE has requested that the Commission take this type of action to address internalization.[57] Under the NYSE proposal, broker-dealers would be limited in the extent to which they could trade as principal with their customers' market and marketable limit orders. A broker-dealer could buy from or sell to its customer only at a price that was better than the NBBO for the particular security. This type of prohibition could be extended to all market centers that receive orders pursuant to a payment for order flow arrangement, in addition to internalizing broker-dealers.

What would be the advisability and practicality of this option? Would it effectively address the problems presented by market fragmentation?

Would restricting internalization and payment for order flow arrangements unduly interfere with competition among market centers to provide trading services based on factors other than price, such as speed, reliability, and cost of execution?

c. *Require Exposure of Market Orders to Price Competition.* As a means to enhance the interaction of trading interest, the Commission could require

[57] *See* Item 11.A.1 above for a fuller description of the NYSE proposal.

that all market centers expose their market and marketable limit orders in an acceptable way to price competition. As one example of acceptable exposure, an order could be exposed in a system that provided price improvement to a specified percentage of similar orders over a specified period of time. As another example of acceptable exposure, a market maker, before executing an order as principal in a security whose quoted spread is greater than one minimum variation, could publish for a specified length of time a bid or offer that is one minimum variation better than the NBBO. The Commission proposed such a rule for public comment in 1995 at the time it proposed the Order Handling Rules.[58] Although it believed that an opportunity for price improvement could contribute to providing customer orders with enhanced executions, the Commission chose not to adopt the proposed rule at the time it adopted the Order Handling Rules. Instead, it stated that it was deferring action to provide an opportunity to assess the effects that the Order Handling Rules would have on the markets.[59]

What would be the advisability and practicality of this option? Would it effectively address the problems presented by market fragmentation?

Are there effective means of representing undisclosed orders in markets in which trading interest is divided among many different market centers? Would exposure of market orders through the quote mechanism provide a viable means of allowing the holders of undisclosed orders (particularly large orders) to interact with market orders? What other means to facilitate the interaction of undisclosed and disclosed orders is feasible and practical?

Would requiring the exposure of market orders to price competition unwarrantedly delay the execution of those orders? If so, should order exposure be offered as a choice to customers?

How would implementation of this option affect the opportunity for execution of displayed trading interest at the NBBO?

d. *Adopt an Intermarket Prohibition Against Market Makers Trading Ahead of Previously Displayed and Accessible Investor Limit Orders.* The Commission also could establish intermarket trading priorities as a means to address fragmentation. One option would be to adopt an intermarket prohibition against market makers (including exchange specialists) using their access to directed order flow to trade ahead of investor limit orders that were previously displayed by any market center and accessible through automatic execution by other market centers. Under this option, each market center would be responsible for providing notice to other market centers of the price, size, and time of its investor limit orders that were entitled to priority, as well as participate in a linkage system that allowed automatic execution against the displayed trading interest.[60] To execute a trade as principal against customer order flow, market makers would be required to satisfy, or seek to satisfy, investor limit orders previously displayed and accessible at that price (or a better price) in all market centers.[61]

To reward market makers willing to add liquidity to the markets through aggressive quote competition (as well as participate in public price discovery), a market maker could be allowed to trade with customers at its quote ahead of a *subsequently* displayed investor limit orders under certain circumstances. For example, a market maker could trade as principal against a customer order if, at the time it received a customer order, its quote was at the NBBO; its quote was widely displayed and accessible through automatic execution at a size at least equal to the customer order; and the market maker satisfied, or sought to satisfy, all investor limit orders that were displayed prior to the market maker's quote.

What would be the advisability and practicality of this option? Would it effectively address the problems presented by market fragmentation?

Would prohibiting market makers from trading ahead of investor limit orders, regardless of where the order entered the national market system, facilitate a broker's ability to obtain best execution of its customers' limit orders?

Would an intermarket prohibition against market makers trading ahead of previously displayed and accessible limit orders encourage price competition and thereby enhance the efficiency of the market as a whole?

Would implementation of this option reduce the willingness or capacity of market makers to supply liquidity? If so, would the problem be addressed by allowing market makers to trade at their quotations after satisfying previously displayed investor limit orders?

Would this option be feasible without the establishment of a single, intermarket limit order file?

e. *Provide Intermarket Time Priority for Limit Orders or Quotations that Improve the NBBO.* As another option for encouraging price competition, the Commission could establish intermarket trading priorities that granted time priority to the *first* limit order or dealer quotation that improved the NBBO for a security (that is, the order or quotation that either raised the national best bid or lowered the national best offer). To qualify for such priority, the limit order or quotation would have to be widely displayed and accessible through automatic execution. Only the first trading interest at the improved price (''Price Improver'') would be entitled to priority. No market center could execute a trade at the improved or an inferior price unless it undertook to satisfy the Price Improver. Subsequent orders or quotations that merely matched the improved price would not be entitled to any enhanced priority. If, prior to satisfaction of the Price Improver, another order or quotation was displayed and accessible at an even better price, the existing Price Improver would be superseded and permanently lose its priority. The subsequent trading interest at the better price would be the new Price Improver.

What is the advisability and practicality of this option? Would it effectively address the problems presented by market fragmentation? Would it discourage competition among market centers or reduce market makers' willingness to supply liquidity?

Would granting time priority only to the first trading interest to improve the NBBO provide an adequate incentive for aggressive price competition?

How difficult would it be to implement this limited type of intermarket time priority? Would it require substantial modifications of currently existing linkage systems?

f. *Establish Price/Time Priority for All Displayed Trading Interest.* To assure a high level of interaction of trading interest, the Commission could order the establishment of a national market linkage system that provides price/time priority for all displayed trading interest. Under this option, the displayed orders and quotations of all market centers would be displayed in the national linkage system (''NLS''). All

[58] Securities Exchange Act Release No. 36310 (Oct. 6, 1995), 60 FR 52792 (proposed Rule 11Ac1–5—Price improvement for customer market orders).

[59] Order Handling Rules Release, note 25 above, section III.C.1

[60] Comment is requested on whether intermarket priority should be extended to the ''reserve size'' orders used by some market centers to facilitate the trading of large investors.

[61] For purposes of this option, an ''investor'' limit order could be defined as all limit orders other than those placed for the benefit of a broker-dealer. If necessary or appropriate to maintain a fair and orderly market, the definition also could exclude limit orders placed for the benefit of professional traders (for example, any trader who repeatedly buys and sells a security within a short time-frame).

NLS orders and quotations would be fully transparent to all market participants, including the public. Orders and quotations displayed in the NLS would be accorded strict price/time priority. Market makers could execute transactions as principal only if they provided price improvement over the trading interest reflected in the NLS. Trading interest in the NLS could be executed automatically; however, the NLS would not be a market center itself: executions would continue to occur at the level of individual market centers. Public access to the NLS would be provided through self-regulatory organizations, alternative trading systems, and broker-dealers. The NLS could be administered and operated by a governing board made up of representatives from the public and relevant parts of the securities industry.

What is the advisability and practicality of this option? Would it effectively address the problems presented by market fragmentation?

Has advancing technology and increased trading volume created more favorable conditions for the establishment of a national market linkage system at the current time than at any time in the past? What would be the respective benefits and costs of such a system?

Would a national market linkage system with strict price/time priority and automatic execution provide the most efficient trading mechanism? If so, why have competitive forces failed to produce such a system without the necessity for Commission action? Are there any regulatory rules or industry practices blocking competitive forces that otherwise would produce such a system? If so, what are they and how should they be addressed?

Would a mandated national market linkage system substantially reduce the opportunity for competition among market centers to provide trading services? If so, would the costs of reduced market center competition outweigh the benefits of greater interaction of trading interest?

Would implementation of a comprehensive national market linkage system effectively require the creation of a single industry utility? How should a national market linkage system be governed?

Should there be any exceptions from the requirement that all orders yield price/time priority to trading interest reflected in a national market linkage system? For example, should there be an exception for block transactions or for intra-market agency crosses at the NBBO?

Should a national market linkage system incorporate a reserve size function to facilitate the submission of large orders?

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the NYSE's proposed rule change and the Commission's request for comment on market fragmentation, including whether the NYSE's proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the NYSE's proposal also will be available for inspection and copying at its principal office. All submissions should refer File No. SR–NYSE–99–48. Comments on the NYSE's proposed rescission of Rule 390 should be submitted by March 20, 2000. Comments responding to the Commission's request for comments on market fragmentation (including the NYSE's request for rulemaking action) should be submitted by April 28, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–4595 Filed 2–25–00; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3237]

State of Georgia

As a result of the President's major disaster declaration on February 15, 2000, I find that Colquitt, Grady, Mitchell, and Tift Counties in the State of Georgia constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on February 14, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 15, 2000 and for economic injury until the close of business on November 15, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Baker, Berrien, Brooks, Cook, Decatur, Dougherty, Irwin, Thomas, Turner, and Worth Counties in Georgia, and Gadsden and Leon Counties in Florida.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 323712, and for economic injury the numbers are 9G7000 for Georgia and 9G7100 for Florida.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 18, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–4599 Filed 2–25–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3212; Amendment #6]

State of North Carolina

In accordance with information received from the Federal Emergency Management Agency dated February 17, 2000, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster from February 17, 2000 to February 29, 2000.

All other information remains the same, *i.e.,* the deadline for filing

applications for economic injury is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 18, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–4600 Filed 2–25–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application for Social Security Disability Benefits—0960–0060. The Social Security Administration (SSA) uses the information collected on form SSA–16 to determine eligibility for Social Security disability benefits. The respondents are applicants for such benefits.

Number of Respondents: 1,185,942.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 395,314 hours.

2. Appointment of Representative-0960–0527. The information on Form SSA–1696 is used by SSA to verify the applicant's appointment of a representative. The form allows SSA to inform the representative of issues that affect the applicant's claim. The respondents are applicants who notify SSA that they have appointed a person to represent them.

Number of Respondents: 412,653.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 68,776 hours.

3. Request to be Selected as Payee—0960–0014. The information collected on Form SSA–11–BK is used to determine the proper payee for a Social Security beneficiary, and it is designed to aid in the investigation of a payee applicant. The form will establish the applicant's relationship to the beneficiary, the justification, the concern for the beneficiary and the manner in which the benefits will be used. The respondents are applicants for selection as representative payee for Old Age, Survivors and Disability Insurance, Supplemental Security Income (SSI), Black Lung benefits and title-VIII Special Veterans Benefits.

Number of Respondents: 2,121,686.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 371,295 hours.

4. Application for Special Benefits for World War II Veterans-0960–0615. The information collected on Form SSA–2000 will be used by the Social Security Administration to elicit the information necessary to determine entitlement of an individual to benefits under title VIII of the Social Security Act. Respondents are certain World War II Veterans as identified under title VIII.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 4,000 hours.

5. Claim for Amount Due in the Case of a Deceased Beneficiary-0960–0101. Section 204 (d) of the Social Security Act provides that if a beneficiary dies before payment of Social Security benefits has been completed, the amount due will be paid to the persons meeting specified qualifications. The information collected on Form SSA–1724 is used by the Social Security Administration to determine whether an individual is entitled to the underpayment. The respondents are applicants for the underpayment of a deceased beneficiary.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 50,000 hours.

6. Third party Liability Information Statement-0960–0323. Form SSA–8019 is used by the Social Security Administration to gather information or to make changes in existing information about third party insurance (excluding Medicare or Medicaid), which could be responsible for payment for a beneficiary's medical care. The respondents are third-party insurers other than Medicare or Medicaid.

Number of Respondents: 95,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 7,917 hours.

II. The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Letter to Employer Requesting Wage Information-0960–0138. The information collected on form SSA–L4201 is used by SSA to determine eligibility and proper benefit payments for SSI applicants/recipients. The respondents are employers of applicants for and recipients of SSI payments.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: February 22, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–4573 Filed 2–25–00; 8:45 am]

BILLING CODE 4191–02–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Rectifications to the NAFTA Rules of Origin in the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of rectifications to the NAFTA rules of origin in the Harmonized Tariff Schedule of the United States.

SUMMARY: The Office of the United States Trade Representative is providing notice of certain rectifications to the rules of origin for goods covered by the North American Free Trade Agreement (NAFTA), as set forth in the Harmonized Tariff Schedule of the United States (HTS). These rectifications are intended to maintain consistency between the HTS and the NAFTA rules or origin.

DATES: The effective date of the rectifications is March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel, (202) 395–7305, 600 17th Street, NW, Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Through an exchange of letters in February 2000, the United States, Mexico, and Canada (the NAFTA Parties) agreed to certain technical rectifications to the rules of origin contained in Annexes 401 and 403.1 of the NAFTA. These rectifications are intended to maintain consistency between Annexes 401 and 403.1 and the tariff schedules of the NAFTA Parties. The appendix to this notice embodies these rectifications in the NAFTA rules or origin set forth in general note 12(t) of the HTS.

Proclamation 6969 of January 27, 1997 (62 FR 4415, January 29, 1997) authorized the United States Trade Representative (USTR) to exercise the authority provided to the President under Section 601 of the Trade Act of 1974 (the 1974 Act), as amended by Public Law 100–418, 88 Stat. 2073 (19 U.S.C. 2483), to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in USTR by Proclamation 6969 and the authority vested in the President by the Constitution and the laws of the United States, including, but not limited to, section 604 of the 1975 Act and section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)), the rectifications, technical or conforming changes, and similar modifications set forth in the appendix to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2000.

Dated: February 22, 2000.

Charlene Barshefsky,

United States Trade Representative.

Appendix

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2000.

(1) General note 12(t) to the Harmonized Tariff Schedule of the United States is modified as follows:

(a) TCR 29.8 is modified by deleting ''(A)'' and by deleting subdivision (B) of such TCR together with its designation;

(b) TCR 85.5A is modified by deleting ''tariff item,'' and by inserting in lieu thereof ''subheading,'',

(c) TCR 85.80(A) is modified by deleting ''8471.92'' and by inserting in lieu thereof ''8471.60'';

(d) TCR 86.4(B) is modified by deleting ''from tariff item'' and by inserting in lieu thereof ''from tariff items 8607.19.06 or''; and

(e) TCRs 87.40 through 87.42, inclusive, are deleted and the following new TCR is inserted in lieu thereof:

''40. (A) A change to headings 8711 through 8713 from any other heading, including another heading within that group, except from heading 8714, or

(B) A change to headings 8711 through 8713 from heading 8714, whether or not there is also a change from any other heading, including another heading within that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.''

(2) Chapter 29 of the HTS is modified by inserting in numerical sequence the following new subheading, with the article description at the same level of indentation as the article description of subheading 2905.49.10:

[2905	Acyclic...:]			
	[Other...:]			
[2095.49	Other:]			
''2905.49.20	Esters of glycerol formed with acids of heading 2904	8.2%	Free (A*, CA, E, IL, J, K, MX) ...	54.5%''

Conforming change: General note 4(d) is modified by inserting in numerical sequence ''2905.49.20 India''.

[FR Doc. 00–4539 Filed 2–25–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension of a currently approved information collection for alcohol testing.

Before submitting this information collection to OMB for renewal, DOT is soliciting comments 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments on this notice must be received on or before April 28, 2000.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–99–6578, Department of Transportation, 400 7th Street, SW, Room PL401, Washington DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/*. The public may

also review docketed comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Edgell, DOT Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, S–1, ODAPC, Room 10403, Department of Transportation, at the address above. Telephone: (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Office of the Secretary, Drug Program Office

Title: U.S. Department of Transportation (DOT) Breath Alcohol Testing Form.

OMB Control Number: 2105–0529.

Form Number: 2105–0529.

Type of Request: Extension of a currently approved collection.

Affected Entities: Transportation industries.

Abstract: Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement an alcohol testing program in various transportation industries. This specific requirement is elaborated in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Breath-alcohol technicians (BAT) must fill out testing form. The form includes the employee's name, the type of test taken, the date of the test, and the name of the employer.

Custody and control is essential to the basic purpose of the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

Estimated Total Burden on Respondents: The estimated annual burden hour is 1. Since this package is simply requesting clearance to use the alcohol testing form, the Office of the Secretary has no actual burden.

Issued in Washington DC.

K.C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance, United States Department of Transportation.

[FR Doc. 00–4640 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–04]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 20, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28397.

Petitioner: Tulsa Technology Center.

Section of the FAR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75(a) and (b).

Description of Relief Sought/Disposition: To permit TTC to (1) administer the FAA oral and practical tests to students at times and places identified in TTC's operations handbook, (2) conduct oral and practical tests as an integral part of the education process rather than conducting the tests upon student's successful completion of the written tests, (3) approve students for retesting within 30 days after failure without requiring a signed statement certifying additional instruction has been given in the failed area, and (4) administer the aviation mechanic general written test to students immediately following successful completion of the general curriculum, before meeting the experience requirements of § 65.77. *Grant, 01/21/2000, Exemption No. 6569B*

Docket No.: 25559.

Petitioner: Aerospace Industries Association of America, Inc.

Section of the FAR Affected: 14 CFR 21.182(a) and 45.11(a).

Description of Relief Sought/Disposition: To permit AIA-member aircraft manufacturers to manufacture aircraft for use in operations conducted under 14 CFR part 121 or aircraft intended to be used for commuter operations under 14 CFR part 135 (as defined in 14 CFR part 119) and for export without installing an identification plate during the production phase of the exterior of those aircraft. *Grant, 01/31/2000, Exemption No. 4913F*

Docket No.: 26474.

Petitioner: Deere & Company.

Section of the FAR Affected: 14 CFR 21.197(a)(1).

Description of Relief Sought/Disposition: To permit Deere to operate its Cessna Model CE–650 aircraft (Registration Nos. N600JD and N900JD; Serial Nos. 650–0236 and 650–0213, respectively) without obtaining a special flight permit when the flaps fail in the up position. *Denial, 01/04/2000, Exemption No. 7103.*

[FR Doc. 00–4637 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–05]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 20, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on February 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 29798.

Petitioner: Frontier Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.391(a)(4).

Description of Relief Sought: To permit Frontier to use two flight attendants aboard airplanes configured with more than 100 seats when (1) a third flight attendant becomes unable to perform his or her duties and a replacement flight attendant cannot be made available without a lengthy delay and (2) all seats in excess of 100 are blocked from use.

Docket No.: 29893.

Petitioner: The Boeing Company.

Section of the FAR Affected: 14 CFR 25.335(e)(3).

Description of Relief Sought: To allow design flap speeds, V_F, for the MD–17, to be calculated based on a power-on stall speed with the critical engine inoperative and the operative engines at the power setting appropriate for the flight condition.

Docket No.: CE157.

Petitioner: Schwans Sales Enterprises.

Section of the FAR Affected: 14 CFR 23.851 and CAR 4a.532(j).

Description of Relief Sought: To permit the Red Baron Stearman Squadron to operate six Vintage Boeing Stearmans without either fire extinguishers or the mounting hardware for a fire extinguisher.

Docket No.: 29739.

Petitioner: Bombardier Services Corporation.

Section of the FAR Affected: 14 CFR 145.35(c) and 145.37(b).

Description of Relief Sought: To permit Bombardier to operate satellite repair stations in Asheville, North Carolina; Charleston, West Virginia; and Newburgh, New York, without meeting all the housing and facility requirements of §§ 145.35 and 145.37.

Dispositions of Petitions

Docket No.: 29217.

Petitioner: Dwight Reber.

Section of the FAR Affected: 14 CFR 21.25(a)(2) and 133.19(a)(1).

Description of Relief Sought/ Disposition: To permit Mr. Reber to operate two Russian military Kamov Ka–25 (Ka–25) helicopters in the restricted category and conduct Class A, Class B, and Class C rotorcraft external-load combination operations. *DENIAL, 11/16/99, Exemption No. 7076.*

Docket No.: 29335.

Petitioner: AlliedSignal, Inc.

Section of the FAR Affected: 14 CFR 21.325(b)(30).

Description of Relief Sought/ Disposition: To permit AES Tempe to issue export airworthiness approval tags for Class II and Class III products manufactured in Singapore by its AES Singapore facility as an approved supplier to AES Tempe under AES Tempe's PMA No. PQ1222NM. *GRANT, 11/17/99, Exemption No. 7075.*

Docket No.: 29118.

Petitioner: Homestead Helicopters, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Homestead to operate its Robinson R44 helicopter (Registration No. N8372H, Serial No. 0387) under part 135 without a TSO–C112 (Mode S) transponder installed. *GRANT, 10/28/99, Exemption No. 6733A.*

Docket No.: 27052.

Petitioner: Petroleum Helicopters, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit PHI to operate its Bell Model 206L–1 helicopters (Registration Nos. N2761X, N5005B, N50046, and N50182; Serial Nos. 45283, 45175, 45173, and 45242, respectively) under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *GRANT, 10/28/99, Exemption No. 5586C.*

Docket No.: 29658.

Petitioner: Sunrise Airlines, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sunrise to operate certain aircraft under part 121 or part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *GRANT, 10/28/99, Exemption No. 7061.*

Docket No.: 29756.

Petitioner: ExecuJet Charter Service, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit ExecuJet to operate its Hawker Model DH 125–400A aircraft (Registration No. N810HS, Serial No. 25271) under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *GRANT, 10/28/99, Exemption No. 7064.*

[FR Doc. 00–4638 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–06]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this

for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 20, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29849.

Petitioner: The Boeing Company.

Section of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought: To permit the issuance of export airworthiness approvals for Class II and Class III products manufactured in Japan by Jamco Corporation as an approved supplier to Boeing without the products first being shipped to the United States.

Dispositions of Petitions

Docket No.: 29695.

Petitioner: Raytheon Systems Company.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Raytheon to make its Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 02/03/ 2000, Exemption No. 7115.*

Docket No.: 29599.

Petitioner: Air Logistics, L.L.C.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Air Logistics to place copies of its IPM in central locations in its repair station rather than giving a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 01/11/2000, Exemption No. 7097.*

Docket No.: 29799.

Petitioner: Bombardier, Inc.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Bombardier to place an adequate number of repair station IPMs in inspection areas and to assign IPMs to key individuals. *Grant, 02/03/2000, Exemption No. 7114.*

Docket No.: 28320.

Petitioner: Learjet, Inc.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Learjet to place and maintain its IPM in a number of fixed locations within its facility and assign it to key individuals in lieu of giving a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 01/11/2000, Exemption No. 7098.*

Docket No.: 28634.

Petitioner: Parker Hannifin Corporation.

Section of the FAR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).

Description of Relief Sought/ Disposition: To permit Parker to use computer-generated electronic signatures in lieu of physical signatures to satisfy the signature requirements of FAA Form 8130–3, Airworthiness Approval Tag, when the form is used as approval for return to service. *Grant, 01/ 07/2000, Exemption No. 7096.*

Docket No.: 28440.

Petitioner: GE Celma S.A.

Section of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit GE Celma to use the calibration standards of the Instituto Nacional de Mertologia, Normalizaçao e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment. *Grant, 02/03/2000, Exemption No. 6546B.*

Docket No.: 26017.

Petitioner: Era Helicopters.

Section of the FAR Affected: 14 CFR 43.3(a) and 135.443(b)(3).

Description of Relief Sought/ Disposition: To permit Era to allow appropriately trained and certificated pilots employed by Era to install and remove an approved emergency rescue hoist on its Aerospatiale AS 332 Super Puma helicopters. *Grant, 02/03/2000, Exemption No. 6760A.*

Docket No.: 19634.

Petitioner: Boeing Commercial Airplanes Group.

Section of the FAR Affected: 14 CFR 121.310(d)(4).

Description of Relief Sought/ Disposition: To permit operators of McDonnell Douglas DC–8 aircraft to operate these aircraft in passenger-carrying operations without a cockpit control device for each emergency light. *Grant, 01/31/2000, Exemption No. 3055J.*

Docket No.: 29038.

Petitioner: GE VARIG.

Section of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit GE VARIG to use the calibration standards of the Instituto Nacional de Mertologia, Normalizaçao e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment. *Grant, 01/28/2000, Exemption No. 6709A.*

[FR Doc. 00–4639 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Falls International Airport, International Falls, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 518 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 29, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Susan Baratono, Secretary of the International Falls-Koochiching County Airport Commission at the following address: PO Box 392, International Falls, Minnesota 56649. Air carriers and foreign air carriers may submit copies of written comments previously provided to the International Falls-Koochiching County Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 15, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by International Falls-Koochiching County Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 7, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2000.

Proposed charge expiration date: August 1, 2006.

Total estimated PFC revenue: $319,740.00.

Brief description of proposed projects: Terminal building modifications (foundation work), acquire SRE, acquire ARFF, construct shoulders runway 13/31, replace HIRLs runway 13/31, replace runway 13/31 REILs, replace beacon, replace SRE, terminal modification HVAC, environmental study for MALSR installation, construct terminal building entrance canopy, PFC administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the International Falls-Koochiching County Airport Commission.

Issued in Des Plaines, Illinois on February 18, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–4636 Filed 2–25–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub-No. 88X)]

Boston and Maine Corporation—Abandonment and Discontinuance of Service—Rockingham and Hillsborough Counties, NH

On February 8, 2000, the Boston and Maine Corporation (B&M) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon and to discontinue service over a 2.95-mile line of railroad in Rockingham and Hillsborough Counties, NH, known as the Manchester and Lawrence Branch. Extending from milepost 4.65 to milepost 7.60 in Salem, NH, the line traverses U.S. Postal Service ZIP Code 03079 and includes the station of Salem, NH.

The line does not contain federally granted rights-of-way. Any documentation in B&M's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979) .

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 26, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 20, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–32 (Sub-No. 88X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Robert B. Culliford, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862. Replies to the B&M petition are due on or before March 20, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 16, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–4499 Filed 2–25–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2000.

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 March 29, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0027.

Form Number: ATF F 4 (5320.4).

Type of Review: Extension.

Title: Application for Tax Paid Transfer and Registration of a Firearm.

Description: This form must be submitted to ATF to obtain approval for tax paid transfers of National Firearms Act (NFA) firearms. Approval of a transfer and registration of a firearm to a new owner are accomplished with the information supplied on this document.

Respondents: Individuals or households, Business of other for-profit.

Estimated Number of Respondents: 7,853.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 31,412 hours.

OMB Number: 1512–0137.

Form Number: ATF F 5150.22 and ATF F 5150.25.

Type of Review: Extension.

Title: Application for an Industrial Alcohol User Permit (F 5150.22); and Industrial Alcohol Bond (F 5150.25).

Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with the Federal laws and regulations. ATF F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 738.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,476 hour.

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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–4602 Filed 2–25–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2000.

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 March 29, 2000 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–1523.

Notice Number: Notice 97–12.

Type of Review: Extension.

Title: Electing Small Business Trusts.

Description: This notice provides the time and manner for making the Electing Small Business Trust election pursuant to section 1361(e)(3).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1536.

Regulation Project Number: REG–209823–96 (Final).

Type of Review: Extension.

Title: Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts.

Description: The recordkeeping requirement in the regulation provides taxpayers with an alternative method for complying with Congressional intent regarding charitable remainder trusts. The recordkeeping alternative may be less burdensome for taxpayers.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 150.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Estimated Total Recordkeeping Burden: 75 hours.

Clearance Officer: Garrick Shea, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–4603 Filed 2–25–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2000.

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 March 29, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0013.
Form Number: PD F 1048 and PD F 2243.
Type of Review: Extension.
Title: Application for Relief on Account of Loss, Theft or Destruction of U.S. Savings and Retirement Securities (1048); and Statement Concerning U.S. Securities.
Description: PD F 1048 and PD F 2243 used by owner(s) or others having knowledge to request substitute or payment of lost, stolen or destroyed securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 80,000.
Estimated Burden Hours Per Respondent:

PD F 1048	25 minutes.
PD F 2243	5 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 32,000 hours.

OMB Number: 1535–0035.
Form Number: PD F 4881.
Type of Review: Extension.
Title: Application for Payment of United States Savings Bonds/Notes or Related Checks in an Amount NOT Exceeding $1,000 by the Survivor of a Deceased Owner Whose Estate is NOT Being Administered.
Description: PD F 4881 is used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,965.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 991 hours.

OMB Number: 1535–0036.
Form Number: PD F 2513.
Type of Review: Extension.
Title: Application by Voluntary Guardian of Implement Owner of United States Savings Bonds/Notes.
Description: PD F 2513 used by voluntary guardian of incompetent bond owner(s) to establish right to act on behalf of incompetent owner.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,650.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 2,600 hours.

OMB Number: 1535–0064.
Form Number: PD F 1980 and PD F 2490.
Type of Review: Extension.
Title: Description of United States Savings Bonds Series HH/H (1980); and Description of United States Bonds/Notes (2490).
Description: PD F 1980 and PD F 2490 are used by owners of United States Savings Bonds/Notes to describe their holdings.
Respondents: Individuals or households.
Estimated Number of Respondents: 19,000.
Estimated Burden Hours Per Respondent:

PD F 1980	6 minutes
PD F 2490	6 minutes

Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 1,900 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–4604 Filed 2–25–00; 8:45 am]
BILLING CODE 4810–40–U

TWENTY-FIRST CENTURY WORKFORCE COMMISSION

Notice of Public Information Hearing

AGENCY: Twenty-First Century Workforce Commission.

ACTION: Notice of Public Information Hearing.

SUMMARY: This notice is to announce a public information hearing on Tuesday, March 7, 2000. Members of the public are invited to attend the hearing. Several witnesses have been invited by the Commissioners to testify and to address the questions identified by the agenda set forth below.

The purpose of the hearing is for Commissioners to learn how Massachusetts companies, educational institutions, community organizations, and governments are working together so more of its residents gain the skills and knowledge necessary to be part of the Information Technology (IT) workforce.

DATES: The Public Information Hearing will be held on Tuesday, March 7, 2000, from 9:00 am to approximately 3:00 p.m. Registration is from 9:00 am to 10:00 am. The dates, locations and times for subsequent meetings will be announced in advance in the **Federal Register**.

ADDRESSES: Northeastern University is located at 360 Huntington Avenue, Boston, MA 02115. The hearing will be held at the Egan Research building. For information, call (617) 373–2000. (TTY) (617) 373–3768. Web-based directions can be found at: *www.neu.edu.* All interested parties are invited to attend this Information Hearing. Seating may be limited and will be available on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Meeder, Executive Director, Twenty-First Century Workforce Commission, 1201 New York Avenue, NW, Suite 700, Washington, DC 20005. (Telephone (202–289–2939. TTY (202) 289–2977)). These are not toll-free numbers. Email: *Workforce21@nab.com.*

SUPPLEMENTARY INFORMATION: Establishment of the Twenty-First Century Workforce Commission was mandated by Subtitle C of Title III of the Workforce Investment Act, Sec. 331 of Pub. L. 105–220, 112 Stat. 1087–1091, (29 U.S.C. 2701 note), signed into law on August 7, 1998. The 15 voting member Twenty-First Century Workforce Commission is charged with studying all aspects of the information technology workforce in the United States. Notice is hereby given of the second Public Information Hearing of the Twenty-First Century Workforce Commission.

The Workforce Investment Act (Pub. L. 105–220), signed into law on August 7, 1998, established the Twenty-First Century Workforce Commission. The Commission is charged with carrying out a study of the information technology workforce in the U.S., including the examination of the following issues:

1. What skills are currently required to enter the information technology workforce? What technical skills will be demanded in the near future?

2. How can the United States expand its number of skilled information technology workers?

3. How do information technology education programs in the United States compare with other countries in effectively training information technology workers? [The Commission study should place particular emphasis upon contrasting secondary, non-and-post-baccalaureate degree education programs available within the U.S. and foreign countries.]

The Workforce Investment Act directs the Commission to issue recommendations to the President and Congress within six months. The Commission first met on November 16, 1999, and will issue its recommendations by May 16, 2000.

Agenda

At the Boston, Massachusetts hearing, the Commission working group conducting the hearing will emphasize the following issues: (1) How will information technology advances continue to change Massachusetts' economy in coming years, and what skills will individuals need to participate in the IT workforce? (2) How are Massachusetts companies, educational institutions, community organizations, state and local governments partnering to provide educational and training opportunities for individuals who want to enter the IT workforce? (3) What particular barriers face Massachusetts in building and strengthening the IT workforce, and how are under-represented populations being reached for participation in the IT workforce?

Commission Membership

The Workforce Investment Act mandates that 15 voting members be appointed by the President, Majority Leader of the Senate, and Speaker of the House (5 members each), including 3 educators, 3 state and local government representatives, 8 business representatives and 1 labor representative. The Act also mandates that the President appoint 2 ex-officio members, one each from the Departments of Labor and Education.

The Commissioners are: Chairman Lawrence Perlman, Ceridian Corporation, Minneapolis, MN; Vice Chair, Katherine K. Clark, Landmark Systems Corporation, Reston, VA; Susan Auld, Capitol Strategies, Ltd., Montpelier, VT; Morton Bahr, Communication Workers of America, Washington, DC; Patricia Gallup, PC Communications, Inc., Merrimack, NH; Dr. Bobby Garvin, Mississippi Delta Community College, Moorhead, MS; Susan M. Green (ex officio), U.S. Department of Labor, Washington, DC; Randel Johnson, U.S. Chamber of Commerce, Washington, DC; Roger Knutsen, National Council for Higher Education, Auburn, WA; Patricia McNeil (ex officio), U.S. Department of Education, Washington, DC; The Honorable Mark Morial, Mayor, City of New Orleans, LA; Thomas Murrin, Duquesne University, Pittsburgh, PA; Leo Reynolds, Electronic Systems, Inc., Sioux Falls, SD; The Honorable Frank Riggs, National Homebuilders Institute, Washington, DC; The Honorable Frank Roberts, Mayor, City of Lancaster, California; Kenneth Saxe, Stambaugh-Ness, York, PA; David L. Steward, World Wide Technology, Inc., St. Louis, MO; Hans K. Meeder, Executive Director, Washington, DC.

Public Participation

Members of the public are invited to attend this hearing. Several witnesses have been invited to testify by the Commissioners to address the questions identified on the Agenda. In addition, members of the public wishing to present oral statements to the Twenty-First Century Workforce Commission should forward their requests to Mr. Hans Meeder, Executive Director, as soon as possible and at least four days before the meeting. Requests should be made by email, fax machine, or telephone, as shown above.

Time permitting, the Commissioners will attempt to accommodate requests for oral presentations. Each member of the public who is selected to testify will be allotted a three minute period to present their oral remarks. Members of the public must limit oral statements to three minutes, but extended written statements may be submitted for the record. Members of the public may also submit written statements for distribution to the Commissioners and inclusion in the public record without presenting oral statements. Such written statements should be sent to Mr. Hans Meeder, as shown above, or may be submitted at the hearing site.

The Commission has established a web site, www.workforce21.org. Any written comments regarding documents published on this web site should be directed to Mr. Hans Meeder, as shown above.

Special Accommodations

Reasonable accommodations will be available. Persons needing any special assistance such as sign language interpretation, or other special accommodation, are invited to contact Mr. Hans Meeder, as shown above. Requests for accommodations must be made four days in advance of the hearing.

Due to difficulties of scheduling the members we are unable to provide a full 15-day advance notice of this meeting.

Signed at Washington, DC this 22nd day of February, 2000.

Hans K. Meeder,

Executive Director, Twenty-First Century Workforce Commission.

[FR Doc. 00–4574 Filed 2–25–00; 8:45 am]

BILLING CODE 4510–23–P

Corrections

Federal Register

Vol. 65, No. 39

Monday, February 28, 2000

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-6516-2]

RIN 2060-AI23

Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

Correction

In rule document 00–19 beginning on page 6698 in the issue of Thursday, February 10, 2000, make the following corrections:

§80.195 [Corrected]

1. On page 6824, in §80.195(a)(1), in the first column, in the first line after ''gasoline'' add ''sulfur standards for refiners and importers, excluding gasoline''.

§86.1811-04 [Corrected]

2. On page 6856, in §86.1811-04(c)(6), in Table S04-2, the ''Notes'' entry corresponding with ''Bin No. 9'' should read ''a b e f h''.

[FR Doc. C0–19 Filed 2–25–00; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA07

Executive Agency Ethics Training Programs Regulation Amendments

Correction

In rule document 00–3346, beginning on page 7275, in the issue of Monday, February 14, 2000, make the following corrections:

1. On page 7276, in the second column, the table is corrected and set out in its entirety as follows:

Old section	New section
2638.701 (1st sentence).	Removed.
2638.701 (2nd sentence).	2638.701.
2638.701 (3rd sentence).	2638.702 (*Employee* definition).
2638.702 introductory text.	Removed.
2638.702(a)	Removed.
2638.702(b)(1st sentence).	Removed.
2638.702(b)(2nd sentence).	2638.704(d).
2638.702(c)	2638.706.
2638.703	2638.703.
2638.704(a)–(b)	2638.704(a); 2638.705(a).
2638.704(c)	2638.704(b); 2638.705(b).
2638.704(d)(1)	2638.704(c); 2638.705(c).
2638.704(d)(2)(i)	2638.704(c).
2638.704(d)(2)(ii) (& Examples 1–3 to ¶ (d)(2)(ii)).	2638.704(d) & Examples 1–3 to ¶ (d)).
2638.704(d)(2)(iii) (& Example 1 to ¶ (d)(2)(iii)(A)).	2638.704(e) (& Example to ¶ (e)(1)).
2638.704(d)(3)(i)	2638.705(c)(2).
2638.704(d)(3)(ii)	2638.705(c)(1).
2638.704(d) (3)(iii)	2638.705(d).
.....	2638.702 (new, except for *Employee* definition).

PART 2638 [CORRECTED]

2. On page 7279, in the third column, amendatory instruction 2. should be moved and placed above the table of contents subpart heading.

[FR Doc. C0–3346 Filed 2– 25–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 00N-0506]

Safety Issues Associated With Dietary Supplement Use During Pregancy; Public Meeting

Correction

In proposed rule document 00–4276 beginning on page 9230 in the issue of Thursday, February 24, 2000, make the following correction:

On page 9230, in the second column, in the **DATES** section, in the second line, ''April 24, 2000'' should read ''March 30, 2000''.

[FR Doc. C0–4276 Filed 2–25–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 28, 2000

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[FV–00–701 PR1]

RIN 0581–AB84

Honey Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding proposed amendments to the Honey Research, Promotion, and Consumer Information Order (Order). These amendments are authorized by amendments to the Honey Research, Promotion, and Consumer Information Act (Act). The Order needs to be amended as a result of these changes to the Act.

The following amendments must be approved by honey producers, producer-packers, handlers, and importers voting in a referendum to become effective: a requirement for the Honey Board (Board) to reserve 8 percent of its funds annually for beekeeping and production research; authority for the Board to develop recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; the addition of two handlers who are also importers to the Board; a decrease in the producer assessment from 1 cent per pound to 0.75 cents per pound; the addition of an assessment of 0.75 cents per pound on handlers; and an increase in the assessment rate from 1 cent per pound to 1.5 cents per pound on imports.

The following major (and other minor) amendments would become effective after the referendum, regardless of the outcome: changing the two importer/exporter positions to two importer positions on the Board; eliminating the public member position; revising nomination and eligibility requirements; requiring that at least 50 percent of the Board members be honey producers; providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; eliminating the requirement to file for an exemption under the program; and removing obsolete language.

DATES: Comments must be received by April 28, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this proposed rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Also, pursuant to the Paperwork Reduction Act (PRA), send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the collection of information under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen T. Comfort or John D. Reilly, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: This proposal to amend the Honey Research, Promotion, and Consumer Information Order (Order) [7 CFR Part 1240] is issued pursuant to amendments to the Honey Research, Promotion, and Consumer Information Act [Pub. L. 98–590; enacted October 30, 1984; 7 U.S.C. 4601 through 4613, as amended], hereinafter referred to as ''Act.'' The amendments to the Act were made by the Agricultural Research, Extension, and Education Reform Act of 1998 [Pub. L. 105–185, enacted June 23, 1998]. The proposed rule for conducting a referendum on amendments to the Order will be published in the **Federal Register** in the near future.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Under Section 10 of the Act, a person subject to the Order may file, within a period prescribed by the Secretary of Agriculture (Secretary), a written petition with the Secretary stating that the Order, or any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed not later than two years after: (1) the effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition, which will be final if the petition is in accordance with the law.

The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 3,285 producers, 400 producer-packers, and 348 importers who pay assessments under the Order, and 121 handlers who are currently subject to the provisions of the Act. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5 million and small agricultural producers are defined as those having annual receipts of not more than

$500,000. The majority of honey producers, producer-packers, importers, and handlers may be classified as small entities.

According to USDA estimates, last published in 1995, the number of beekeepers in the U.S. varies from 139,000 to 212,000. Approximately 95 percent of these beekeepers are hobbyists with fewer than 25 colonies. Another 4 percent are part-time or ''sideliner'' beekeepers with 25 to 299 colonies. Commercial beekeepers owning 300 or more colonies number approximately 2,000.

Based on the latest available statistics from USDA's National Agricultural Statistics Service, 2.63 million colonies produced approximately 220 million pounds of honey in the United States in 1998. This represented a 12 percent increase in production from 1997.

According to Board historical data, 3,285 producers paid over $1.8 million in assessments under the Act and Order in 1998. This amount represented 58 percent of the Board's revenue for the period. In 1998, 348 importers of honey paid nearly $1.4 million in assessments, and the eight largest importers paid approximately 75 percent of this amount. The countries of origin of imported honey include Argentina, Canada, China, and Mexico.

Based on the latest available information, U.S. honey production in 1998 totaled 220 million pounds, a 24 million-pound increase from 1997. California, North Dakota, Florida, South Dakota, Montana, and Minnesota accounted for 60 percent of production. Forty-three other states accounted for the remaining 40 percent of domestic production. The value of production in 1998 was $144.3 million, down from $147.8 million in 1997.

In 1998, exports of U.S. honey packaged for retail sales totaled nearly 3.9 million pounds, with a value of $3.8 million. Bulk honey exports totaled over 6.5 million pounds, with a value of $5.0 million. Sizable quantities of honey are exported to a wide range of countries in Europe, the Middle East, and the Far East. U.S. per capita consumption of honey was about 1.2 pounds per person in 1998, about the same as in 1997.

Also during this period, honey imports into the U.S. totaled 132.4 million pounds, about 35 million pounds less than in 1997. Argentina accounted for 53 percent of the quantity and 50 percent of the value of imports in 1998. China accounted for 23 percent of the quantity of imports and 21 percent of the value. About 12 percent of the quantity and 16 percent of the total value of imports came from Canada; 6 percent of the quantity and 5 percent of the value came from Mexico. The remainder came from an assortment of countries around the world. The value of the U.S. imports in 1998 was about $77.8 million, down 35 percent from the year before.

The proposed amendments would add a $0.0075 per pound assessment on honey handlers, decrease the producer assessment from $0.01 to $0.0075 per pound, and increase the assessment on imported honey from $0.01 to $0.015 per pound. An assessment of $0.0075 per pound represents 1.1 percent of the 1998 average price of honey of $0.655 per pound (wholesale). Basing projections on the assessments remitted or reported for each group over the 5-year period from 1995 to 1999, the Board would collect approximately $4,860,000 in assessments annually, a $1.6 million increase in revenue from assessments collected in 1998, if the amendments are approved. The Transaction Report form used in the assessment collection process would have to be revised to reflect the new assessment rates.

The proposed amendments also would require producers to maintain and make available to the Board and the Secretary such books and records which are appropriate or necessary for the administration or enforcement of the honey research and promotion program. Presently, only handlers, importers, and producer-packers are required to maintain these records. The primary intent of this amendment is to require producers to maintain and make available books and records to facilitate enforcement of the Act.

The proposed changes to the Order would add authority for the Board to require producers to maintain records and, at such time and such manner that the Board may prescribe, report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Under the current Order, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information would be obtained from producers through periodic audits.

Based on this expanded reporting authority, there are also plans to collect information periodically from producers for statistical purposes. At this time, Board plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the proposed information collection. Such form or mailer for collecting the information will be submitted to OMB for approval prior to its use and the industry will be notified.

The amendments to the Order in this proposal would also reduce the reporting burden for certain producers, producer-packers, handlers, and importers who qualify for exemption from assessment based on the quantity of honey or honey products produced, handled, or imported. Pursuant to the 1998 changes to the Act, the Order would no longer require individuals to file an application with the Board in order to attain exempt status.

The recordkeeping and reporting requirements related to the proposed amendments to the Order are designed to minimize the burden on producers, producer-packers, handlers, and importers. In addition, any information collection that cannot occur through forms already in use would pose a minimal additional burden.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,870 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, and 1 cooperative representative) would be $40,775 or $5.03 per producer, $31.03 per producer-packer, $26.36 per handler, $0.11 per importer, and $5.00 per cooperative representative, and represents an overall increase in burden for each of these groups.

The impact of the recordkeeping requirement provided for in this proposed rule on small entities would be minimal. This recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of the small entities affected. It is anticipated that a significant number of these small entities currently practice such recordkeeping for commercial and/or tax purposes.

AMS has performed the initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning the potential effects of this rule. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which

implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed based on the proposed amendments to this Order have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The proposed recordkeeping and information collection requirements are essential to carry out the intent of the Act, as amended.

In addition, there would also be a new burden on handlers voting for the first time in the upcoming referendum. The referendum ballot, which represents the information collection requirement relating to the referendum, is addressed in a proposed rule on referendum procedures which will be published in the **Federal Register** in the near future.

The amendments to the Order contained in this proposed rule would increase the recordkeeping burden on producers. The Order currently requires handlers, importers, and producer-packers to retain their books and records for at least two years beyond the marketing year of their applicability. The Order would be changed to conform to the Act, as amended, by also requiring producers to maintain and retain books and records for two years. It is anticipated that producers already maintain and retain the books and records which contain this information for commercial and/or tax purposes. Therefore, this recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of producers.

The proposed changes to the Order would add authority for the Board to require producers to maintain records and, at such time and such manner that the Board may prescribe, report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Under the current Order, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information would be obtained from producers through periodic audits.

Based on this expanded reporting authority, there are also plans to collect information periodically from producers for statistical purposes. At this time, Board plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the proposed information collection.

If approved by voters in the referendum, the amended Order would impose a new $0.0075 per pound assessment on handlers of honey and honey products, decrease the producer assessment from $0.01 to $0.0075 per pound, and increase the assessment on imported honey and honey products from $0.01 to $0.015 per pound. If the amendments are approved in the referendum, the Transaction Report form, which is currently used to report purchase and assessment information, would have to be modified to reflect the new assessment rates.

Information provided on the Transaction Report is collected under OMB No. 0581–0093. There would be a slight increase in the reporting burden for handlers and producer-packers in order to complete additional assessment information covering their handling activity on the Transaction Report. However, the added reporting burden would be minimal. The extra information to be collected represents a small portion of the total information that handlers and producer-packers are already required to fill out and submit on the same form for each purchase.

The background information form used by the Secretary to determine if nominees to the Board are eligible to serve would be revised and submitted as a new form (AMS–755). It would be added to the information collection under OMB No. 0581–0093. This form is completed and submitted to USDA by those persons nominated for member or alternate positions on the Board.

To conform to the 1998 amendments to the Act, the proposed changes to the Order would include revised qualification requirements for serving on the Board. This information would be collected on the Board's Candidate Profile questionnaire (No. 4 below), and would be used by the Board's staff and the National Honey Nominations (Committee) to determine the qualifications of candidates to the Board. The Candidate Profile form would be submitted as a new form and added to the information collection under OMB No. 0581–0093. It is anticipated that the basic background information to be collected would be readily accessible or otherwise maintained from records currently maintained by those persons who would be candidates to serve on the Board.

It should be noted that the amendments to the Order contained in this proposed rule would reduce the reporting burden for those producers, producer-packers, and importers who previously have been required to file an application with the Board in order to qualify for exemption from assessment. Based on the changes to the Act in 1998, persons subject to the Act would no longer be required to file an application for exempt status.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA under this rulemaking action by an estimated 5,870 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, and 1 cooperative representative) would be $40,775 or $5.03 per producer, $31.03 per producer-packer, $26.36 per handler, $0.11 per importer, and $5.00 per cooperative representative.

The new recordkeeping requirement involving 2,700 hours for producers and producer-packers would be added to the program's recordkeeping burden under OMB No. 0581–0093. The previously approved recordkeeping burden totals 12,525 hours. This total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the new annual recordkeeping burden would equal 5,451 hours, after including the additional 2,700 hours.

The estimated annual burden of 1,355 hours in providing additional information on the Transaction Report would be added to the previous burden under OMB No. 0581–0093. The previously approved burden totals 9,100 hours. However, this total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the estimated new annual burden for completion of the Transaction Report would equal 8,128 hours, after including the additional 1,355 hours.

The estimated annual burden of 10 hours for completing the background information form (AMS–755) represents a new burden to be reported under OMB No. 0581–0093. The removal of the exemption application requirement would eliminate the estimated annual burden of 41.5 hours as reported under OMB No. 0581–0093. The estimated annual burden of 12.5 hours for completing the Candidate Profile form represents a new burden to be reported under OMB No. 0581–0093 for the first time.

The provisions of the amendments to the Order in this proposal have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping or reporting costs or requirements.

The proposed forms to be modified would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the proposed amendments to the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. These forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The information sought is not available from other sources because such information relates specifically to persons covered by the Act and Order. Therefore, there is no practical method for collecting the required information without the proposed recordkeeping requirements and use of forms described herein.

The new recordkeeping requirement included in this proposed rule is:

(1) *A requirement for producers to maintain books and records to facilitate administration and enforcement of the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents (Recordkeepers): Producers and producer-packers.

Estimated Number of Respondents (Recordkeepers): 5,400.

Estimated Number of Responses per Respondent (Recordkeeper): 1.

Estimated Total Annual Burden on Respondents (Recordkeepers): 2,700 hours.

Information collection requirements included in this proposed rule resulting in an increase or decrease in burden are:

(2) *A Transaction Report to be completed by first handlers, producer-packers, and importers.*

Estimate of Increased Burden: Public reporting burden for the collection of additional information from handlers and producer-packers is estimated to average an additional 3 minutes per each response [18 minutes (requested) − 15 minutes (currently approved) = 3 minutes (increase)].

Respondents: Handlers and producer-packers.

Estimated Number of Respondents: 521.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 8,128 hours [8,128 hours (requested − 9,100 hours (currently approved) = 972 (decrease)]. Note: The previously approved burden of 9,100 hours is not correct due to an overstatement in the number of respondents. If the previous burden were recalculated based on 521 respondents, it would equal 6,773 hours. This means that the 8,128 hours now requested would represent an increase in burden of 1,355 hours instead of a decrease of 972 hours.

(3) *A background information form (AMS–755) to be completed by candidates nominated for appointment to the Board.*

Estimate of Burden: Public reporting burden for the collection of information from two nominees for each of the estimated five member and five alternate position openings annually is estimated to average 0.5 hours per response.

Respondents: Producers, producer-packers, handlers, importers, and cooperative representatives.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 10.0 hours [10.0 hours (requested) − 0.0 hours (new form) = 10.0 hours (increase)].

(4) *A Candidate Profile form used by Board staff and the Committee to determine qualifications to serve on the Board.*

Estimate of Burden: Public reporting burden for this collection of information from candidates to the Board is estimated to average 0.50 hours per response.

Respondents: Producers, producer-packers, importers, handlers, handler-importers, and cooperative representatives.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours [12.5 hours (requested) − 0.0 hours (new form) = 12.5 hours (increase)].

The following information collection would be eliminated by this rule:

(5) *A producer or importer application to be completed by producers and importers seeking exemption from assessment.*

Estimate of Burden: Public reporting burden for this collection of information from producers, producer-packers, and importers is estimated to average 0.083 hours per response.

Respondents: Producers, producer-packers, and importers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Decrease in Total Annual Burden on Respondents: 41.5 hours [0.0 hours (form discontinued) − 41.5 hours (currently approved) = 41.5 hours (decrease)].

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the amendments to the Order and USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of any recordkeeping and/or reporting burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the recordkeeping requirement on those who are affected, including the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology.

Comments concerning the recordkeeping and information collection requirements contained in this action should reference OMB No. 0581–0093, Docket Number FV–00–701 PR1, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act was amended on June 23, 1998, by the Agricultural Research, Extension, and Education Reform Act (1998 amendments).

On July 31, 1998, USDA issued a news release inviting persons to submit proposals for implementing the 1998 amendments by September 30, 1998. Subsequently, on September 21, 1998, USDA extended the deadline to December 31, 1998, to provide the various segments of the honey industry ample opportunity to develop proposals. One proposal and eight comments were received.

The proposal was submitted by the National Honey Board with support from the American Beekeeping Federation (ABF), the American Honey Producers Association (AHPA), and the National Honey Packers and Dealers Association (NHPDA). Submissions by American Farm Bureau Federation, B. Weaver Apiaries, Inc., China Products North American, Inc., Mississippi Beekeepers Association, Joe Rowland, Thomas R. Smith, Southern Arizona Beekeepers Association, and U.S. Beekeepers did not include regulatory text. Therefore, they are being made part of the overall rulemaking record and will be considered along with the comments received on this proposed rule.

A copy of the current Order and the proposed rule amending the Order can be obtained by contacting Karen T. Comfort or John D. Reilly, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800. The current Order and the proposed rule amending the Order can also be found at: www.ams.usda.gov/fv/rpb.html.

Proposal

The Board submitted this proposal with support from the ABF, AHPA, and NHPDA. The proposed amendments to the Order submitted by the Board are explained below.

In §§ 1240.1 through 1240.28 of the Order, definitions would be added for the terms ''Department,'' ''honey production,'' ''industry information,'' ''national honey marketing cooperative,'' ''plans and projects,'' ''qualified national organization representing handler interests,'' and ''qualified national organization representing importer interests.'' Each of these new definitions was added to sections 4602(19) through (24) of the Act as part of the 1998 amendments. Currently, the Order does not contain definitions for these terms. The definitions have also been arranged in alphabetical order for ease of reference.

Definitions would be revised for the terms ''handle,'' ''honey,'' ''Honey Board,'' and ''research.'' The definition of the term ''handle'' would be amended to exclude the purchase of honey or a honey product by a consumer or other end-user, which conforms to the revised definition set out in section 4602(7) of the Act.

The definition of the term ''honey'' would be modified to include comb honey. USDA has recognized in the past that the intent of the Act is to assess comb honey. This proposed revision would resolve any confusion in this area.

The term ''Honey Board'' would reappear under the definition heading of ''National Honey Board'' which then clarifies that the terms ''National Honey Board, ''Honey Board,'' and ''Board'' all refer to the National Honey Board created by the Act.

The definition of ''research'' would be revised to include studies that test the effectiveness of market development and promotion efforts as well as studies on bees as provided for in the 1998 amendments to section 4601(b) of the Act.

Section 1240.30 would be revised to change the composition of the Board to 14 members consisting of: seven producers; two handlers; two handlers who are also importers, if approved in referendum; two importers; and one representative (i.e., officer, director, or employee) of a national honey marketing cooperative. The public member position would be eliminated as well as specific representation for honey exporters. These changes are authorized by the 1998 amendments to section 4606(c)(2) of the Act. Except for the addition to the Board of two handlers who are also importers, these changes would become effective regardless of the outcome of the referendum. See also discussion on producer representation under *USDA Changes to Proposal.*

Presently, the Board has 13 members consisting of: seven producers; two handlers; two importers or one importer and one exporter; one cooperative representative; and one public member. The cooperative representative must be an officer or employee of a honey marketing cooperative but does not necessarily have to be from a ''national'' honey marketing cooperative.

Section 1240.31 would be revised to remove obsolete language regarding the length of the terms of office of the initial Board members. This section would also be revised to provide that terms of office be staggered periodically as recommended by the Board and as determined by the Secretary to maintain continuity of Board membership and to avoid situations where a majority of the members' terms end at the same time. The Order currently provides for staggered terms only with respect to the seating of members on the initial Board. Section 4606(c)(8) of the Act as amended in 1998 provides for periodic staggering of Board terms. This amendment does not require approval in the referendum in order to take effect.

In § 1240.32 concerning nominations, a number of revisions would be made to conform the Order with the 1998 amendments to the Act with regard to the nomination process for Board members. For instance, references to state associations representing exporters would be deleted from § 1240.32(a) since section 4606(c)(2) of the amended Act no longer provides for exporter representation on the Board. Similarly, references to the Board member and alternate positions representing the general public would be removed from this section to correspond with the elimination of these positions by the 1998 amendments to the Act. References to the initial Committee formed after the Order was implemented as well as language on the first annual meeting of the Committee would also be deleted from § 1240.32 since such provisions are no longer relevant. Furthermore, as provided in section 4606(b)(2) of the amended Act, § 1240.32 would be amended to reflect the Secretary's authority to stagger the terms of Committee members. These revisions do not require approval in the referendum in order to take effect.

In addition, § 1240.32(a)(3) would be revised so that the term of office for Committee members would begin on July 1 instead of January 1. This change would accommodate the nomination of Committee members by state beekeeper associations, which often meet in the winter months. Currently, it is difficult for the associations to meet and elect their nominees, for the nominees to complete and submit background information forms, and for the Secretary to review the nominations and make a determination prior to the beginning of the term of office on January 1. Having the term of office commence on July 1 would allow adequate time for the nomination process to be completed prior to the beginning of the term. In addition, since the Committee's main meeting is usually in the fall, new members would be appointed by the Secretary in time to participate in that meeting if the term of office begins on July 1. This change would go into effect regardless of the outcome of the referendum.

Section 1240.32(b) would be revised with regard to the process the Committee would follow in considering recommendations of nominees and submitting nominations to the Secretary for handler, importer, handler-importer, and cooperative representative positions on the Board. Based on sections 4606(c)(2)(B) through (E) of the Act, as amended, the Committee would be required to consider the recommendations of ''qualified organizations representing handler interests,'' ''qualified organizations

representing importer interests,'' and ''qualified national honey marketing cooperatives.'' The requirements for qualification or certification of these organizations are set forth in section 4606(c)(6) of the Act. These requirements were added to the Act to ensure that the recommendations being made to the Committee would be from organizations that truly represent the various industry segments. If, in a given instance, there is not a qualified national organization that represents handler or importer interests, the Committee would consider the recommendations of individual handlers who have paid assessments on the honey they have handled or the recommendations of individual importers who have paid assessments on the honey they have imported. This revision would become effective regardless of the outcome of the referendum.

Currently, candidates for nomination to the Board for handler or importer positions may be recommended to the Committee by any industry organization that represents the interests of handlers or importers. There are no certification or qualification requirements that need to be met by the industry organization making the recommendations.

With regard to nominations for the cooperative position on the Board, the current Order does not provide a process whereby recommendations are initiated by qualified national honey marketing cooperatives. The current Order also does not limit cooperative nominations to persons affiliated with honey marketing cooperatives that are ''national'' in character. The current Order does require that the representative be an officer or employee of the cooperative. In contrast, the proposed revision of § 1240.32(b) would expand eligibility to include all directors of a cooperative's board. This takes into account the possibility that one may serve on the board of directors of a cooperative but not necessarily be an officer of the cooperative.

The Act, as amended, requires the Committee to make the following nominations: (1) one producer member (and alternate) from each of the seven regions established by the Secretary; (2) two handler members (and two alternates) from recommendations made by qualified national organizations representing handler interests; (3) two importer members (and two alternates) from recommendations made by qualified national organizations representing importer interests; (4) two handler members who are also importers (i.e., handler-importers) and two alternates from recommendations made by qualified national organizations representing handler or importer interests; and (5) one member (and one alternate) who are officers, directors, or employees of a national honey marketing cooperative from recommendations made by qualified national honey marketing cooperatives. Therefore, this proposed rule would revise § 1240.32 of the Order to adopt this new Board composition and to remove the obsolete references to the current Board structure. The two handler-importer positions on the Board are subject to voter approval in the referendum before taking effect.

Section 1240.32(b) would also be revised to require that at least 75 percent of an importer's gross income generated by the sale of honey and honey products during any three of the preceding five years be from the sale of imported honey and honey products in order to be eligible for nomination to one of the importer member or alternate positions on the Board. This conforms to section 4606(c)(5)(B) of the Act as amended in 1998. Presently, the Order does not establish a minimum gross income level for importer member eligibility. This change would take effect regardless of the outcome of the referendum.

As mandated by section 4606(c)(4) of the Act, and not subject to voter approval in the referendum, § 1240.32(b)(6) in the proposal would be amended with respect to the administrative reconstitution of the Board if certain criteria are met. The 1998 amendments to the Act made changes in Board reconstitution requirements in order to provide more equitable treatment and fairness of representation on the Board. See discussion on Board reconstitution under *USDA Changes to Proposal* in which references to reconstitution of the Board would be moved from § 1240.32 to § 1240.33.

The proposal would require the Board to review every five years: (1) the geographic distribution of domestically produced honey assessed under the Order, (2) the changes in the annual average percentage of assessments owed by importers under the Order relative to assessments owed by producers and handlers of domestic honey and honey products, and (3) whether there are any changes in the proportion of assessments owed on imports by importers and handler-importers.

As a result of this review, and if necessary to reflect changes in the proportion of domestic and imported honey assessed, the Board would recommend for the Secretary's approval changes in the regional representation of honey producers. And, if the proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period or if the proportion of assessments owed by importers compared with the proportion of assessments owed by producers and handlers of domestic honey and honey products changed by more than 6 percent from the base period proportion, the Board would recommend to the Secretary: (1) the reallocation of handler-importer member positions as handler positions; (2) the reallocation of importer member positions as handler-importer positions; (3) the reallocation of handler-importer positions as importer member positions; or (4) the addition of Board members.

For the initial review conducted by the Board, the base period proportions would be the proportions determined by the Board for fiscal year 1996. Otherwise, the base period proportions would be the proportions determined during the prior review.

Recommendations made by the Board shall be based on the five-year average of annual assessments, excluding the two years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products and whether any change in the average in the annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

The provision on Board reconstitution in § 1240.32(b)(6) of the current Order provides authority for the Board to review the fairness of representation on the Board among producer regions, but not the adequacy of representation among handlers and importers serving on the board. In addition, the criteria for evaluating representation on the Board are more permissive in the current Order when compared to the assessment-based criteria provided for in the proposed new version. Also, the current Order, while requiring the Board to conduct a review every five years, does not mandate that the Board propose changes to representation among producer regions as a result of such review.

In § 1240.35 on Board meeting procedures, the quorum requirement would be changed from seven to eight members assuming the voters approve the amendments in the referendum allowing the size of the Board to increase from 13 to 14 members. This would maintain the practice that more than half of the Board members must be present at Board meetings for official Board action to be taken. Note, if the

voters in the referendum do not approve the amendments, the number of Board members would decrease from 13 to 12 and the quorum requirement would not be raised. This would occur because the public member position would be eliminated regardless of the outcome of the referendum.

In § 1240.36, a grammatical change would be made, replacing the word ''of'' with the word ''at'' in the second sentence without changing the meaning. This change would go into effect regardless of the outcome of the referendum.

In § 1240.38, the Board's duty to investigate potential violations of the Order in paragraph (d) would be expanded to also include the authority to investigate violations of any rule or regulation implemented to carry out the Order. The Board would continue to be required to report any findings to the Secretary.

An editorial change would be made in § 1240.38(l) covering the Board's authority to appoint working committees. The provision currently states that members of committees be ''drawn from'' producers, handlers, importers, exporters, members of wholesale or retail outlets, or other members of the public. The proposed new language reads simply that the committees ''may include'' these representatives. This revision does not alter the eligibility of who is able to serve on working committees. This revision to § 1240.38(l) would go into effect regardless of the outcome of the referendum.

In addition, throughout § 1240.38 the words ''plan'' and ''plans'' are inserted in place of ''project'' and ''projects'' in certain instances. For example, the repeated use of the phrase ''programs and projects'' would read ''programs and plans.'' In addition to programs and projects being closely synonymous in meaning and somewhat redundant when used together, the use of ''plan'' or ''plans'' better describes the Board's planning activities. Also, the term ''industry information'' would be inserted alongside the other permissible program activities of research, promotion, and consumer education as provided for in section 4601(b)(1) of the amended Act and elsewhere. These changes to § 1240.38 would go into effect regardless of the outcome of the referendum.

In the text of § 1240.39 as well as the section title and the heading immediately preceding the section, ''industry information'' would be added to reflect the Board's authority to conduct this type of activity along with research, promotion, and consumer education. The addition of ''industry information'' as an authorized activity appears in section 4601(b)(1) of the Act and elsewhere. The word ''programs'' would also be added wherever the words ''plans and/or projects'' appear. This is consistent with the Act, which frequently uses the word ''programs'' in connection with research, promotion, industry information, and consumer education activities. These changes would go into effect regardless of the outcome of the referendum.

A new paragraph would be added to § 1240.39 authorizing the Board to conduct research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the proposed changes to the Order authorized by the 1998 amendments to the Act would strengthen the honey industry by expanding research in areas that would help solve production problems, reduce costs of production, and enhance the image of honey as a pure and natural product. Such research authority is specifically provided for in sections 4601(a) through (b) of the Act.

Another new paragraph would be added to § 1240.39 authorizing the Board to conduct activities which may lead to the development of new markets or marketing strategies for honey or honey products, as well as activities to increase the efficiency of the honey industry and to enhance the image of honey and honey products. The authority to conduct these activities is specifically provided for in section 4601(b)(1)(C) of the amended Act. This paragraph would become effective regardless of the outcome of the referendum.

Another new paragraph would be added to § 1240.39 to address the Board's authority to carry out activities and develop procedures for the inspection or monitoring of honey and honey products being sold for domestic consumption or for export from the United States. This includes the authority to develop minimum purity standards. Sections 4607(a)(8) and 4607(b) of the amended Act provide specific authority for the Board to develop and conduct these activities. Any program involving the establishment of minimum purity standards as well as systems for inspection or monitoring of honey or honey products would be subject to prior approval by the Secretary. In addition, the Board's power to develop purity standards or inspection or monitoring programs that are mandatory must first be approved by voters in the referendum.

Sections 1240.39 and 1240.40 would be amended to allow activities to be funded with donations or other funds available to the Board in addition to assessment funds. Section 4606(e)(1) of the amended Act created the specific authority for the Board to accept voluntary contributions to finance expenses covered in its budget including activities in research, promotion, consumer education, and industry information as well as expenses for the administration of the Board. These changes to §§ 1240.39 and 1240.40 would go into effect regardless of the outcome of the referendum.

In § 1240.40 on budget and expenses, industry information would be included in the types of activities for which the Board is authorized to incur expenses based on its authorization as a permissible activity under section 4601(b)(1) and elsewhere in the Act. This revision does not require approval in the referendum.

Also in § 1240.40, a new paragraph would be added to require the Board to reserve at least 8 percent of all assessments collected each year for expenditure on research programs designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the additional assessment funding for such research projects, including an 8 percent allocation for production research, would allow the industry to leverage its resources to make research both practical for and applicable to the industry's needs. Any allocated funds remaining at the end of the year would be carried forward for allocation and expenditure in subsequent years. The 8 percent figure was selected because it provides the funding level the industry felt would be adequate for the intended research. Allocating 8 percent of the Board's funds to this type of research is specifically provided for in section 4606(f)(2) of the amended Act. In order to become effective, this provision must be approved in the referendum.

Section 1240.41 would be amended so that handlers as well as producer-packers in their capacity as handlers would pay assessments. Currently, only producers and importers as well as producer-packers in their capacity as producers are subject to assessment under the Order.

First handlers would be responsible for paying assessments on the honey they handle as well as collecting and remitting assessments from producers.

The total assessment on honey produced in the United States would be increased from $0.01 per pound to $0.015 per pound. Payment of this total amount would be allocated among producers, handlers, and producer-packers. The assessment rate to be levied on producers for honey produced and handled would be $0.0075 per pound of honey. This is a decrease from the current assessment rate of $0.01 per pound paid by producers. A new assessment levied on handlers would be $0.0075 per pound of honey handled. Producer-packers would pay a $0.0075 assessment on the honey they produce as well as a $0.0075 assessment on the honey for which they act as a first handler, even if the honey handled was from the producer-packer's own production.

The new assessment rates for producers, handlers, and producer-packers is authorized by section 4606(e)(3) of the Act. Sections 4608(a) and 4608(e) provide new requirements affecting first handlers with regard to the payment of the handler assessment as well as the collection and payment of the producer's assessment. These proposed changes to the Order at § 1240.41 covering the new assessment rates as well as the authority to subject handlers to assessment must first be approved in the referendum. If the amendments are not approved in the referendum, the current rate of $0.01 per pound payable by domestic producers would remain in effect, and handlers would not be subject to assessment.

Section 1240.41 would also be revised so that the total assessment on honey and honey products imported into the United States would be increased from $0.01 per pound to $0.015 per pound in order to equal the combined rate paid by producers and handlers on domestic honey. Of this $0.015 total, $0.0075 would represent the assessment due from the importer, and $0.0075 would represent the assessment due from a handler and paid by the importer on behalf of the handler. The full assessment on imported honey would be due at the time of entry of the honey into the United States. The authority for increasing the assessment on imported honey is found in section 4606(e)(3)(B) of the Act and is subject to referendum approval before being implemented. If the amendments are not approved in the referendum, the current rate of $0.01 per pound payable by importers on honey and honey products would remain in effect.

Section 1240.41 would also be amended so that importers are ultimately responsible for the payment of assessments in the event the U.S. Customs Service (Customs) did not collect the amounts owed at the time of entry. While the current Order makes reference to importers being subject to late payment charges, it does not expressly provide that importers are liable for paying the assessment directly to the Board if Customs fails to collect the amount. This change is authorized by section 4608(i)(2) of the Act. In addition, reference in the Order to the collection of assessments by the Secretary would be removed since the Secretary does not undertake the collection responsibility. These changes clarifying the Secretary's role as to assessment collection as well as the ultimate liability of importers for assessment payment do not require approval in the referendum.

Section 1240.41 would also be amended to make producers subject to late-payment charges and interest penalties on past-due assessments similar to handlers, importers, and producer-packers. Presently, the Order only mentions that a producer is responsible for payment of the assessment to the Board should the first handler fail to collect the assessment. Subjecting producers to late-payment charges and interest penalties for assessments owed to the Board would be consistent with the sanctions other program participants face for failing to pay amounts due to the Board. This change would go into effect regardless of the outcome of the referendum.

Since the honey price support loan program, as provided in the Agricultural Act of 1949 [7 U.S.C. § 1446(b)], has been discontinued, § 1240.41(g) of the current Order would be revised by referring to a more generic loan program. This generic reference would adequately accommodate any new recourse loan program or other loan program that might be developed by USDA's Farm Service Agency. The other features of this provision would not be changed. The Board's proposal would have this provision on loan programs appear at § 1240.41(m). However, see discussion under *USDA Changes to Proposal* in which this provision would appear at § 1240.41(k). This change does not require approval in the referendum.

In § 1240.42 on exemption from assessment, an exemption would be added for handlers handling less than 6,000 pounds of honey per year. The 6,000-pound limit is identical to the exemption amount for producers, producer-packers, and importers. Providing the exemption for handlers conforms to section 4606(e)(4)(B) of the amended Act. This amendment would not take effect unless the referendum is approved.

In addition, § 1240.42(c) in the current Order would be removed. This section requires that a person file an application with the Board in order to receive an exemption from paying assessments. With the removal of this provision, no direct action would be necessary for a producer, producer-packer, handler, or importer to qualify for exemption, other than to maintain relevant records.

Based on the number of persons eligible to claim an exemption, eliminating the application requirement would significantly reduce the reporting requirement for applicants as well as the consequent recordkeeping demands on the Board's staff. The elimination of the exemption application requirement in § 1240.42(c) conforms to the 1998 amendments to the Act, which struck a similar provision from section 4606(e)(4)(B), as redesignated. This change would go into effect regardless of the outcome of the referendum.

A minor editorial change would also be made to § 1240.42 by inserting the word ''United'' to precede ''States'' for purposes of clarification and correctness.

The Board proposes that § 1240.43 of the Order be removed in its entirety. This section authorizes the payment of refunds to States operating a similar assessment program. Coverage of this same subject in § 1240.42(f) would also be stricken. Both § 1240.43 and § 1240.42(f) of the Order discuss how States operating programs similar to those authorized by the Act may obtain refunds of assessments from the Board. These provisions were originally included in the Order because a program existed in California at the time. Since the California program no longer exists, and no other similar State plans exist, the provisions in the Order referencing State plans are no longer relevant and therefore would be removed. The elimination of these provisions from the Order would take effect regardless of the outcome of the referendum.

The section on operating reserves at § 1240.44 in the current Order would be redesignated as § 1240.43.

A new § 1240.44 would be added to authorize the Board to develop and recommend to the Secretary a system or program for monitoring the purity of honey and honey products being sold for domestic consumption and for export. The authority to develop and carry out such programs, including the establishment of minimum purity standards, is based on sections 4607(a) through (b) of the amended Act. This section must be approved in the referendum to become effective.

A new § 1240.45 would also be added to authorize the Board, subject to the approval of the Secretary, to develop and implement a voluntary quality assurance program concerning purity standards for honey and honey products. Components of this program could include, among other things, the establishment of an official seal of approval to be displayed on honey and honey products which meet the standards of purity established under the program, actions to encourage persons in the honey industry to participate in the program, actions to encourage consumers to purchase honey and honey products containing the official seal of approval, and periodic inspections by the Secretary of honey and honey products of individuals who participate in the program. The components provided in this new provision parallel those set forth in sections 4607(a) and (c) of the amended Act. This section does not require approval in the referendum.

A new § 1240.46 would also be added to the Order authorizing the Board to recommend, subject to the Secretary's approval, the establishment of minimum purity standards for honey. Authority for this provision is based on section 4607(a) of the amended Act. This section must be approved in the referendum to become effective.

New §§ 1240.44, 1240.45, and 1240.46 would address concerns about the disparate quality of honey available to consumers as well as the need to maintain a positive and wholesome marketing image for honey and honey products.

Section 1240.50 would be revised to make producers subject to reporting requirements similar to handlers, importers, and producer-packers. This would cover producers subject to assessment as well as those currently exempt. In 1996, section 4608(f)(1) of the Act was amended to add recordkeeping and reporting requirements for producers. Requiring producers to be subject to reporting requirements similar to others in the honey program would facilitate enforcement of the Order. Without this reporting requirement, it has been difficult for the Board to investigate producers for potential noncompliance with the Order. This reporting requirement would also assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation.

Section 1240.50 would also be revised to provide the Board the authority to request reports from producers and producer-packers on the quantity of honey produced and the total number of bee colonies maintained. This change is authorized by the 1998 amendments to the Act. Section 1240.50 already contains reporting requirements for handlers and producer-packers with regard to the total quantity of honey acquired or handled as well as the total quantity of honey imported in the case of importers. Section 1240.50 would also be revised so that these reporting requirements would include coverage for ''honey products'' in addition to ''honey'' as provided in the current Order for handlers, producer-packers, and importers. Section 4608(f)(1) provides authority for these changes.

The changes in reporting requirements in § 1240.50 involving producers, producer-packers, handlers, and importers would go into effect regardless of the outcome of the referendum.

In addition, § 1240.51 would be amended to require that producers as well as handlers, importers, and producer-packers maintain and make available for inspection their books and records. This applies to those subject to assessment as well as those currently exempt. Making producers subject to recordkeeping requirements similar to others in the program would facilitate enforcement of the Order. Without this requirement, it has been difficult for the Board to carry out compliance investigations against producers for possible violation of the Order. This change would go into effect regardless of the outcome of the referendum.

Section 1240.51 would also be revised to provide the authority for employees or agents of the Board or USDA to inspect the books and records of individuals subject to the Act and Order. The existing Order provides no authority for ''agents'' to inspect books and records. One reason for extending this authority to agents is to provide the Board the flexibility of utilizing the services of an outside auditing firm to assist with its compliance efforts. This change is authorized by section 4608(f)(2). This change would go into effect regardless of the outcome of the referendum.

In § 1240.52, a specific penalty would be added for persons convicted of disclosing confidential information. The penalty consists of a fine of up to $1,000, imprisonment for up to 1 year, or both, as well as removal from office or employment. These proposed changes to § 1240.52 of the Order are authorized by section 4608(g) of the Act and do not require approval in the referendum.

In § 1240.61, a change was made to remove the word ''projects'' and replace it with the word ''plans.''

In § 1240.62 on suspension or termination of the Order, there would be a change to allow handlers, if subject to assessment, to vote in continuance referenda every five years or referenda on request as provided for in sections 4612(c) through (d) of the Act. This change would only go into effect if the referendum is approved. Obsolete provisions referring to the first continuance referendum would be removed regardless of the outcome of the referendum.

Section 1240.62 would also be revised with regard to petitions for referenda so handlers would be included in calculating the 10 percent which is needed for submitting a petition to have a referendum. The authority for this change is provided by section 4612(d)(1) of the Act and would only go into effect if the amendment making handlers subject to assessment is approved in the referendum.

Also added to § 1240.62 is a requirement that referenda at the request of the Board or by petition of program participants can be held no more than once every two years. If continuation of the Order is approved in a referendum held at the request of the Board or by petition, then the next periodic referendum to determine the continuation of the Order shall be held no sooner than five years from the date of the referendum on request. These changes are made pursuant to sections 4612(c) through (d) of the Act. These changes are not subject to approval in the referendum.

USDA Changes to Proposal

The Department has modified the Board's proposal to make it consistent with the Act when necessary as well as provide clarity, consistency, and correctness when appropriate with respect to word usage and terminology. For example, in some cases, references to ''Honey Board'' or ''National Honey Board'' were changed to ''Board'' for simplicity. In certain instances, gender-specific references were replaced with gender-neutral language.

The Department did not change the title of the Order, as proposed by the Board, to include a reference to ''industry information'' for consistency with the Act's title which was not changed by the 1998 amendments to the Act. However, a subpart designation has been added to apply to §§ 1240.01 through 1240.67.

In the definition of ''Act,'' the Department did not change the Act's name to reference ''industry

information'' as proposed because, while the Act was amended, the title was not.

The Board proposed defining ''National Honey Board'' instead of ''Honey Board'' to include the Board's common reference. The Department retained ''Honey Board'' as the term defined but included ''National Honey Board'' as a synonym.

The definition of ''part and subpart'' was not changed to refer to the Order as it was proposed to be renamed by the Board.

The term ''plans and projects'' is not a new definition being added to the Order as indicated in the proposal. A definition for this term does appear in the present Order at § 1240.21. The proposal would amend the existing definition by adding the words ''industry information'' to the existing text.

A minor change in the definition of ''Committee'' was made for syntax and clarity.

In the definitions of ''qualified national organization representing handler interests'' at § 1240.23 and ''qualified national organization representing importer interests'' at § 1240.24, several section cross-references were added. A minor change was also made to the latter definition for purposes of syntax and clarity. In addition, portions of the text from each definition on eligibility requirements were moved to § 1240.32 on nominations and revised slightly for purposes of brevity and clarity. For example, ''the association or organization'' was shortened to ''the organization'' in almost every instance.

In the definition of ''research'' at § 1240.25, the words ''products containing honey'' were replaced with ''honey products'' for consistency with language in the Act and Order. The definition of ''research'' was also revised to add clarification to the proposal's reference to ''studies on bees'' in accordance with sections 4601(a)(9) through (10), 4601(b)(1)(C) through (D), and 4606(f)(2)(A) of the Act.

In § 1240.30 and elsewhere, the word ''national'' was placed in front of references to ''honey marketing cooperative'' to be consistent with usage of this term in section 4606(c)(2)(E) and elsewhere in the Act.

In § 1240.31 on terms of office, several changes were made in order to make the language consistent with USDA procedures and terminology, such as the substitution of gender-neutral language. Another revision added authority for the Secretary to make a determination on staggered Board terms individually. This change was made pursuant to language added to section 4606(c)(8) of the Act, which refers only to the Secretary's authority in making determinations on staggered terms. In the last sentence following ''alternate'' in § 1240.31, the word ''member'' was stricken to parallel similar word usage elsewhere in the section.

In § 1240.32, subparagraph (b)(6) as it appeared in the proposal was stricken since it covers actions of the Board as opposed to actions of the Committee, which is the subject of § 1240.32. The text of former subparagraph (b)(6) would be reinserted, with several modifications, as a new § 1240.33 titled ''Board reconstitution.''

A new provision was added to § 1240.32(b)(8) on the basic eligibility requirements for those nominated to fill Board seats as handler-importers. To be nominated for the handler-importer position, a handler must also have been an importer of record of at least 40,000 pounds of honey during any three of the preceding five years. These requirements are contained in section 4606(c)(2)(C) of the Act. The creation of two handler-importer positions on the Board must be approved in the referendum to become effective.

In § 1240.32(b)(9), changes were made to underscore the possibility that a full slate of nominees may not be submitted should Board members serve in staggered terms. The proposal and current Order use set numbers in terms of filling the different Board positions. The language is modified to better convey that the number of nominations will directly correspond to the number of positions due to become vacant.

In § 1240.32(b)(12), language was added providing that organizations seeking certification as a qualified national organization for purposes of making nomination recommendations must agree to notify nonmembers of Board nomination opportunities as well as consider the nomination of nonmembers interested in serving on the Board. This language was added to conform with section 4606(c)(6)(F) of the Act.

Finally, a new § 1240.32(b)(13) was added to state that the certification of an organization by the Secretary shall be final, pursuant to section 4606(c)(6)(C) of the Act.

A new § 1240.33 contains the text on Board reconstitution. This topic is currently covered under § 1240.32(b)(6) in the Order. The Board's proposal to amend the Order also covers this topic in § 1240.32(b)(6). It is recommended that the subject of Board reconstitution be moved from § 1240.32 to § 1240.33 for purposes of organization and clarity. Section 1240.32 primarily covers the activities of the Committee and the nomination process for Board members. Board reconstitution covers the process whereby the Board evaluates possible changes in representation to the Board based on such factors as changes in the geographic distribution of honey producers, changes in the proportion of domestic and imported honey assessed, or the source of assessments on imported honey or honey products. It would be clearer from an organizational standpoint for this topic to be covered in a new § 1240.33.

In the new § 1240.33 covering Board reconstitution, the word ''shall'' was substituted in place of ''may'' before the word ''recommend'' in paragraph (b) of the proposed text to clarify the Board's responsibility to move forward with reconstituting the Board if warranted by the results of the review. Section 4606(c)(4)(B) of the Act requires the Board to recommend reconstitution of the Board to the Secretary if certain criteria as provided in the section are met. A provision was also added to emphasize that, notwithstanding any action on reconstitution, at least 50 percent of the members serving on the Board shall be honey producers, pursuant to section 4606(c)(7) of the Act. Several other minor editorial changes were made including use of the word ''continuance'' in place of ''continuation'' in modifying referendum.

The Board's proposal includes no modifications to § 1240.34 on vacancies. However, § 1240.34(a) needs to be revised to include the cross-reference to the new § 1240.33 on Board reconstitution in place of § 1240.32(b)(6).

Section 1240.34(a) of the existing Order provides an exception where a producer member or alternate serving on the Board may complete the term of office in situations where, due to Board adjustment of regions, the member or alternate is no longer from the region from which the person was appointed. Section 4606(c)(4) of the Act addresses changes in geographic regions for producer representation and reallocation of handler, importer, and handler-importer positions on the Board. For purposes of consistency, the exception in § 1240.34(a) allowing producers affected by geographic redistricting to finish out their term would be extended to allow those members serving in handler, importer, or handler-importer Board positions to complete their terms in situations where their position is subject to reallocation by the Board.

In § 1240.38 on Board duties and in § 1240.40(a), a requirement was added that budgets be submitted to the Secretary for approval 60 days in advance of the beginning of the fiscal period. The Act and current Order do not specify any time frame for submitting the budget to the Secretary. The 60-day period formalizes current USDA policy and allows adequate time for review and approval prior to the start of the fiscal period. A minor change was made to § 1240.38(e) by inserting ''consumer'' to precede ''education'' and deleting the word ''development.'' And ''industry information'' was added to the list of allowable program activities in § 1240.38(l) as provided for in 1998 amendments to the Act.

Several changes were made to the Board's proposal involving § 1240.39. A paragraph was added providing that the Board shall conduct ''an independent evaluation'' of the effectiveness of the Order and its programs at least once every five years. This requirement appears in Commodity Promotion and Evaluation [7 U.S.C. 7401]. Section 1240.39(e) of the current Order does contain a provision on periodic program evaluations; however, it does not require that the review be conducted by an independent source.

As a result of adding the paragraph on independent evaluations, the paragraphs in § 1240.39 were redesignated.

Also in § 1240.39, the proposed provision on activities and procedures for monitoring the purity of honey and honey products was modified by striking the words ''and prevention'' from the phrase ''including programs or activities for identification and prevention of adulterated honey.'' Pursuant to section 4607(b)(2) in the Act, the Board has the authority to ''develop and recommend * * * a system for identifying honey.''

Finally, the phrase ''research, education, industry information, and promotion'' in § 1240.39 of the proposal was replaced with ''research, promotion, consumer education, and industry information'' to be consistent with similar references elsewhere in the section.

In § 1240.40(a), the words ''industry information'' were added to ''research, promotion, and consumer education'' to be consistent with similar references elsewhere in the provision.

In § 1240.40(c), the word ''projects'' was not changed to ''plans'' as suggested in the proposal. The word ''projects'' is retained so as to mirror the same language in section 4606(f)(2) of the Act on this point.

Section 1240.41(a) of the current Order and the proposal was removed because it is not necessary.

In the discussion of assessment rates in § 1240.41, changes were made to clarify that handlers, importers, and producer-packers are subject to assessments for both honey and honey used in honey products while producers are assessed only on honey produced. This is based on section 4606(e)(3) of the Act. ''U.S.'' was added where necessary to specify honey produced domestically versus honey produced outside the United States.

Discussion of the assessment rate on imported honey and honey products was expanded for purposes of clarification. For example, one change clarifies that importers must pay assessments through Customs to the Board. Both the current Order and the proposal provide that the importer is required to pay the assessment to the Board at the time the honey or honey products enter the United States. There is no specific mention of Customs acting as the payment intermediary. Congress made a similar clarification in section 4608(c) of the Act.

In § 1240.41, language on the prescribed interest rate set by the Board and approved by the Secretary was removed and replaced with language specifying that the rate of interest shall be prescribed in regulations issued by the Secretary.

A new paragraph (i) was added to § 1240.41 specifying that persons failing to remit assessments in a timely manner may also be subject to actions under federal debt collection procedures.

Finally, in § 1240.41 on government loan programs, the ''USDA Commodity Credit Corporation'' was substituted for ''CCC,'' and other minor changes were made to the sentence to accommodate this change. Also, ''USDA'' was inserted before ''loan program'' in the first sentence for purposes of clarity. This provision was redesignated from § 1240.41(m) in the Board's proposal to § 1240.41(k).

Paragraphs (j) and (k) in § 1240.41 of the Board's proposal were redesignated as paragraphs (l) and (m) of § 1240.41.

In § 1240.42(a) on exemption from assessment, the words ''or honey products'' were added to the exemption language since the calculation of the 6,000 pound minimum amount to qualify for exemption from assessment can include both honey and honey products in the case of producer-packers, handlers, and importers. This is consistent with section 4606(e)(4)(A) of the Act as amended in 1998. In § 1240.42(c), the reference to a person who ''claims'' an exemption was replaced with language referring to a person who has been exempt. This change was made because section 4606(e)(4) of the Act eliminated the requirement of filing a claim with the Board as a prerequisite to being exempt from assessments. Several other minor changes in word order and phraseology were also made.

In § 1240.44 on activities involving the inspection and monitoring of honey, the words ''and the Secretary shall have the authority to approve or disapprove'' were added to mirror similar language in section 4607(d) of the Act and to underscore the Secretary's oversight authority. The proposal provides that the Board is ''authorized to develop and recommend to the Secretary'' a system or program for monitoring the purity of honey. However, the Board's proposal contains no mention of the Secretary's authority to approve such system or program as is provided for in the 1998 amendments to the Act.

Also in § 1240.44, the words ''or program'' were inserted to follow the word ''system'' in several instances for purposes of consistency throughout the section. Also, several other minor changes in punctuation were made to follow similar construction in section 4607(b) of the Act.

In § 1240.45, language regarding the Secretary's authority to approve or disapprove the establishment of a voluntary quality assurance program was inserted to be consistent with similar language in section 4607(d) of the Act and to underscore the Secretary's authority on this point. A paragraph was also added providing that a producer, handler, or importer must participate in the voluntary quality assurance program in order to be eligible to display the official seal of approval. This addition is based on sections 4607(c)(2)(A) and (c)(3) of the Act. Finally, a provision was inserted to provide that a voluntary quality assurance program and any related rule or regulation for its development and operation may be ''in addition to or independent of'' any program, rule, or regulation involving an inspection and monitoring system established under the authority of § 1240.44. This language was taken from sections 4607(a)(8) and (c)(1) of the amended Act.

In § 1240.46 on minimum purity standards, the words ''develop and'' were inserted before ''recommend'' and ''and related rules and regulations'' were added to immediately follow ''minimum purity standards'' for consistency with section 4607(a)(8) of the Act.

In § 1240.50, minor grammatical corrections were made. Also, the articles

''the'' and ''a'' were inserted at various points in the text.

In § 1240.51 on books and records, a change was made in reference to those subject to exemption since it is no longer necessary to file a claim with the Board in order to be exempt from assessments. In addition, the word ''agent'' was added for use with employees since section 4608(f)(2) of the amended Act provides authority for employees or agents of the Board or USDA to inspect and review books and records.

In § 1240.52 on confidential treatment, a revision is made so that the confidentiality provisions with respect to books, records, or reports would apply to officers and employees of the USDA and employees and agents of the Board. Members and alternates of the Board are specifically excluded from inspecting or reviewing books and records under section 4608(f)(2) of the amended Act in the first place. This change is authorized by section 4608(g)(1) of the amended Act. Presently, the Order as well as the Board's proposal extend the confidentiality provisions to ''any person.''

In § 1240.52(a), a minor edit was made substituting the word ''the'' in place of ''a'' to precede ''number.''

Section 1240.52(c) of the proposal, which covers the penalties for disclosure of confidential information, was removed. The specific penalties for violating the confidentiality provisions of the Act and Order, as provided for in section 4608(g) of the Act, are self-executing and, therefore, are not included in the Order.

In § 1240.62 on the suspension or termination of Order, several minor revisions were made such as adding ''(5)'' after the word ''five'' and adding ''(2)'' after the word ''two''. Also the phrase ''subject to assessment under the Order'' was inserted in both paragraphs (b) and (c) to provide greater clarity and completeness.

Referendum

After an opportunity for public comment, a referendum will be held among honey producers, producer-packers, importers, and handlers who would be subject to assessment under the 1998 amendments to the Act. Producers, producer-packers, importers, and handlers who are not exempt and who have been engaged in the production, importation, or handling of honey or honey products during a two-year representative period to be determined by the Secretary will be eligible to vote on the proposed amendments to the Order.

All known honey producers, producer-packers, importers, and handlers will be mailed information regarding the referendum. Those who do not receive a ballot and believe they are eligible will be able to request one from USDA.

The following proposed amendments to the Order must be approved by honey producers, producer-packers, importers, and handlers voting in a referendum before taking effect: (1) the requirement for the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) the authority for the Board to conduct projects, including developing recommendations for purity standards and an inspection and monitoring system, to enhance the image of honey and honey products; (3) the addition of two handler members who are also importers to the Board; (4) a decrease in the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) the addition of an assessment of 0.75 cents per pound on handlers; and (6) an increase in the assessment rate from 1 cent per pound to 1.5 cents per pound on imports.

The following proposed amendments to the Order would become effective after the referendum, regardless of the outcome: (1) revised and new definitions for certain terms; (2) changing the two importer/exporter Board positions to two importer positions; (3) elimination of the public member position on the Board; (4) revised nomination and eligibility requirements for Board members; (5) a requirement that at least 50 percent of the Board members shall be honey producers and authority to stagger terms of office as necessary; (6) authority for the Board to accept voluntary contributions; (7) elimination of the requirement that exempt persons must file for an exemption; (8) the authority for the Board to develop an enforceable voluntary quality assurance program; (9) clarification of recordkeeping and reporting requirements; and (10) the removal of obsolete language.

There were several additional amendments to the Act in 1998 that do not require amendment of the Order. One of these amendments adds a 2-year statute of limitations for persons filing petitions under Section 10 of the Act. In addition, the Act was amended to provide that each producer-packer and importer who votes in referenda will have one vote as a handler and one vote as a producer or importer, assuming the producer-packer or importer would owe assessments as a handler in addition to owing assessments as a producer or importer. Further, the Act was amended to provide that the Order amendments that are subject to approval in the referendum will become effective if (1) the changes are approved or favored by a majority of the producers, importers, and handlers voting in the referendum, and (2) that majority who voted produced, imported, and handled 50 percent or more of the quantity of the honey and honey products produced, imported, and handled during the representative period among those voting in the referendum. The 1998 amendments to the Act also provided that no individual provision of the amended Order shall be subject to a separate vote in the referendum.

If the proposed amendments to the Order regarding assessments on handlers are approved, the same voting criteria for passage will apply in all subsequent referenda. If the proposed amendments to the Order regarding assessments on handlers are not approved, handler approval would not be necessary in future referenda.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1240 be amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for Part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613; 7 U.S.C. 7401.

2. Revise the heading for 7 CFR Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

3. Add a heading for a new subpart, consisting of §§ 1240.01 through 1240.67, and revise the table of contents for those sections to read as follows:

Subpart A—Honey Research, Promotion, and Consumer Information Order

Definitions

Sec.
1240.01 Act.
1240.02 Board.
1240.03 Committee.
1240.04 Consumer education.
1240.05 Department.
1240.06 Exporter.

1240.07 Fiscal period and marketing year.
1240.08 Handle.
1240.09 Handler.
1240.10 Honey.
1240.11 Honey production.
1240.12 Honey products.
1240.13 Importer.
1240.14 Industry information.
1240.15 Marketing.
1240.16 National honey marketing cooperative.
1240.17 Part and subpart.
1240.18 Person.
1240.19 Plans and projects.
1240.20 Producer.
1240.21 Producer-packer.
1240.22 Promotion.
1240.23 Qualified national organization representing handler interests.
1240.24 Qualified national organization representing importer interests.
1240.25 Research.
1240.26 Secretary.
1240.27 State.
1240.28 State association.

Honey Board

1240.30 Establishment and membership.
1240.31 Term of office.
1240.32 Nominations.
1240.33 Board reconstitution.
1240.34 Vacancies.
1240.35 Procedure.
1240.36 Attendance.
1240.37 Powers.
1240.38 Duties.

Research, Promotion, Consumer Education, and Industry Information

1240.39 Research, promotion, consumer education, and industry information.

Expenses and Assessments

1240.40 Budget and expenses.
1240.41 Assessments.
1240.42 Exemption from assessment.
1240.43 Operating reserve.
1240.44 Inspection and monitoring system.
1240.45 Voluntary quality assurance program.
1240.46 Minimum purity standards.

Reports, Books, and Records

1240.50 Reports.
1240.51 Books and records.
1240.52 Confidential treatment.

Miscellaneous

1240.60 Influencing governmental action.
1240.61 Right of the Secretary.
1240.62 Suspension or termination.
1240.63 Proceedings after termination.
1240.64 Effect of termination or amendment.
1240.65 Personal liability.
1240.66 Separability.
1240.67 Patents, copyrights, inventions, product formulations, and publications.

4.–6. Redesignate §§ 1240.1 through 1240.67 as follows:

Old section	New section
1240.1	1240.26
1240.2	1240.1
1240.3	1240.18
1240.4	1240.10
1240.5	1240.12
1240.6	1240.20
1240.7	1240.8
1240.8	1240.9
1240.9	1240.21
1240.10	1240.13
1240.11	1240.6
1240.12	1240.22
1240.13	1240.25
1240.14	1240.4
1240.15	unchanged
1240.16	1240.3
1240.17	1240.28
1240.18	1240.2
1240.19	1240.27
1240.20	1240.7
1240.21	1240.19
1240.22	1240.17
1240.30	unchanged
1240.31	unchanged
1240.32	unchanged
1240.34	unchanged
1240.35	unchanged
1240.36	unchanged
1240.37	unchanged
1240.38	unchanged
1240.39	unchanged
1240.40	unchanged
1240.41	unchanged
1240.42	unchanged
1240.43	remove
1240.44	1240.43
1240.50	unchanged
1240.51	unchanged
1240.52	unchanged
1240.60	unchanged
1240.61	unchanged
1240.62	unchanged
1240.63	unchanged
1240.64	unchanged
1240.65	unchanged
1240.66	unchanged
1240.67	unchanged

7. Revise newly designated § 1240.2 to read as follows:

§ 1240.2 Board.

Board or *National Honey Board* means Honey Board, the administrative body established pursuant to § 1240.30.

8. Revise newly designated § 1240.3 to read as follows:

§ 1240.3 Committee.

Committee means the National Honey Nominations Committee established pursuant to § 1240.32.

9. Add a new § 1240.5 to read as follows:

§ 1240.5 Department.

Department means the United States Department of Agriculture.

10. Revise newly designated § 1240.8 to read as follows:

§ 124.8 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. This term shall include selling unprocessed honey that will be consumed without further processing or packaging. This term shall not include the transportation of unprocessed honey by a producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer. This term shall not include the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

11. Revise newly designated § 1240.10 to read as follows:

§ 1240.10 Honey.

Honey means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees, including comb honey.

12. Add a new § 1240.11 to read as follows:

§ 1240.11 Honey production.

Honey production means all beekeeping operations related to managing honey bee colonies to produce honey, harvesting honey from the colonies, extracting honey from the honeycombs, and preparing honey for sale and further processing.

13. Revise newly designated § 1240.13 to read as follows:

§ 1240.13 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

14. Add a new § 1240.14 to read as follows:

§ 1240.14 Industry information.

Industry information means information or a program that will lead to the development of new domestic and foreign markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

15. Add a new § 1240.16 to read as follows:

§ 1240.16 National honey marketing cooperative.

National honey marketing cooperative means a cooperative that markets its products in at least two of the following four regions of the United States, as determined by the Secretary:

(a) The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico;

(b) The Mideast;

(c) The Midwest; and

(d) The Pacific, including the states of Alaska and Hawaii.

16. Revise newly designated § 1240.19 to read as follows:

§ 1240.19 Plans and projects.

Plans and *projects* means those research, promotion, industry information, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

17. Add a new § 1240.23 to read as follows:

§ 1240.23 Qualified national organization representing handler interests.

Qualified national organization representing handler interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for handler, handler-importer, alternate handler, and alternate handler-importer members of the Board under § 1240.32.

18. Add a new § 1240.24 to read as follows:

§ 1240.24 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for importer, handler-importer, alternate importer, and alternate handler-importer members of the Board under § 1240.32.

19. Revise newly designated § 1240.25 to read as follows:

§ 1240.25 Research.

Research means any type of systematic study or investigation, including studies testing the effectiveness of market development and promotion efforts, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

20. Revise § 1240.30 to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board (elsewhere in this part called the Board) is established to administer the terms and provisions of this part. The Board shall consist of fourteen (14) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey importers; two members and two alternates shall be handlers of honey who are also importers; and one member and one alternate shall be an officer, director, or employee of a national honey marketing cooperative. The Board shall be appointed by the Secretary from nominations submitted by the Committee, pursuant to § 1240.32. Notwithstanding any other provision of this part, at least 50 percent of the members of the Board shall be honey producers.

21. Revise § 1240.31 to read as follows:

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except that terms may be staggered periodically as recommended by the Board and as determined by the Secretary or as determined by the Secretary alone. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. Each Board member and alternate member shall continue to serve until the member or alternate's successor meets all qualifications and is appointed by the Secretary.

22. Amend § 1240.32 by:

a. revising paragraphs (a)(1)and (a)(3), and (b)(1) and (b)(2)respectively;

b. removing paragraph (b)(6); and redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively;

c. revising newly designated paragraphs (b)(6) and (b)(7); and

d. adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13) to read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is established a National Honey Nominations Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42 (a) and (b) to make nominations for that State.

* * * * *

(3) Members of the Committee shall serve for three-year terms, except that the term of appointments to the Committee may be staggered periodically, as determined by the Secretary. The term of office shall begin on July 1.

* * * * *

(b) * * *

(1) The Committee shall nominate the members and alternate members of the Board and submit such nominations promptly to the Secretary for approval.

(2) The Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

* * * * *

(6) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Board as a producer or as an alternate to a producer.

(7) In nominating importer members to the Board, no importer who, during any three of the preceding five years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Board as an importer or as an alternate to such importer.

(8) In nominating handler-importers to the Board, no handler who, during any three of the preceding five years, was not an importer of record of at least 40,000 pounds of honey shall be eligible for nomination or appointment to the Board as a handler-importer or as an alternate to a handler-importer.

(9) Six months before the new Board term begins, the Committee shall submit to the Secretary nominations for positions on the Board. The number of nominations will directly correspond to the number of producer, handler, importer, handler-importer, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(i) Nominations for producer members and alternate producer members will be from one of the seven regions established by the Secretary in which a vacancy will occur;

(ii) Nominations for handler members and alternate handler members will be based on recommendations made by qualified national organizations representing handler interests, or, if the Secretary determines that there is not a qualified national organization representing handler interests, by

individual handlers who have paid assessments to the Board on honey or honey products handled;

(iii) Nominations for importer members and alternate importer members will be based on recommendations made by qualified national organizations representing importer interests, or, if the Secretary determines that there is not a qualified national organization representing importer interests, by individual importers who have paid assessments to the Board on imported honey or honey products;

(iv) Nominations for handler members and alternate handler members who are also importers (i.e., handler-importers) will be based on recommendations made by qualified national organizations representing importer interests or qualified national organizations representing handler interests: *Provided,* That, if the Secretary determines that there is not a qualified national organization representing handler or importer interests, then the Committee shall nominate members and alternate members from individual handlers or importers who have paid assessments to the Board on imported honey or honey products; and

(v) Nominations for a member and alternate member who are officers, directors, or employees of national honey marketing cooperatives will be based on recommendations made by qualified national honey marketing cooperatives.

(10) *Qualified national organization representing handler interests.* To be certified by the Secretary as a qualified national organization representing handler interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's membership is comprised primarily of honey handlers;

(ii) The organization represents a substantial number of handlers who handle a substantial volume of honey in at least 20 states;

(iii) The organization has a history of stability and permanency;

(iv) A primary or overriding purpose of the organization is to promote the economic welfare of honey handlers;

(v) A portion of the operating funds of the organization are derived from handlers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(11) *Qualified national organization representing importer interests.* To be certified as a qualified national organization representing importer interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's total paid membership is comprised of a significant number of importers or the organization's total paid membership represents at least a majority of the volume of honey imported into the United States;

(ii) The organization has a history of stability and permanency;

(iii) A primary or overriding purpose of the organization is to promote the economic welfare of honey importers;

(iv) Geographic territory is covered by the active membership of the organization;

(v) A portion of the operating funds of the organization are derived from importers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(12) As a condition of certification by the Secretary as a qualified national organization representing handler or importer interests, an organization shall agree to:

(i) Notify nonmembers of the organization of Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and

(ii) Consider the nomination of nonmembers when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(13) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

23. Add a new § 1240.33 to read as follows:

§ 1240.33. Board reconstitution.

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers and handlers of domestic honey, including whether any changes in assessments owed on imported quantities are owed by importers or handler-importers. The Board shall conduct the initial review required by this paragraph prior to the initial continuance referendum conducted pursuant to the Act.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:

(i) Changes in the regional representation of honey producers;

(ii) The reallocation of handler-importer member positions as handler member positions;

(iii) The reallocation of importer member positions as handler-importer positions;

(iv) The reallocation of handler-importer member positions as importer member positions; and/or

(v) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend a reallocation or addition of members pursuant to paragraphs (b)(1), (ii), (iii), (iv), and (v) of this section unless:

(i) The proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section; or

(ii) The proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers and handlers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d).

(c) Except as provided in paragraph (d), recommendations made under paragraph (b) of this section shall be based on:

(1) The 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under paragraph (a) of this section; and

(2) Whether any change in the average annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal year 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

(f) Any such reallocation or addition of members shall be made at least six

months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

24. Amend § 1240.34 by revising paragraph (a) to read as follows:

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant: *Provided,* That if as a result of Board reconstitution pursuant to § 1240.33, a producer member or alternate is no longer from the region from which such person was appointed, or if a member, whose position is based on their status as a handler, importer, or handler-importer is subject to reallocation by the Board, the affected member and/or alternate may serve out the term for which such person was appointed.

* * * * *

25. Amend § 1240.35 by revising paragraph (a) to read as follows:

§ 1240.35 Procedure.

(a) Eight members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

* * * * *

26. Revise § 1240.36 to read as follows:

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

27. Amend § 1240.38 by revising paragraphs (c), (d), (e), (g), (l), and (m) to read as follows:

§ 1240.38 Duties.

* * * * *

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part;

(e) To develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;

* * * * *

(g) To periodically prepare and make public and to make available to producers, handlers, producer-packers, and importers, reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

* * * * *

(l) To appoint and convene, from time to time, working committees which may include producers, handlers, producer-packers, importers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, consumer education, and industry information programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

28. Revise the undesignated heading preceding § 1240.39 to read as follows:

Research, Promotion, Consumer Education, and Industry Information

29. Revise § 1240.39 to read as follows:

§ 1240.39 Research, promotion, consumer education, and industry information.

(a) *Scope of activities.* The Board shall develop and submit to the Secretary for approval any plans, programs, or projects authorized in this section. Such plans, programs, and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans, programs, or projects for consumer education, industry information, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(2) The establishment and conduct of marketing research and development plans to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of, this subpart;

(3) The development and expansion of honey and honey product sales in foreign markets;

(4) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(5) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees;

(6) The conduct of activities which may lead to the development of new markets or marketing strategies for honey or honey products. In addition, the Board may conduct activities designed to increase the efficiency of the honey industry or activities to enhance the image of honey and honey products and the honey industry;

(7) Activities and procedures for monitoring the purity of honey and honey products being sold for domestic consumption, or for export from the United States, including programs or activities for identification of adulterated honey;

(8) Periodic evaluation by the Board of each plan, program, or project authorized under this part to insure that each plan, program, or project contributes to an effective and coordinated program of research, promotion, consumer education, and industry information and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan, program, or project does not further the purposes of the Act, then the Board shall terminate such plan, program, or project; and

(9) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, consumer education, and industry information programs, and pay for the

costs of such contracts or agreements with funds received by the Board.

(b) *Independent evaluation.* In addition to any evaluation that may be carried out pursuant to paragraph (a)(8) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of this subpart and other plans, programs, and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under paragraph (b) of this section.

30. Amend § 1240.40 by revising paragraphs (a) and (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 1240.40 Budget and expenses.

(a) Sixty days in advance of the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including expenses of the Committee and probable costs of research, promotion, consumer education, and industry information.

(b) The Board is authorized to incur expenses for: research, promotion, consumer education, and industry information; such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary; any operating reserve established pursuant to § 1240.43; and those administrative costs incurred by the Department specified in paragraph (d) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this subpart, and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained in that section.

(c) The Board shall reserve at least 8 percent of all assessments collected during a year for expenditure on approved research projects designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees. If any of the funds reserved under this paragraph are not allocated to approved research projects in a year, the remaining reserved funds shall be carried forward for allocation and expenditure in subsequent years to be used on projects described in this paragraph.

* * * * *

31. Revise § 1240.41 to read as follows:

§ 1240.41 Assessments.

(a) *Domestic honey and honey products.* (1) The assessment rate to producers and producer-packers on honey produced by them in the U.S. and handled shall be $0.0075 per pound of honey produced.

(2) The assessment rate to handlers, including producer-packers in their capacity as handlers, on U.S. produced honey or honey products shall be $0.0075 per pound of honey or honey products handled.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be $0.015 per pound of honey or honey products imported, which equals the combined rate at which domestic honey produced in the U.S. and handled is assessed. Of this $0.015 total, $0.0075 per pound represents the assessment due from the importer and $0.0075 represents the assessment due from the handler and paid by the importer on behalf of the handler. The importer of imported honey and honey products shall pay the assessment of $0.015 per pound to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States.

(c) Except as provided in § 1240.42 and in paragraphs (b), (d), and (k) of this section, the first handler shall be responsible for the collection of such assessment from the producer and from the handler and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(d) Producer-packers shall pay to the Board the assessment on all honey or honey products for which they act as first handler, in addition to the assessment owed on honey they produce.

(e) Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(f) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to this part. Such regulations may provide for different handler, importer, producer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(g) There shall be a late-payment charge imposed on any handler, importer, producer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, producer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (f) of this section. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(h) There shall also be imposed on any handler, importer, producer, or producer-packer subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, producer, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(i) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(j) Should the U.S. Customs Service fail to collect an assessment from an importer, the importer shall be responsible for the payment of the assessment to the Board.

(k) Whenever a loan is made on honey under a USDA loan program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative approved by the USDA Commodity Credit Corporation that deducts the assessment from its member producers. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(l) The Board is authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(m) The Board is authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

32. Amend § 1240.42 by revising paragraph (a); removing paragraphs (c) and (f); redesignating paragraphs (d) and (e) as (c) and (d), respectively; and revising newly designated paragraphs (c) and (d) to read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, a producer-packer who produces and handles less than 6,000 pounds of honey or honey products per year, an importer who imports less than 6,000 pounds of honey or honey products per year, or a handler who handles less than 6,000 pounds of honey or honey products per year shall be exempt from assessment provided such honey or honey products are distributed directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary during such year.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year under this section, and such person no longer meets the requirements of this section for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced, handled, or imported by such person during the year for which the person claimed the exemption.

(d) The Board may recommend to the Secretary that honey exported from the United States be exempted from the provisions of this subpart and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

33. Add a new § 1240.44 to read as follows:

§ 1240.44 Inspection and monitoring system.

(a) The Board is authorized to develop and recommend to the Secretary, and the Secretary shall have the authority to approve or disapprove, a system or program for monitoring the purity of honey and honey products being sold for domestic consumption in, or for export from, the United States. Such system or program may include inspection and testing procedures to monitor the purity of honey or to detect adulterated honey.

(b) The Board may recommend and the Secretary may issue rules and regulations as are necessary to implement such system or program as authorized by the Act.

34. Add a new § 1240.45 to read as follows:

§ 1240.45 Voluntary quality assurance program.

(a) The Board is authorized to develop and carry out a voluntary quality assurance program concerning purity standards for honey and honey products. The Secretary shall have the authority to approve or disapprove such program.

(b) The program may include the following components:

(1) The establishment of an official Board seal of approval to be displayed on honey and honey products which meet such standards of purity as are established under the program;

(2) Actions to encourage producers, handlers, and importers to participate in the program;

(3) Actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

(4) Periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of persons who participate in the program.

(c) To be eligible to display the official seal of approval under paragraph (b)(1) of this section on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program described in paragraph (a) of this section.

(d) Any program and related rules and regulations for establishing and carrying out a voluntary quality assurance program may be in addition to or independent of any program, rule, or regulation involving an inspection and monitoring system under § 1240.44.

35. Add a new § 1240.46 to read as follows:

§ 1240.46 Minimum purity standards.

The Board is authorized to develop and recommend to the Secretary and the Secretary shall have the authority to approve or disapprove the establishment of minimum purity standards and related rules and regulations for honey and honey products designed to maintain a positive and wholesome marketing image for honey and honey products.

36. Revise § 1240.50 to read as follows:

§ 1240.50 Reports.

Each handler, importer, producer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such time and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For producers or producer-packers: the quantity of honey produced and the total number of bee colonies maintained.

(b) For handlers or producer-packers: the total quantity of honey acquired during the reporting period; the total quantity of honey and honey products handled during such period; the amount of honey acquired from each producer, giving the name and address of each producer; the assessments collected during the reporting period; the quantity of honey processed for sale from a producer-packer's own production; and a record of each transaction for honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(c) For importers: the total quantity of honey and honey products imported during the reporting period and a record of each importation of honey or honey products during such period, giving the quantity, date, country of origin, and port of entry.

(d) For persons who have an exemption from assessments under § 1240.42 (a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

37. Revise § 1240.51 to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer, producer-packer, or any person who is exempt from assessments shall maintain and during normal business hours make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting such inspections. Such books and records shall be maintained for two years beyond the first period of their applicability.

38. Revise § 1240.52 to read as follows:

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

39. Revise § 1240.61 to read as follows:

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or plans, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

40. Amend § 1240.62 by:

a. Revising paragraph (b);

b. removing paragraph (c) and redesignating paragraph (d) as (c); and

c. revising newly designated paragraph (c) to read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this section, five (5) years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five (5) years thereafter, the Secretary shall conduct a referendum to determine if honey producers, handlers, producer-packers, and importers subject to assessment favor the termination or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers, handlers, producer-packers, and importers subject to assessment under this subpart to determine if the honey producers, handlers, producer-packers, and importers favor termination or suspension of this subpart. A referendum under this paragraph may not be held more than once every two (2) years. If the Secretary determines, through a referendum conducted pursuant to this paragraph, that continuation of this subpart is approved, any referendum otherwise required to be conducted under paragraph (b) of this section shall not be held less than five (5) years after the date the referendum was conducted under this paragraph.

41. Revise the heading for Subpart—General Rules and Regulations to read as follows:

Subpart B—General Rules and Regulations

42. Revise the heading for Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order to read as follows:

Subpart C—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

Dated: February 14, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–4190 Filed 2–25–00; 8:45 am]

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Federal Register

Monday,
February 28, 2000

Part III

Department of Education

34 CFR Part 361

The State Vocational Rehabilitation Services Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB50

The State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services Program. These amendments are needed to implement changes to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998, enacted on August 7, 1998, and as further amended in 1998 by technical amendments in the Reading Excellence Act and the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998 (hereinafter collectively referred to as the 1998 Amendments).

DATES: We must receive your comments on or before April 28, 2000.

ADDRESSES: Address all comments about these proposed regulations to Fredric K. Schroeder, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202–2531. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term ''VR Regulations'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, 400 Maryland Avenue, SW., room 3014, Mary E. Switzer Building, Washington, DC. 20202–2531. Telephone (202) 205–8831. If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5538.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director, Alternate Formats Center, U.S. Department of Education, 400 Maryland Avenue, SW., room 1000, Mary E. Switzer Building, Washington, DC. 20202–2531. Telephone (202) 260–9895. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3014, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

The State Vocational Rehabilitation Services Program (VR program) is authorized by Title I of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 701–744). The VR program provides support to each State to assist it in operating a statewide comprehensive, coordinated, effective, efficient, and accountable State program, as an integral part of a statewide workforce investment system, to assess, plan, develop, and provide vocational rehabilitation (VR) services for individuals with disabilities so that those individuals may prepare for and engage in gainful employment consistent with their strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

The 1998 Amendments made substantial changes to Title I of the Act, such as expanding options for individual choice, streamlining administrative procedures, facilitating the development of State goals and strategies to accomplish those goals, modifying due process provisions, requiring trial work experiences as part of the eligibility assessment for certain individuals with significant disabilities, and linking the VR program to a State's workforce investment system under Title I of the Workforce Investment Act of 1998 (WIA). This notice of proposed rulemaking (NPRM) proposes regulatory changes that would implement these and all other provisions in Title I, Parts A and B, of the Act as adopted in the 1998 Amendments, with the exception of the client assistance program (CAP) described in section 112 of the Act. Changes to the CAP regulations (34 CFR part 370) are being implemented through a separate rulemaking document.

In addition, the proposed regulations were developed in light of new requirements related to the VR program under WIA. A designated State unit (DSU or State unit) operating a VR program is a required partner in the State One-Stop service delivery system (One-Stop system) established under Title I of WIA. As a required partner, the State unit must fulfill certain responsibilities related to that system. Those responsibilities, as well as the requirements for coordination between the VR program and other One-Stop system partners, are addressed in § 361.23 of the proposed regulations.

In general, the establishment of a One-Stop system is a cornerstone of reforms to Federal education and training programs. This delivery system streamlines access to numerous workforce investment and educational and other human resource services, activities, and programs. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging, and confusing, WIA requires States and communities to coordinate multiple workforce development programs and resources for individuals at the ''street level'' through a user-friendly One-Stop system. This system will simplify and

expand access to services for job seekers, including those with disabilities, and for employers.

In particular, participation in the One-Stop system by State units administering VR programs will result in enhancing the range and quality of services accessible to program participants. The collaboration of the DSU with other partners through the One-Stop system is intended to produce better information, more comprehensive services, easier access to services, and improved long-term employment outcomes. The effective participation of the VR program in the One-Stop system, therefore, is critical to enhancing the VR program itself, as well as the workforce investment system in each State and local area.

Given this close relationship between the partners of the One-Stop service delivery system contemplated under WIA, as well as the non-discrimination requirements in the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act (section 504), and section 188 of WIA, we emphasize that all partner programs, not just the VR program, have a legal responsibility to serve persons with disabilities. To receive services under the VR program, individuals must meet specific program eligibility criteria, including a narrower definition of ''individual with a disability'' (see § 361.5(b)(28) and § 361.42(a) of the proposed regulations) than the more general definition of that term found in the ADA, section 504, and the regulations implementing section 188 of WIA (29 CFR part 37). The broader definition, which is also specified in § 361.5(b)(29) of the proposed regulations, covers those with an impairment that substantially limits one or more major life activities, those with a record of such an impairment, or those regarded as having such an impairment. It is this broader population of individuals with disabilities that the workforce system has a legal obligation to serve, meaning that some individuals may receive the full scope of needed services through the One-Stop system without accessing the VR program at all, while others may be referred to the State unit for a program of VR services or receive a combination of services from the VR program and other One-Stop system partners. In addition, some individuals who are eligible for VR services may choose not to participate in the VR program and, therefore, also may be served exclusively by other partner programs of the One-stop system. The broader definition in § 361.5(b)(29) of the proposed regulations, which is the same as that in the ADA, section 504, and 29 CFR part 37, applies to certain areas of the VR program that are unrelated to eligibility (*e.g.,* membership on the State Rehabilitation Council under § 361.17 and organizational requirements in § 361.13).

Changes to Current Regulations

Each of the substantive changes to the current VR program regulations proposed in this NPRM are based on statutory changes or are otherwise considered necessary to the effective administration of the VR program. The remaining changes to the current regulations are technical in nature, meaning that they are needed to conform to language used in the Act (*e.g.,* substituting the term ''individual with a significant disability'' for the previously used term ''individual with a severe disability''), remove requirements that were eliminated in the 1998 Amendments, or add provisions that were included as part of the statutory amendments. The following sections of the current regulations either would be unchanged by this NPRM or would include only technical changes and, therefore, are not discussed in the following section-by-section analysis: § 361.1, § 361.2, § 361.3, § 361.4, § 361.11, § 361.12, § 361.14, § 361.16, § 361.17, § 361.19, § 361.20, § 361.21, § 361.25, § 361.32, § 361.34, § 361.40, § 361.55, § 361.61, § 361.63, § 361.64, and § 361.65.

Additionally, in an effort to reduce the paperwork burden associated with developing the State plan for the VR program, the NPRM would significantly reduce the number of descriptions or assurances that must be submitted as part of the State plan. The following sections (which are not otherwise discussed in the section-by-section analysis), in addition to including technical changes as previously explained, also include requirements that would be removed from the State plan under this NPRM: § 361.13, § 361.15, § 361.27, § 361.28, § 361.38, § 361.39, § 361.41, § 361.43, § 361.44, § 361.49, § 361.50, § 361.51, and § 361.62. Because the underlying requirements in these sections are considered essential to the proper and efficient administration of the VR program, however, they would be retained in the NPRM as requirements of the program even though they would no longer be components of the State plan.

In addition, some of the sections of the current regulations that would be substantively amended by the NPRM also would be removed from the content of the State plan. Substantive changes to those sections, as well as the removal of State plan requirements (where applicable), are outlined in the section-by-section analysis.

The State plan content requirements that remain in the NPRM are those that are required by statute. The same reduced State plan requirements would apply both to VR State plans submitted as part of a State unified plan under section 501 of the Workforce Investment Act and to VR plans submitted separately under Title I of the Act and 34 CFR part 361. In either instance, we believe that the reduced number of State plan requirements will enable State VR agencies to better focus on the needs of its consumers and its program without expending an inordinate amount of time in compiling its State plan.

Section-by-Section Summary

Section 361.4 Applicable Regulations

This proposed section identifies the same list of regulations applicable to the VR program found in the current regulations, with two significant additions—the regulations in 20 CFR part 662 (which implements the One-Stop system requirements under Title I of WIA) and 29 CFR part 37 (which implements the civil rights requirements under section 188 of WIA and applies to activities of the VR program that are conducted as part of the One-Stop system). Thus, in addition to following the proposed regulations and those regulations in the Education Department General Administrative Regulations listed in proposed § 361.4, individuals should consult the WIA implementing regulations, including the nondiscrimination requirements in 29 CFR 37.5 (which, for example, prohibits discrimination on the basis of participation in an activity receiving funds under Title I of WIA), when conducting VR program activities as part of the One-Stop system.

Section 361.5 Applicable Definitions

Fair Hearing Board

The proposed regulations include a new definition of the term ''fair hearing board'' that is based on the longstanding authority in the Act for State fair hearing boards to review disputes between State units and individual VR consumers. Specifically, section 102(c)(6)(A) of the Act allows a State fair hearing board established prior to 1985 to carry out the responsibilities of an impartial hearing officer in conducting due process hearings under the VR program. The proposed regulatory definition, coupled with the requirements that apply to fair hearing boards under § 361.57(i), is intended to

clarify confusion about the scope of the fair hearing board exception to the due process requirements in section 102(c)(6)(A) of the Act.

The term ''fair hearing board'' would be defined as ''a committee, body, or group of persons'' that is authorized by State law to review VR service-related determinations made by designated State unit personnel and that carries out the hearing officer's responsibilities in accordance with § 361.57. The requirement in the definition and, more specifically, in § 361.57(i) that the fair hearing board act as a collective body of persons is designed to address the misunderstanding that a single individual can issue final hearing decisions on behalf of a fair hearing board. The ''fair hearing board exception'' in section 102(c)(6) of the Act exempts the limited number of States from the statutory due process hearing procedures if a board or group of reviewing officials takes the place of an individual hearing officer.

Some fair hearing boards fulfill their role by appointing an individual board member or other official to conduct due process hearings, reviewing the hearing officer's recommended decision, and issuing the final decision in a given case (subject to review by a civil court). Those arrangements would continue to be appropriate under the proposed regulations. On the other hand, in States in which a sole administrative law judge or other hearing official conducts due process hearings under the VR program, each of the procedural safeguards that apply to due process hearings under the Act must be implemented since a single reviewing official does not constitute a ''fair hearing board.''

Physical or Mental Impairment

The term ''physical or mental impairment'' as defined in the current regulations has been revised to track the definition of that same term in the ADA and in the regulations implementing section 504 (see 34 CFR 104.3). The revised definition is intended not to alter the scope of physical or mental impairments that are covered under the current regulatory definition, but rather to clarify that an individual who is found to have an impairment for purposes of ADA or section 504 would be considered to have an impairment for purposes of the VR program. We note, however, that this change does not have an impact on the employment-related eligibility criteria under the VR program. For example, the requirement that the individual's impairment constitute or result in a substantial impediment to employment, as well as the rest of the criteria in § 361.42(a), still must be met for an individual to be found eligible for VR services.

Qualified and Impartial Mediator

The proposed regulations also include a new definition of the term ''qualified and impartial mediator.'' This proposed definition identifies the qualifications that we believe are essential for an individual to mediate disputes between applicants or eligible individuals and the designated State unit. The Act requires that mediation, which State units must make available consistent with the procedural requirements in proposed § 361.57(c) of the proposed regulations, be conducted by ''qualified and impartial'' mediators who are trained in effective mediation techniques. In addition to the statute, the proposed definition draws a number of elements from the current regulatory definition of ''impartial hearing officer.'' The proposed regulations would also require, however, that mediators be trained in effective mediation techniques consistent with any applicable State certification, license, registration, or other requirements in light of the fact that some States have established certification or other criteria for individuals who mediate disputes involving public agencies.

Workforce Definitions

The proposed regulations also include several new statutory definitions from WIA. The defined terms—''local workforce investment board,'' ''State workforce investment board,'' and ''Statewide workforce investment system''—are used elsewhere in the proposed regulations to address required coordination between the VR program and other components of the workforce investment system established under WIA.

Section 361.10 Submission, Approval, and Disapproval of the State Plan

This section of the proposed regulations makes mostly technical changes to the current regulations in order to conform to the statutory amendments. In addition, the proposed regulations would require each State to submit its State plan for the VR program on the same date that it submits either a State plan under section 112 of WIA or a State unified plan under section 501 of that Act. Essentially, a State would have three options for submitting its VR State plan: (1) Submit a separate VR State plan on the same date as the State submits its State plan under section 112 of WIA (see section 101(a)(1)(A)). (2) Include the VR program as part of the State unified plan submitted under section 501 of WIA. (3) Submit a separate VR State plan on the same date as it submits its State unified plan (that does not include the VR program) under section 501 of WIA.

Those States that choose to submit a State unified plan under section 501 of WIA should consult the ''State Unified Plan—Planning Guidance'' issued by the U.S. Department of Labor and published in the **Federal Register** on January 14, 2000 (65 FR 2463 through 2489). As stated previously, the State plan content requirements in the proposed regulations are those that are required by statute. The State unified plan guidance also identifies these same State plan requirements for inclusion in a State unified plan. Thus, the State plan for the VR program, whether submitted as part of a State unified plan in an effort to coordinate across programs or submitted as a separate State plan as has been done in the past, would be required to address the same State plan requirements as specified in the proposed regulations. In addition, those States submitting a State plan for the VR program apart from other programs still must coordinate closely with the other partners of the One-Stop service delivery system established under WIA. The interagency coordination requirements throughout the proposed regulations, including those in § 361.23, serve as important standards for improving services to individuals with disabilities across the State's One-Stop system.

Section 361.13 State Agency for Administration

This section of the proposed regulations is the same as that in the current regulations except for technical changes to conform to the Act and an addition to the list of activities that are the responsibility of the designated State unit. Specifically, § 361.13(c) of the proposed regulations would require that the State unit be responsible for participating as a partner in the One-Stop system under Title I of WIA in accordance with the WIA implementing regulations issued by the U.S. Department of Labor.

Section 361.18(c) Comprehensive System of Personnel Development—Personnel Standards

Proposed § 361.18(c), which contains the requirements governing DSU personnel standards, includes the sole substantive changes to the comprehensive system of personnel development under the current regulations.

The Act requires the DSU to establish standards to ensure that all State rehabilitation professionals and

paraprofessionals needed to carry out the VR program are qualified consistent with applicable certification, licensing, or registration requirements. The Act also requires that the standards implemented by the DSU be based on ''the highest requirements in the State,'' a term defined in both the current and proposed regulations to refer to the highest entry-level academic degree needed for any national or State certification, licensing, or registration applicable to a given profession. Thus, DSUs must develop personnel standards requiring VR program professionals and paraprofessionals to meet the degree criterion of the certification, license, or registration requirements appropriate to their profession. To the extent that the DSU's current personnel do not meet the degree criterion, or a higher entry-level degree criterion is applied to the same category of personnel by another State agency, section 101(a)(7)(B)(ii) of the Act requires the DSU to take steps to ensure that its personnel meet the highest degree requirement in the State. In an effort to foster State progress in this area, proposed § 361.18(c) would modify the current regulations by requiring the DSU to describe in a written plan its retraining, recruitment, and hiring strategies, timeframes for DSU personnel to meet applicable standards, procedures for evaluating the DSU's progress in employing a staff that is qualified within the meaning of the Act, and other plan components. We believe the written plan is critical to the ability of DSUs to ensure the high quality of its VR staff and, consequently, the high quality of the program that the staff administers. Nevertheless, we are interested in receiving public comment on whether the proposed requirements of the written plan should be reduced, expanded, or modified in any way.

Additionally, the Rehabilitation Services Administration (RSA) has received a number of inquiries from DSUs in States that have established multi-tier certification systems for rehabilitation counselors employed by State Workers' Compensation or other programs. These certification systems include different academic degree requirements depending upon the extent of the individual's experience in the rehabilitation counseling field. For example, State rehabilitation counselor certification may be available to individuals who have a Bachelor's degree and a certain number of years of applicable experience or have a Master's degree and fewer years of experience. If the job functions carried out by counselors employed by the VR and Workers' Compensation programs are similar, it is permissible for the DSU to base its personnel standards for VR counselors on the multi-tiered certification used by the Workers' Compensation program. However, both research findings and the widely held opinion in the disability community support the position that an advanced degree (*e.g.,* a Master's degree in Rehabilitation Counseling) is important to a VR counselor's capability to assess the specialized needs of individuals with disabilities and to assist those individuals in developing an appropriate program of services to address those needs. Thus, we strongly encourage States not to employ minimally qualified individuals, *i.e.,* those with Bachelor's degrees, by routinely substituting ''equivalent experience'' for higher-level degree criteria.

We continue to recognize the need to safeguard DSU employment opportunities for individuals who, because of their disability, are prohibited from obtaining the license or certification applicable to their particular profession. As RSA has previously stated, to the extent that certification and licensing requirements are discriminatory on the basis of disability, these issues should be addressed as compliance issues under section 504 of the Act and the Americans with Disabilities Act (ADA). Nevertheless, we remain aware of the particular difficulty experienced by blind individuals who, historically, have been excluded on the basis of their disability from becoming certified orientation and mobility instructors. The proposed regulations, like the current regulations, would not inhibit DSUs or other VR service providers from hiring blind individuals as orientation and mobility instructors, even though those individuals may not meet current certification requirements. To the extent that a DSU employs blind individuals who do not meet the ''highest requirements in the State'' applicable to the orientation and mobility profession, the State agency's detailed plan under paragraph (c)(1)(ii) of this proposed section would identify the State's strategies, timeframe, and evaluation procedures related to the retraining of these employees to meet the highest requirements. In addition, the Secretary will continue to support the development of alternative certification standards for orientation and mobility instructors in order to ensure that individuals who are blind can meet necessary certification standards within the timeframe outlined in the DSU's plan under paragraph (c)(1)(ii) of this proposed section.

Finally, RSA has received inquiries concerning whether DSUs should focus their efforts on developing personnel standards for certain professions rather than others. We interpret the Act to require that the DSU establish and implement appropriate, certification-based standards for all categories of professionals and paraprofessionals needed to conduct the VR program. Nevertheless, in light of the difficulty States may experience in developing numerous standards at the same time, we would expect DSUs to give priority to those professions that are generally considered most critical to the success of the VR program. Accordingly, RSA encourages DSUs to give highest priority to establishing standards for vocational rehabilitation counselors. Priority should also be given to vocational evaluators, job coaches for individuals in supported employment or transitional employment, job development and job placement specialists, and personnel who provide medical or psychological services to individuals with disabilities.

Section 361.22 Coordination With Education Officials

We have amended this section of the current regulations to conform to the revised statutory requirements governing coordination between vocational rehabilitation and education agencies in the State. As in the past, the proposed regulatory requirements are intended to assist in the timely and efficient transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services from the designated State agency. This intent is clearly reflected in the Conference Report (No. 105–659) to the 1998 Amendments, as is the expectation that the transition services provisions in the Act not be used to shift the responsibility of service delivery from education to rehabilitation during the transition years. Rather, those provisions are intended to define the role of the rehabilitation system as primarily one of planning for the student's years after leaving school. To that end, the proposed regulations would require State VR agencies to develop an individualized plan for employment (IPE) for a student determined to be eligible for VR services before the student leaves the school setting.

However, the proposed regulations also incorporate the new statutory components of the interagency agreement, including those under which

the State VR agency assists in transition planning and in the development of the student's individualized education program (IEP) under the Individuals with Disabilities Education Act. The VR agency is authorized to assist educational agencies in these areas, and is encouraged to do so in Conference Report No. 105–659, without determining whether the student is eligible under the VR program or developing an IPE under section 102(b) of the Rehabilitation Act.

Section 361.23 Requirements Related to the Statewide Workforce Investment System

This section of the current regulations has been revised significantly to reflect both the VR program's responsibilities as a partner of the One-Stop system under WIA and the requirements in the 1998 Amendments related to interagency coordination between the VR program and other components of the statewide workforce investment system under WIA (*i.e.,* other partners of the One-Stop system).

Specifically, § 361.23(a) would restate the requirements in 20 CFR 662.230 (which, along with the other provisions of part 662, implements the statutory requirements under Title I of WIA related to partners of the One-Stop system) by specifying the specific responsibilities that the VR program must fulfill as a partner in that system. Restating these requirements from the WIA implementing regulations in these proposed regulations is intended to inform State units of their WIA-related responsibilities that are in addition to the responsibilities that apply solely to VR programs. As indicated in the Background section of this preamble, we expect the State unit's participation in the One-Stop system to lead to improved access to better quality and more comprehensive services, including services provided by other entities, and to improved long-term employment outcomes for individuals with disabilities. We note that the VR program's participation in the One-Stop system signifies an important step in improving services overall for individuals with disabilities. We also note, however, that in meeting their One-Stop system responsibilities, State units, like all partners of the One-Stop system, must comply with the requirements of the law authorizing their program, meaning that the requirements of the Act and the proposed regulations must be met in the course of participating in One-stop system activities.

Aside from the other issues that individuals might address in their comments on the proposed regulations, we recognize that commenters may request additional policy or interpretative guidance on these new One-Stop system responsibilities of the State unit that are specified in Title I of WIA, the WIA implementing regulations (20 CFR 662), and now in 361.23(a) of the proposed regulations. Accordingly, we ask that commenters on the proposed regulations identify specific questions that they consider most pertinent to the State unit's ability to operate an effective VR program as part of the statewide workforce investment system, including questions related to the list of One-Stop system responsibilities. We intend to help inform VR agencies and other One-Stop system partners about the required role of the VR program by responding to appropriate questions in a subsequent policy issuance, possibly an appendix to the final regulations that follow these proposed regulations.

Section 361.23(b) of the proposed regulations largely track the statutory requirements related to cooperative agreements between the designated State agency and other entities that are components of the statewide workforce investment system under Title I of WIA (*i.e.,* other One-Stop system partners). Coupled with the responsibilities in paragraph (a) of this proposed section, proposed paragraph (b) is intended to enhance coordination throughout the One-Stop service delivery system and ensure that interagency coordination between the State unit and other partners of the One-Stop system will enable individuals with disabilities to receive needed services provided by multiple sources. To that end, both the Act and proposed regulations require State units to enter into cooperative agreements with other partners of the One-Stop system and work toward increasing the capacity of those partners, and the One-Stop service delivery system as a whole, to better address the needs of individuals with disabilities.

It also should be noted that proposed § 361.23(b) differs from the current regulations since it follows the Act's emphasis on coordination between employment training programs across the State's One-Stop service delivery and workforce systems. Those Federal, State, and local programs that are not part of the workforce system but, nevertheless, are appropriate parties with which the VR agency should partner are addressed in § 361.24 of the proposed regulations.

Section 361.24 Cooperation and Coordination With Other Entities

In following the framework of section 101(a)(11) of the Act, § 361.24 of the proposed regulations does not specify, to the extent done in § 361.23 of the current regulations, the programs with which the designated State agency must cooperate. Rather, the proposed regulations, which largely track the revised Act, rely on the State agency to partner with, and use the facilities and services of, appropriate agencies and programs that it identifies.

Section 361.26 Waiver of Statewideness

This section of the proposed regulations is largely unchanged from the current regulations. The chief substantive change, which concerns the authority of States to use geographically earmarked funds (State funds only) without requesting a waiver of statewideness, is more fully discussed in § 361.60 of this section-by-section analysis.

Section 361.29 Statewide Assessment; Annual Estimates; Annual State Goals and Priorities; Strategies; and Progress Reports

This section, which closely tracks section 101(a)(15) of the Act, is intended to guide States in developing a comprehensive, forward-thinking plan for administering and improving their VR programs. The logical, systemic framework of this section—the statewide needs assessment, followed by the annual service and cost estimates, the DSU's goals and priorities for the program, its strategies for achieving those goals, and its reports of progress—would replace several sections of the current regulations that address some of the same requirements. This section also takes the place of the strategic plan provisions of the current regulations since those provisions were removed from the Act as part of the 1998 Amendments.

Section 361.30 Services to American Indians

Proposed § 361.30 is a newly titled section that tracks section 101(a)(13) of the Act in requiring that DSUs provide vocational rehabilitation services to American Indians who are eligible under the VR program to the same extent that it provides services to other significant populations of individuals with disabilities. Because the American Indian population is the sole ''special group'' listed in § 361.30 of the current regulations (i.e., American Indians, U.S. civil employees, and public safety officers) that is specified in the 1998

Amendments, we have changed the title and scope of this proposed section.

Section 361.31 Cooperative Agreements With Private Nonprofit Organizations

Proposed § 361.31 would revise the current regulations to implement section 101(a)(24)(B) of the Act, which requires a description in the State plan of the manner in which the DSU will establish cooperative agreements with private nonprofit vocational rehabilitation service providers. This section of the current regulations addresses the use of community resources in providing vocational rehabilitation services, a requirement that was removed from the Act and, therefore, this proposed section.

Section 361.33 [Reserved]

We propose to remove § 361.33 of the current regulations and reserve that section for future use. The requirements in the current regulatory section regarding the use, assessment, and support of community rehabilitation programs are fully addressed in other reorganized sections of the proposed regulations. For example, the requirement that DSUs assess the need to establish, develop, and improve community rehabilitation programs in the State, and the DSUs' strategies for addressing those needs, are contained in the comprehensive assessment and strategy provisions in proposed § 361.29(a)(1)(i) and (d)(3), respectively. Moreover, proposed § 361.31 requires the DSU to establish cooperative agreements with private nonprofit vocational rehabilitation service providers, such as community rehabilitation programs. Consequently, § 361.33 of the current regulations is considered redundant and, therefore, no longer necessary.

Section 361.35 Innovation and Expansion Activities

Although the separate funding authority and other provisions related to the strategic plan have been removed from the Act, section 101(a)(18) of the Act, in part, retains a requirement that the State reserve a portion of its allotment under section 110 of the Act to further innovation and expansion of its VR program. Proposed § 361.35 would revise the current regulations to track this statutory requirement.

Section 361.36 Ability To Serve All Eligible Individuals; Order of Selection for Services

This proposed section largely tracks § 361.36 of the current regulations, except that the proposed State plan content requirements that remain from this section of the current regulations are those that are specified in the Act. The proposed regulations also would incorporate additional requirements adopted as part of the 1998 Amendments, including the requirement that individuals who do not meet the State's order of selection criteria for receiving services be provided access to the DSU's information and referral system under § 361.37.

Section 361.37 Information and Referral Services

Proposed § 361.37 would implement the requirements in sections 101(a)(5) and (20) of the Act regarding information and referral systems. The Act applies several new criteria for information and referral programs under the VR program, including procedures for referring individuals to those components of the statewide workforce investment system best suited to meet the individual's employment needs and informational requirements that specify the type of information individuals must receive as part of their referrals (*e.g.,* notice to the agency receiving the referral, a contact person in the receiving agency, *etc.*). These requirements are addressed in paragraph (b) of this proposed section.

Section 361.37(c) of the current regulations authorized the State unit to establish an expanded information and referral services program for providing counseling, guidance, and referral for job placement to eligible individuals who do not meet the priority category or categories for receiving vocational rehabilitation services under the order of selection established by a State. This authority, which was discretionary under the current regulations, has been modified in the 1998 Amendments to require the DSU to provide access to the information and referral services that it establishes under this section to those eligible individuals who do not meet the State's order of selection criteria. Thus, a DSU operating under an order of selection must assist eligible individuals who otherwise would not receive services from the State unit to secure needed employment assistance from other entities, particularly other program components of the statewide workforce investment system.

Section 361.42 Assessment for Determining Eligibility and Priority for Services

We propose to modify § 361.42 to implement new provisions in the Act regarding presumptive eligibility for Social Security recipients and beneficiaries (section 102(a)(3) of the Act) and the use of trial work experiences as part of the assessment for determining eligibility (sections 7(2)(D) and 102(a)(2)(B) of the Act). In addition, we propose to revise the requirements in § 361.42(d) of the current regulations concerning extended evaluation and to clarify the current regulatory requirement in § 361.42(a)(1) by identifying the type of personnel that must conduct eligibility determinations. We also propose to remove from the State plan several assurances from the current regulations related to the eligibility criteria and procedures.

Section 361.42 specifies the requirements related to assessments for determining eligibility for vocational rehabilitation services and priority for services under an order of selection. As in current regulations, proposed § 361.42(a) specifies the criteria for determining eligibility under the VR program. Specifically, this section would require, as it has in the past, that an individual's eligibility be based on the following determinations: (1) The individual has a physical or mental impairment. (2) The impairment results in a substantial impediment to employment. (3) The individual requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The Act requires that assessments for determining eligibility be conducted both by qualified personnel (section 103(a)(1) of the Act) and by the DSU (section 102(a)(6) of the Act). Consistent with these statutory emphases (and RSA policy that key programmatic decisions, including those related to eligibility determinations, be made by qualified personnel employed by the State), the proposed regulations would specify that qualified personnel must determine the existence of an impairment and whether the impairment results in a substantial impediment to employment, and that qualified vocational rehabilitation counselors employed by the DSU must determine whether the individual requires vocational rehabilitation services.

Section 361.42(a)(3) of the proposed regulations would implement the new statutory requirement in section 102(a)(3) of the Act concerning presumptive eligibility for Supplemental Security Income (SSI) recipients and Social Security Disability Insurance (SSDI) beneficiaries. Prior to the 1998 Amendments, disabled SSI recipients and SSDI beneficiaries were

statutorily presumed to have both a physical or mental impairment that constituted a substantial impediment to employment (*i.e.,* that these individuals satisfy the first two of the three eligibility criteria) and a severe disability. Section 102(a)(3) of the Act expanded the first of these two presumptions by requiring that disabled SSI recipients and SSDI beneficiaries be presumed eligible for vocational rehabilitation services. These individuals satisfy all of the previously mentioned three eligibility criteria, including the criterion that the individual requires VR services; *i.e.,* that the individual requires VR services in order to prepare for, enter into, or retain employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This change was intended to streamline eligibility for a specific population of individuals who have already satisfied stringent disability-related assessments under the Social Security Act. The proposed regulations reflect the statutory changes.

The Act states that individuals with disabilities receiving SSI or SSDI benefits are presumed eligible under the VR program provided they intend to achieve an employment outcome consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The Conference Report for the 1998 Amendments (Conference Report 105–659, pp. 354–355) interprets this language to mean that SSI- or SSDI-eligible individuals must demonstrate their desire to work in order to receive vocational rehabilitation services. Because we believe all applicants for VR services must intend to work to receive services, the proposed regulations would implement the Conference Report language by requiring DSUs to inform individuals, through the application process for VR services, that individuals receiving VR services must intend to achieve an employment outcome. Consequently, an individual's completion of the application process would demonstrate the individual's desire to achieve an employment outcome.

We believe that these proposed regulatory requirements strike an appropriate balance between ensuring that applicants are fully aware of the employment-related purpose of the VR program (as opposed to entitlement programs like SSI and SSDI) and fulfilling the statutory mandate that SSI recipients and SSDI beneficiaries be considered presumptively eligible for the VR program. We note that the expectation that an applicant receiving SSI or SSDI support, like any applicant, intends to become employed or maintain employment by receiving VR services does not constitute a new or additional criterion of eligibility. The eligibility criteria for the VR program specified in section 102(a)(1) of the Act were unchanged by the 1998 Amendments. The proposed regulations give meaning to congressional intent that SSI recipients and SSDI beneficiaries, in particular, be given ready access to services necessary for the achievement of an appropriate employment outcome by avoiding unnecessary and duplicative assessments.

Proposed § 361.42(b) would expressly authorize States to provide VR services to individuals with disabilities through more immediate determinations of eligibility. Specifically, this proposed provision would allow DSUs to make interim determinations of eligibility for individuals who the DSU reasonably believes will be eligible for VR services at the end of the statutory 60-day period for making eligibility decisions. If a DSU elects to implement this option, the proposed regulations would require the DSU to make a final determination of eligibility within 60 days from the time the individual applies for VR services, as required under § 361.41(b)(1) of the current regulations. In addition, the DSU must establish criteria for using interim eligibility determinations (*e.g.,* interim eligibility given if the DSU is awaiting documentation from another agency), develop procedures for making those determinations, and determine the scope of services that would be available pending final eligibility determinations. States may find this authority particularly useful with regard to SSI or SSDI recipients who, by virtue of section 102(a)(3) of the Act, are presumed eligible under the VR program and may begin to receive VR services prior to the end of the 60-day period while the DSU awaits documentation from the Social Security Administration.

Section 101(a)(12) of the Act, which would be implemented in § 361.42(c) of the proposed regulations, states that the State plan must include an assurance that the State will not impose a residence requirement that excludes from services any individual who is present in the State. This provision preexisted, and was left unchanged by, the 1998 Amendments. However, we believe it is important to clarify, as explained in the Senate Committee Report on the Rehabilitation Act Amendments of 1998, that the requirement for an individual to be present in the State in order to be eligible to receive services should not be interpreted in any way to circumvent an individual's choice of an out-of-State provider (Senate Report 105–166, p.13). The committee further stated that, with regard to out-of-State placements, the requirement that an individual be present in the State must be imposed at the time of the eligibility determination and may not be used as a means of denying the continuation of services that are being provided in an out-of-State setting.

Paragraph (d) of this proposed section would clarify the extent to which DSUs can rely on determinations made by other agencies as a basis for eligibility determinations under the VR program. Section 101(a)(4)(B) of the Act specifies that determinations made by officials of other agencies regarding whether an applicant is an individual with a disability or an individual with a significant disability are to be used, to the extent appropriate and consistent with applicable statutory requirements, to assist the DSU in making determinations related to eligibility for VR services. In order to implement this provision in a manner that is consistent with the specific statutory mandate in section 102(a)(3)(A)(ii) of the Act that SSI recipients and SSDI beneficiaries be presumed eligible under the VR program, § 361.42(d)(2) of the proposed regulations would expand upon section 104(a)(4)(B) of the Act as it applies to determinations made by officials of the Social Security Administration. Specifically, paragraph (d)(2) would require that the DSU use determinations made by the Social Security Administration as evidence that an individual is receiving SSI or SSDI benefits and, therefore, is presumed to meet each criterion of eligibility under the VR program. We note that this proposed paragraph would constitute an exception to the general requirement in proposed § 361.42(a) that a VR counselor employed by the DSU determine that an individual requires VR services. This interpretation is essential, we believe, to ensure that SSI and SSDI recipients be considered presumptively eligible for VR services and receive VR services in a timely manner.

Section 7(2) of the Act revised the definition of ''assessment for determining eligibility and vocational rehabilitation needs'' by changing the statutory emphasis on ''extended evaluation'' to a new approach referred to as an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences. If a DSU

believes that an applicant for VR services is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability (and, therefore, would be ineligible under section 102(a)(2)(A) of the Act), the DSU must, in most instances, assess whether the individual can work by placing the individual in a trial work setting with appropriate supports. The Act requires that trial work experiences be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability (section 102(a)(2)(B) of the Act). The Senate Committee Report accompanying S. 1579, from which the requirements came, notes that the trial work experiences may include supported employment, on-the-job training, and other experiences using realistic work settings (Senate Report 105–166, p. 9).

Proposed § 361.42(e) would implement the requirements for trial work experiences by requiring the DSU to develop a written plan for assessing an individual's ability to perform in a real work setting and requiring that trial placements for assessment purposes be as realistic as possible, meaning that the trial work must occur in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual. We are particularly interested in public comments identifying other types of trial work experiences, in addition to supported employment and on-the-job training, that may be appropriate. We consider the requirement for trial work experiences a critical element in determining eligibility in instances in which the DSU is concerned that the severity of an individual's disability indicates that the individual may be unable to benefit in terms of an employment outcome from VR services.

We emphasize that an individual may not be determined to be ineligible for VR services due to the unavailability of trial work settings since an inability to find suitable trial work would not constitute clear and convincing evidence that the individual cannot benefit from VR services in terms of an employment outcome. In these limited circumstances, the DSU may conduct an extended evaluation to determine the individual's eligibility for services. Though the Act emphasizes the use of trial work experiences for assessment purposes, the Congress recognized the need to allow extended evaluation as an alternative if a real work test is impossible or if the State VR agency has exhausted other options without reaching a determination of eligibility (See Senate Report 105–166, pp. 9–10). Accordingly, proposed § 361.42(f) would retain limited requirements for an extended evaluation that would be based on a written plan for determining eligibility and would provide for VR services in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

Finally, we recognize that this section of the current regulations includes a note explaining how to interpret the term ''clear and convincing evidence.'' The information in that note—*e.g.,* that clear and convincing evidence be determined on a case-by-case basis, constitutes the highest standard used in our civil system of law, and requires that the designated State unit have a high degree of certainty before concluding that an individual is incapable of benefiting from services in terms of an employment outcome—still includes useful guidance material for purposes of satisfying the clear and convincing evidentiary standard. Thus, as specified in the note, the review of existing information still would not provide clear and convincing evidence, meaning that, for example, the use of an intelligence test result alone would not constitute clear and convincing evidence. On the other hand, clear and convincing evidence could include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. Also, under the proposed regulations, a demonstration of clear and convincing evidence requires that the designated State unit explore the applicant's abilities, capabilities, and capacity to perform in work situations and provide appropriate supports. Nevertheless, the note in the current regulations has been removed from the proposed regulations, and the content of the note has been discussed here in this preamble in order to distinguish between regulatory requirements and guidance material. We are interested in commenters' views on whether this information should be reinserted into the final regulations.

Section 361.45 Development of the Individualized Plan for Employment

We propose to revise § 361.45 to implement new provisions in section 102(b)(1) of the Act. Like the statute, the proposed regulations expand an eligible individual's options for developing the IPE, enable individuals to receive technical assistance in developing their IPEs, and specify the information that the DSU must provide to the eligible individual during IPE development. This proposed section tracks section 102(b)(2) of the Act by prescribing procedural requirements related to the development of IPEs, including the requirement that the IPE and any amendments to the IPE be approved and signed by a qualified vocational rehabilitation counselor employed by the DSU. In addition, several portions of this proposed section (as well as other proposed sections) have been removed from the State plan in an effort to both streamline the State plan and reduce paperwork burden on State agencies.

Proposed § 361.45(b)(1) reflects the new statutory requirement in section 102(b)(1) of the Act authorizing an eligible individual or, as appropriate, an individual's representative to develop all or part of the IPE without any assistance, with assistance from a qualified VR counselor (who may or may not be employed by the DSU), or with technical assistance from additional resources outside of the DSU. Additional resources may include independent living centers, community rehabilitation programs, family members, friends, or other programs and individuals.

The statutory options for developing the IPE were adopted from the changes proposed by the Senate in S. 1579. In the report accompanying S. 1579, the Senate committee stated that these changes enable eligible individuals to determine the extent to which the State VR agency would assist in the development of their IPEs (Senate Report 105–166, pp. 22–23). The committee noted that, although the plan's effect is conditioned on the approval and signature of both the eligible individual and a qualified VR counselor employed by the DSU, the new requirements were intended to empower individuals with disabilities to have greater control in developing their IPEs to address their unique needs. In addition, the committee noted its intent that, in many instances, rehabilitation counselors are likely to serve more as facilitators of plan development than they did in the past.

Consistent with the language in the Senate Report, the proposed regulations place the responsibility on the eligible individual or, as appropriate, the individual's representative to decide whether, and to what extent, the DSU or other entity will assist in the development of the individual's IPE.

Regardless of the option chosen, however, the DSU counselor does retain approval (and signature) authority. In addition, it should be noted that the DSU is responsible for ensuring that each IPE is reviewed annually by the individual and a qualified VR counselor who, at the individual's request, may or may not be employed by the DSU. This responsibility is reflected in § 361.45(d)(5).

Proposed § 361.45(b)(2) describes other information that the DSU must provide to an eligible individual or, as appropriate, the individual's representative, including descriptions of the full range of components that must be included in an IPE, the rights and remedies available to the individual, the availability of a client assistance program, and information on how to contact that program. The DSU must also provide, as appropriate, an explanation of agency guidelines and criteria associated with financial commitments concerning an IPE, information on the availability of assistance in completing DSU forms required as part of the IPE, and any additional information that the eligible individual requests or the DSU determines to be necessary.

As in section 102(b)(2)(B) of the Act, proposed § 361.45(c) requires that the IPE be developed in a manner that gives the individual the opportunity to exercise informed choice in selecting the employment outcome, the specific VR services needed to achieve the employment outcome, the entity or entities that will provide the services, and the methods available for procuring the services. We note that informed choice also applies to the selection of both the employment setting and the setting in which VR services are provided as part of the selection of the employment outcome and services respectively. Several of the remaining provisions in this proposed section simply track statutory requirements. In addition, proposed § 361.45(c)(8)—requiring that an IPE for a student with a disability who is receiving special education services be developed in consideration of the student's IEP and in accordance with the plans, policies, procedures, and interagency agreement required in proposed § 361.22—is retained from the current regulations as a necessary safeguard.

The terms ''long-term vocational goal,'' ''intermediate rehabilitation objectives,'' and ''individualized written rehabilitation program'' would be removed from this section of the current regulations since these terms are no longer used in the Act.

Section 361.46 Content of the Individualized Plan for Employment

Proposed § 361.46 identifies the mandatory content components of the IPE, as specified in section 102(b)(3) of the Act. These components must be included in each IPE regardless of the approach that the individual selects under proposed § 361.45(b)(1) for developing the IPE.

Because proposed § 361.46 simply amends current regulations by tracking statutory changes, the proposed changes to this section, other than the burden-reducing step of removing the requirements of this section from the State plan, are purely technical. Also, as in proposed § 361.45, the terms ''long-term vocational goal,'' ''intermediate rehabilitation objectives,'' and ''individualized written rehabilitation program'' would be removed from this section of the current regulations since these terms are no longer used in the Act.

Section 361.47 Record of Services

We propose to modify the regulatory requirements related to the record of services by requiring States to determine, with input from the State Rehabilitation Councils, the type of documentation that they will maintain for each applicant and eligible individual to meet the content items that must be included in each individual's record of services. The proposed regulations also add limited content items that are related to an individual's participation in the VR program.

We believe that States should be given the discretion to determine which sources of documentation to use to meet the record of services requirements (RSA typically examines records of services as part of its periodic monitoring of a State's administration of the VR program). We further believe that consultation with the State Rehabilitation Council (if the State has a Council) is warranted since deciding which type of documentation is sufficient to support determinations affecting an individual's participation in the VR program (*e.g.,* eligibility determinations that must be documented under paragraph (a)(1) of this proposed section) would constitute a policy of general applicability.

The proposed regulations would also move certain content requirements from § 361.46 of the current regulations to the record of services section of the regulations. Documentation requirements specified in proposed § 361.47(a)(2) (ineligibility determinations), (a)(13) (referrals), and (a)(14) (achievement of an employment outcome), we believe, are more likely to be viewed as components of the individual's record rather than the individual's program of services.

The proposed regulations also incorporate new statutory requirements (*e.g.,* § 361.47(a)(10) related to the annual reviews of individuals in extended employment).

The remaining documentation requirements in proposed § 361.47(a)(4) (level of significance of the disability), (a)(6) (IPE), (a)(9) (verification of competitive employment), and (a)(11) (results of mediation or due process hearing) represent documentation requirements that we consider necessary to ensure that important program requirements are met with respect to each individual participating in the VR program.

Finally, this proposed section would amend the current regulations by no longer requiring that the record of services requirements be addressed in the list of assurances of the State plan.

Section 361.52 Informed Choice

Proposed § 361.52 would implement the expanded authority in section 102(d) the Act requiring that applicants and eligible individuals be able to exercise informed choice throughout the rehabilitation process. This proposed section would largely track the statutory requirements provisions and also would retain the current regulatory provisions that specify types of information that could assist eligible individuals to exercise informed choice in the selection of VR services and service providers.

Section 361.53 Comparable Services and Benefits

Section 101(a)(8) of the Act expands the longstanding provisions regarding comparable services and benefits to require interagency agreements between the designated State agency and other appropriate public entities (including the State agency administering the State's medicaid program, public institutions of higher education, and other components of the statewide workforce investment system) to ensure that eligible individuals with disabilities receive, in a timely manner, necessary services to which each party to the agreement has an obligation, or the authority, to contribute. The statutory requirements related to this enhanced interagency coordination would be implemented in paragraph (d) of this proposed section.

Section 361.54 Participation of Individuals in Cost of Services Based on Financial Need

This section of the proposed regulations largely tracks the requirements in the current regulations related to financial needs tests with two primary changes.

First, the list of VR services that are currently exempted from State financial needs tests (*e.g.,* assessment and counseling and guidance), meaning that a State unit cannot require an individual to contribute to the cost of those services, has been expanded to include interpreter services for individuals who are the deaf or hard of hearing, reader services for individuals who are blind, and personal assistance services. We are proposing to exempt these services from financial need assessments since each service is provided to enable an individual to access the VR program or participate in a program of vocational rehabilitation services. Individuals do not apply, nor are they eligible, under the VR program solely to receive these types of support services. Rather, these services allow persons to communicate or perform daily living functions in the course of receiving other VR services that are necessary to their training for employment.

We are interested in commenters' views on this proposed change and request public comment on whether this list of access services that would be exempted from financial needs tests under this section should be modified in any way. We also would like to point out that exempting these additional services from financial needs tests would not affect a State unit's or other service provider's responsibility to comply with section 504 of the Act, the Americans with Disabilities Act, or other Federal statutes and regulations regarding individuals with disabilities. To the extent an entity is obligated under Federal law to provide an accommodation or an auxiliary aid to a VR program participant at no cost to the individual, that entity must provide the necessary service and fulfill those requirements that apply to it.

The proposed regulations also would prohibit State units from applying financial needs tests to individuals receiving SSI or SSDI. As with the requirement that SSI recipients and SSDI beneficiaries be presumed eligible under the VR program, this proposed change is intended to increase efficiency in the way State agencies serve those with disabilities who receive Social Security.

Typically SSI recipients (based on limited income and resources) and SSDI beneficiaries (based on an inability to engage in substantial gainful activity without assistance such as VR services) have limited ability to contribute to the cost of VR services and, thus, are unlikely to meet the State criteria for contributing to service costs. SSI recipients, in fact, have already been determined by the Social Security Administration (SSA) to fall below federally established income and resource standards. The proposed regulations would ensure that those receiving Social Security disability benefits receive timely VR services without being subject to a largely duplicative (at least with regard to SSI recipients), and unnecessary, financial need test as a condition of receiving needed services.

More importantly, exempting SSI recipients and SSDI beneficiaries from financial needs assessments would support the chief goal behind the practice of referring these individuals to the VR program: Enabling individuals to become gainfully employed and to no longer require Social Security benefits. Requiring Social Security recipients, who typically have very limited resources, to contribute to the cost of VR services serves as a disincentive for these individuals to pursue gainful employment through the VR program. Instead, the proposed regulations would support individuals' efforts to pursue employment and avoid Social Security disability benefits. Moreover, the proposed regulations would not overly burden State units since SSA reimburses State units for the cost of VR services provided to eligible individuals receiving SSI and SSDI after the individual has engaged in substantial gainful activity consistent with SSA criteria.

Finally, we believe that the benefits afforded by the changes to this section—*e.g.,* streamlining the process for accessing VR services and reducing disincentives for remaining on public assistance—outweigh any costs to States since many States use financial needs tests only in very limited circumstances.

Section 361.56 Requirements for Closing the Record of Services of an Individual Who Has Achieved an Employment Outcome

We propose to modify § 361.56 of the current regulations to better reflect the requirement that the components of that section must be met before the DSU can close the record of services for an individual who has achieved an employment outcome. Accordingly, the title of § 361.56 of the current regulations (''Individuals determined to have achieved an employment outcome'') would be changed in the proposed regulations to ''Requirements for closing the record of services of an individual who has achieved an employment outcome.'' Proposed § 361.56 would also be removed from the State plan list of assurances.

In order to close the individual's record of services, this proposed section would require that the individual achieve the employment described in the individual's IPE and maintain the employment outcome for an appropriate period of time, but not for less than 90 days. Also, the individual and the qualified VR counselor employed by the DSU must consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment. Each of the proposed provisions is based on criteria specified in § 361.56 of the current regulations. In addition, the proposed regulations would require DSUs to inform individuals of the availability of post-employment services that may be provided after the record of services is closed. We consider each of the proposed provisions to be important protection for individuals by ensuring that the individual's employment outcome is sufficiently stable and that the individual no longer requires VR services to maintain the employment.

Section 361.57 Review of the Designated State Unit Personnel Determinations

Section 361.57 of the proposed regulations would implement section 102(c) of the Act by describing the procedural requirements for resolving disputes between individual applicants or eligible individuals in the VR program and the DSU. The proposed regulations would largely track current regulatory requirements related to informal resolution procedures, due process hearings, selection of impartial hearing officers, and other items. In addition, the proposed regulations would establish requirements for implementing two new procedures that were adopted in the 1998 Amendments to the Act—mediation and administrative review of hearing officer decisions. Finally, under this proposed section, the DSU would no longer be required to include its due process procedures as part of its State plan submission.

Designated State units are required by statute to establish mediation procedures in an effort to resolve disputes in a more timely and less confrontational manner and to reduce the number of formal, adversarial hearings. We note, however, that the Act prohibits DSUs from using mediation as

a means of denying or delaying an individual's right to a hearing. Consequently, the proposed regulations would clarify that an applicant or eligible individual must be given a hearing within 45 days from the individual's request for review if, by that time, the dispute has not been resolved informally or through mediation. Additionally, mediation sessions must be conducted by ''qualified and impartial mediators,'' a term that is defined in § 361.5(b)(38) of the proposed regulations.

States also have the option of developing administrative review procedures through which parties can seek review of hearing officer decisions by the designated State agency (that oversees the DSU) or the Office of the Governor. The 1998 Amendments provides for this administrative review process in place of the prior authority for DSU directors to review hearing decisions, an authority that has been removed from the Act.

The proposed regulations also track the statute by explicitly informing parties to disputes concerning the provision of VR services that they may challenge final agency decisions in civil court.

We also propose to clarify one point related to representation during mediation sessions and hearings. Paragraph (a)(3)(ii) of this proposed section, which, consistent with section 102(c)(3)(B) of the Act, gives individuals the opportunity to be represented in mediation sessions or formal hearings by counsel or another advocate that they select, is to be interpreted broadly. In other words, the individual, as the party to the dispute, has full discretion to choose an attorney, a guardian, family member, a friend, or other person to serve as his or her advocate during mediation or a hearing.

Section 361.60 Matching Requirements

Proposed § 361.60 would revise current regulatory matching requirements for the VR program to reflect a number of statutory changes made by the 1998 Amendments. Specifically, this proposed section would omit the current provisions related to the innovation and expansion grant program since the authority for that program has been removed from the Act. In addition, the regulatory requirements governing sources of State matching funds (*i.e.,* the State's non-Federal share) would be revised to reflect the new statutory provisions governing the use of geographically limited earmarked funds as part of a State's non-Federal share.

Section 361.60(b)(3)(ii) of the proposed regulations would implement section 101(a)(4)(B) of the Act. Section 101(a)(4)(B) of the Act authorizes a State to use funds that are earmarked for a particular geographic area within the State as part of its non-Federal share without obtaining a waiver of statewideness. In these instances, the State must first determine and inform the RSA Commissioner that it cannot provide the full amount of its non-Federal share without using the earmarked funds.

Although section 101(a)(4)(B) of the Act is intended to assist some States in meeting their matching obligations, we emphasize that the Act does not permit States to restrict the use of any Federal funds received under the VR program to certain geographic areas unless the State obtains a waiver of statewideness from the Commissioner of RSA. In the absence of RSA approval, VR services are to be made generally available to individuals with disabilities across the State. The statewideness requirements also apply to the Federal VR program funds that the State receives in return for contributing geographically limited earmarked funds to its non-Federal share. In other words, without a waiver, Federal funds that are matched by privately donated funds must be used on a statewide basis and cannot flow entirely back to the particular geographic area for which the privately donated funds were earmarked.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We believe that the NPRM would substantially improve the State VR Services Program and would yield substantial benefits in terms of program management, efficiency, and effectiveness. We also believe that the proposed regulations represent the least burdensome way to implement the 1998 Amendments to Title I of the Act and fulfill important policy objectives that we consider to be essential to the success of the program. The NPRM would further reduce paperwork or process requirements that currently apply to DSUs and enhance the flexibility of DSUs to meet non-statutory requirements. Increased flexibility of DSUs and other benefits resulting from the proposed regulations are discussed in the following paragraphs of this section and throughout the section-by-section summary of the preamble.

Definitions and Examples

The proposed regulations would incorporate certain definitions under the Workforce Investment Act to give a complete listing of defined terms that apply to the VR program. For purposes of further clarification, the NPRM also includes definitions of two terms that are used in the program but are not defined in the Act—''fair hearing board'' and ''qualified and impartial mediator.''

We have also provided additional clarifying information in the proposed regulations through the limited use of examples. In the past, many in the vocational rehabilitation community have stated that they find this information more accessible and more useful if it is included in the regulations rather than issued separately by RSA as subregulatory guidance. Nevertheless, we emphasize that the examples in the proposed regulations are purely

illustrative and are not intended to restrict State flexibility.

Reduction of Grantee Burden

Non-statutory paperwork requirements have been eliminated or consolidated throughout the NPRM in an effort to reduce regulatory burden on States. In particular, as noted earlier in this preamble, the NPRM would significantly reduce the number of requirements that apply to the DSU's State plan submission. A list of the sections of the current regulations that have been removed from content of the State plan is provided in the Background section of this preamble. Additional burden-reducing steps taken in the NPRM are explained in the section-by-section summary. Those paperwork requirements that would remain in the proposed regulations are considered essential to the proper administration of the program.

Enhanced Protections for Individuals With Disabilities

The proposed regulations include several provisions that are intended to ensure that individuals with disabilities are more readily provided VR services without unnecessary delay. For example, § 361.42 (Assessment for determining eligibility and priority for services) would provide several safeguards for individuals receiving SSI or SSDI benefits (who, therefore, are presumed eligible under the VR program) to ensure that an individual's SSI or SSDI status is verified quickly and that these individuals receive VR services in a timely manner as the statute intends.

As a second example, § 361.57 (Review of State unit personnel decisions) would clarify that the use of mediation or informal means to resolve disputes between VR agencies and consumers must not serve to delay an individual's right to a due process hearing within 45 days of a request for review. Proposed § 361.57 as a whole is designed to expedite resolution of disputes and avoid disruptions in services.

Additional Benefits

Aside from establishing certain regulatory safeguards to address specific issues that arise under the VR program, the NPRM generally follows the statutory framework of giving States significant flexibility in operating their VR programs and assisting individuals with disabilities to achieve high-quality employment. Also, the NPRM closely links the VR program to the State workforce investment system as is required by the Act. Several sections of the NPRM—*e.g.,* § 361.23 (Requirements related to the statewide workforce investment system) and § 361.37 (Information and referral services)—foster increased coordination between VR and the other employment training programs in the workforce system to ensure that individuals with disabilities receive necessary rehabilitation and other services enabling them to achieve an appropriate employment outcome.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 361.42 *Assessment for determining eligibility and priority for services.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These regulations would impact some public institutions of higher education (IHEs) by requiring States to develop formal agreements between State VR agencies and public IHEs for purposes of providing necessary VR services to eligible individuals attending those IHEs. However, because these proposed regulations impose only minimal requirements on IHEs and otherwise would affect only States and State agencies, the regulations would not have a significant impact on small entities. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Sections 361.10, 361.12, 361.13, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.23, 361.24, 361.25, 361.29, 361.30, 361.31, 361.32, 361.34, 361.35, 361.36; 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55 contain information collection requirements. Information collection requirements that pertain to State recordkeeping, but are not associated with the State plan, are contained in §§ 361.14, 361.26, 361.27, 361.28, 361.38, 361.41, 361.47, 361.48, 361.49, 361.50, 361.54, 361.57, 361.60 and 361.62.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: The State Vocational Rehabilitation Services Program

States are eligible to apply for grants under these proposed regulations. The information to be collected includes State plan assurances and descriptions to meet statutory requirements and other required information that the Department considers important to the efficient and effective administration of the program. Required information that is unrelated to the State plan is necessary for purposes of Department monitoring of program performance and compliance.

The Department needs and uses the information related to the State plan for the VR program in order to ensure compliance with Federal requirements. An approved State plan is necessary for a State to receive a grant under the VR program. All State plan information is to be collected and reported once unless the State has submitted the information previously or determines that modifications are necessary, or the Secretary requires modifications due to changes in State policy, Federal law (including regulations), interpretation of the Act by a Federal court or the highest court in the State, or a finding by the Secretary of State noncompliance with the requirements of the Act. However, consistent with statutory requirements, the following State plan information must be submitted annually: Information relating to the comprehensive system of personnel development under § 361.18; reports

relating to assessments, estimates, goals and priorities, and reports of progress under § 361.29; reports on the use of funds reserved for innovation and expansion activities under § 361.35; input provided by the State Rehabilitation Council on State plan revisions in accordance with § 361.16; and other State plan updates of information required under the proposed regulations that are requested by the Secretary.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 12,220 hours for each response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 1,002,050 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collections of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthening federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.126 State Vocational Rehabilitation Services Program)

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: February 22, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 361 to read as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 Purpose.
361.2 Eligibility for a grant.
361.3 Authorized activities.
361.4 Applicable regulations.
361.5 Applicable definitions.

Subpart B—State Plan for Vocational Rehabilitation Services

361.10 Submission, approval, and disapproval of the State plan.
361.11 Withholding of funds.

Administration

361.12 Methods of administration.
361.13 State agency for administration.
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361.15 Local administration.
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361.19 Affirmative action for individuals with disabilities.
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361.22 Coordination with education officials.
361.23 Requirements related to the statewide workforce investment system.
361.24 Cooperation and coordination with other entities.
361.25 Statewideness.
361.26 Waiver of statewideness.
361.27 Shared funding and administration of joint programs.
361.28 Third-party cooperative arrangements involving funds from other public agencies.
361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.
361.30 Services to American Indians.
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361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.
361.33 [Reserved]
361.34 Supported employment State plan supplement.
361.35 Innovation and expansion activities.
361.36 Ability to serve all eligible individuals; order of selection for services.
361.37 Information and referral services.
361.38 Protection, use, and release of personal information.
361.39 State-imposed requirements.
361.40 Reports.

Provision and Scope of Services

361.41 Processing referrals and applications.
361.42 Assessment for determining eligibility and priority for services.

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361.54 Participation of individuals in cost of services based on financial need.
361.55 Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act.
361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.
361.57 Review of State unit personnel determinations.

Subpart C—Financing of State Vocational Rehabilitation Programs

361.60 Matching requirements.
361.61 Limitation on use of funds for construction expenditures.
361.62 Maintenance of effort requirements.
361.63 Program income.
361.64 Obligation of Federal funds and program income.
361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

Authority: 29 U.S.C. 709(c), unless otherwise noted.

Subpart A—General

§ 361.1 Purpose.

Under the State Vocational Rehabilitation Services Program (Program), the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable programs, each of which is—

(a) An integral part of a statewide workforce investment system; and

(b) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Section 100(a)(2) of the Act; 29 U.S.C. 720(a)(2))

§ 361.2 Eligibility for a grant.

Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this Program.

(Authority: Section 101(a) of the Act; 29 U.S.C. 721(a))

§ 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the State plan; and

(b) Administrative costs under the State plan.

(Authority: Section 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

§ 361.4 Applicable regulations.

The following regulations apply to this Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for § 80.24(a)(2).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(b) The regulations in this part 361.

(c) 20 CFR part 662 (Description of One-Stop Service Delivery System under Title I of the Workforce Investment Act of 1998).

(d) 29 CFR part 37, to the extent programs and activities are being conducted as part of the One-Stop service delivery system under section 121(b) of the Workforce Investment Act of 1998.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*).

(2) *Administrative costs under the State plan* means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including expenses for—

(i) Quality assurance;

(ii) Budgeting, accounting, financial management, information systems, and related data processing;

(iii) Providing information about the program to the public;

(iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in § 361.49(a)(4);

(v) The State Rehabilitation Council and other advisory committees;

(vi) Professional organization membership dues for designated State unit employees;

(vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;

(viii) Operating and maintaining designated State unit facilities, equipment, and grounds;

(ix) Supplies;

(x) Administration of the comprehensive system of personnel development described in § 361.18, including personnel administration, administration of affirmative action plans, and training and staff development;

(xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with

mediation and impartial due process hearings under § 361.57; and

(xiv) Legal expenses required in the administration of the program.

(Authority: Section 7(1) of the Act; 29 U.S.C. 705(1))

(3) *American Indian* means an individual who is a member of an Indian tribe.

(Authority: Section 7(19)(A) of the Act; 29 U.S.C. 705(19)(A))

(4) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(5) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(6) *Assessment for determining eligibility and vocational rehabilitation needs* means, as appropriate in each case—

(i)(A) A review of existing data—

(*1*) To determine if an individual is eligible for vocational rehabilitation services; and

(*2*) To assign priority for an order of selection described in § 361.36 in the States that use an order of selection; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(*1*) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in § 361.36 for the individual; and

(*2*) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Section 7(2) of the Act; 29 U.S.C. 705(2))

(7) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(3) of the Act; 29 U.S.C. 705(3))

(8) *Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sections 7(4) and 12(c) of the Act; 29 U.S.C. 705(4) and 709(c))

(9) *Community rehabilitation program.*—(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) For the purposes of this definition, the word *program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(10) *Comparable services and benefits* means—

(i) Services and benefits that are—

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

(ii) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

(11) *Competitive employment* means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(Authority: Sections 7(11) and 12(c) of the Act; 29 U.S.C. 705(11) and 709(c))

(12) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The construction of new buildings;

(iii) The acquisition of existing buildings;

(iv) The expansion, remodeling, alteration, or renovation of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 705(6) and 709(c))

(13) *Designated State agency* or *State agency* means the sole State agency, designated in accordance with § 361.13(a), to administer, or supervise the local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

(14) *Designated State unit* or *State unit* means either—

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation, as its primary function.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Act; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(15) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(20)(A) and 102(a)(1) of the Act; 29 U.S.C. 705(20)(A) and 722(a)(1))

(16) *Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(3)(A) of the Act; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(3)(A))

(17) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program means*—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(18) of this section to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of 4 years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year.

(B) 75 percent of staffing costs for the second year.

(C) 60 percent of staffing costs for the third year.

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

(Authority: Sections 7(12) and 12(c) of the Act; 29 U.S.C. 705(12) and 709(c))

(18) *Establishment of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of an existing building and, if necessary, the land in

connection with the acquisition, if the building has been completed in all respects for at least 1 year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Sections 7(12) and 12(c) of the Act; 29 U.S.C. 705(12) and 709(c))

(19) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(20) *Extended services* means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part and 34 CFR part 363 after an individual with a most significant disability has made the transition from support provided by the designated State unit.

(Authority: Sections 7(13) and 623 of the Act; 29 U.S.C. 705(13) and 795i)

(21) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Act; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(22) *Fair hearing board* means a committee, body, or group of persons established by a State prior to January 1, 1985 that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in § 361.57(i).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(23) *Family member,* for purposes of receiving vocational rehabilitation services in accordance with § 361.48(i), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(17) of the Act; 29 U.S.C. 709(c) and 723(a)(17))

(24) *Governor* means a chief executive officer of a State.

Authority: Section 7(15) of the Act; 29 U.S.C. 705(15))

(25) *Impartial hearing officer.*

(i) *Impartial hearing officer* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(16) of the Act; 29 U.S.C. 705(16))

(26) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Section 7(19)(B) of the Act; 29 U.S.C. 705(19)(B))

(27) *Individual who is blind* means a person who is blind within the meaning of applicable State law.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(28) *Individual with a disability,* except as provided in § 361.5(b)(29), means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Act; 29 U.S.C. 705(20)(A))

(29) *Individual with a disability,* for purposes of §§ 361.5(b)(14), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(5), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Act; 29 U.S.C. 705(20)(B))

(30) *Individual with a most significant disability* means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in § 361.36(d)(1) and (2).

(Authority: Sections 7(21)(E)(i) and 101(a)(5)(C) of the Act; 29 U.S.C. 705(21)(E)(i) and 721(a)(5)(C))

(31) *Individual with a significant disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Act; 29 U.S.C. 705(21)(A))

(32) *Individual's representative* means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Sections 7(22) and 12(c) of the Act; 29 U.S.C. 705(22) and 709(c))

(33) *Integrated setting,*—

(i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(ii) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(34) *Local workforce investment board* means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998.

(Authority: Section 7(25) of the Act; 29 U.S.C. 705(25))

(35) *Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Act; 29 U.S.C. 709(c) and 723(a)(7))

Examples: The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

Example 2: The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

Example 3: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

Example 4: The costs of an individual's participation in enrichment activities related to that individual's training program.

(36) *Nonprofit,* with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Act; 29 U.S.C. 705(26))

(37) *Ongoing support services,* as used in the definition of ''Supported employment''

(i) Means services that are—

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (b)(6)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(27) and 12(c) of the Act; 29 U.S.C. 705(27) and 709(c))

(38) *Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 102(b)(3)(B)(i)(I), and 103(a)(9) of the Act; 29 U.S.C. 705(28), 722(b)(3)(B)(i)(I), and 723(a)(9))

(39) *Physical and mental restoration services means*—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Act; 29 U.S.C. 709(c) and 723(a)(6))

(40) *Physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Act; 29 U.S.C. 705(20)(A) and 709(c))

(41) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(18) of the Act; 29 U.S.C. 709(c)) and 723(a)(18))

Note: Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.*, the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, *e.g.*, the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.*, the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(42) *Qualified and impartial mediator.*

(i) *Qualified and impartial mediator* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(ii) An individual serving as a mediator is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Act; 29 U.S.C. 709(c) and 722(c)(4))

(43) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(30) of the Act; 29 U.S.C. 705(30))

(44) *Reservation* means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Section 121(c) of the Act; 29 U.S.C. 741(c))

(45) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(Authority: Section 7(24) of the Act; 29 U.S.C. 705(24))

(46) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(32) of the Act; 29 U.S.C. 705(32))

(47) *State workforce investment board* means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(Authority: Section 7(33) of the Act; 29 U.S.C. 705(33))

(48) *Statewide workforce investment system* means a system described in section 111(d)(2) of the Workforce Investment Act of 1998.

(Authority: Section 7(34) of the Act; 29 U.S.C. 705(34))

(49) *State plan* means the State plan for vocational rehabilitation services submitted under § 361.10.

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 709(c) and 721)

(50) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Act; 29 U.S.C. 705(20)(A) and 709(c))

(51) *Supported employment* means—

(i) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition as described in paragraph (b)(20) of this section to perform this work; or

(ii) Transitional employment, as defined in paragraph (b)(54) of this section, for individuals with the most significant disabilities due to mental illness.

(Authority: Section 7(35) of the Act; 29 U.S.C. 705(35))

(52) *Supported employment services* means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(36) and 12(c) of the Act; 29 U.S.C. 705(36) and 709(c))

(53) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

(Authority: Section 7(37) and 103(a)(15) of the Act; 29 U.S.C. 705(37) and 723(a)(15))

(54) *Transitional employment,* as used in the definition of ''Supported employment,'' means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(35)(B) and 12(c) of the Act; 29 U.S.C. 705(35)(B) and 709(c))

(55) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: 103(a)(8) of the Act; 29 U.S.C. 723(a)(8))

Examples: The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(56) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in § 361.49.

(Authority: Sections 7(38) and 103(a) and (b) of the Act; 29 U.S.C. 705(38), 723(a) and (b))

Subpart B—State Plan for Vocational Rehabilitation Services

§ 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* For a State to receive a grant under this part, the designated State agency must submit to the Secretary, and obtain approval of, a State plan that contains a description of

the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) *Separate part relating to the vocational rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the vocational rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) *State unified plan.* The State may choose to submit the State plan for vocational rehabilitation services as part of the State unified plan under section 501 of the Workforce Investment Act of 1998. The portion of the State unified plan that includes the State plan for vocational rehabilitation services must meet the State plan requirements in this part.

(d) *Public participation.* Prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan remains in effect subject to the submission of modifications the State determines to be necessary or the Secretary may require based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Act by a Federal court or the highest court of the State, or a finding by the Secretary of State noncompliance with the requirements of the Act or this part.

(f) *Submission of the State plan.* The State must submit the State plan for approval—

(1) To the Secretary on the same date that the State submits a State plan relating to the statewide workforce investment system under section 112 of the Workforce Investment Act of 1998;

(2) As part of the State unified plan submitted under section 501 of that Act; or

(3) To the Secretary on the same date that the State submits a State unified plan under section 501 of that Act that does not include the State plan under this part.

(g) *Annual submission.* (1) The State must submit to the Secretary for approval revisions to the State plan in accordance with paragraph (e) of this section and 34 CFR 76.140.

(2) The State must submit to the Secretary reports containing annual updates of the information required under §§ 361.18, 361.29, and 361.35 and any other updates of the information required under this part that are requested by the Secretary.

(3) The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on August 6, 1998.

(h) *Approval.* The Secretary approves any State plan and any revisions to the State plan that conform to the requirements of this part and section 101(a) of the Act.

(i) *Disapproval.* The Secretary disapproves any State plan that does not conform to the requirements of this part and section 101(a) of the Act, in accordance with the following procedures:

(1) *Informal resolution.* Prior to disapproving any State plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the State plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, Subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act. (Authority: Sections 101(a) and (b), and 107(d) of the Act; 20 U.S.C. 1231g(a); and 29 U.S.C. 721(a) and (b), and 727(d))

§ 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under section 111 or 622(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

(1) The State plan, including the supported employment supplement, has been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106 (b)(2) of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, Subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

Administration

§ 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Sections 101(a)(6) and (a)(10)(A) of the Act; 29 U.S.C. 721(a)(6) and (a)(10)(A))

§ 361.13 State agency for administration.

(a) *Designation of State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is an independent State commission, board, or other agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) *American Samoa.* In the case of American Samoa, the State plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.*

(1) If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section does not have as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.*

(1) At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with § 361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

(v) Participation as a partner in the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

(Authority: Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

§ 361.14 Substitute State agency.

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency must submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Act; 29 U.S.C. 727(c)(3))

§ 361.15 Local administration.

(a) If the State plan provides for the administration of the plan by a local agency, the designated State agency must—

(1) Ensure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in § 361.5(b)(45) that is responsible for the administration of the program within the political subdivision that it serves; and

(2) Develop methods that each local agency will use to administer the vocational rehabilitation program, in accordance with the State plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Sections 7(24) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(24) and 721(a)(2)(A))

§ 361.16 Establishment of an independent commission or a State Rehabilitation Council.

(a) *General requirement.* Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the designated State agency is an independent State commission that—

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities;

(iii) Includes family members, advocates, or other representatives of individuals with mental impairments; and

(iv) Conducts the functions identified in § 361.17(h)(4).

(2) An assurance that—

(i) The State has established a State Rehabilitation Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit, in accordance with § 361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

(iv) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under this part to be submitted to the Secretary;

(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and

(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and

(v) The State plan, and any revision to the State plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in § 361.17(h)(4), and other reports prepared by the Council, and the designated State unit's response to the input and recommendations, including explanations of reasons for rejecting any input or recommendation of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency under § 361.13(a)(3) to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section.

(Authority: Sections 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.17 Requirements for a State Rehabilitation Council.

If the State has established a Council under § 361.16(a)(2) or (b), the Council must meet the following requirements:

(a) *Appointment.* (1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

(2) The appointing authority must select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(b) *Composition.*—(1) *General.* Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson or other designee of the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;

(iii) At least one representative of the Client Assistance Program established under 34 CFR part 370, who must be the director of or other individual recommended by the Client Assistance Program;

(iv) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the Council if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) In a State in which one or more projects are carried out under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects;

(x) At least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce investment board; and

(xii) The director of the designated State unit as an ex officio, nonvoting member of the Council.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty

representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* A majority of the Council members must be individuals with disabilities who meet the requirements of § 361.5(b)(29) and are not employed by the designated State unit.

(d) *Chairperson.* The chairperson must be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) *Terms of appointment.*—(1) Each member of the Council must be appointed for a term of no more than 3 years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this section, for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council must, after consulting with the State workforce investment board—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with § 361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with § 361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

(4) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

(5) Prepare and submit to the Governor and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public Health Service Act, and the State workforce investment board;

(7) Provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(i) *Resources.* (1) The Council, in conjunction with the designated State unit, must prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the Council to carry out its functions under this part.

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary to carry out the functions of the Council must be resolved by the Governor, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council must, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Act; 29 U.S.C. 725)

§ 361.18 Comprehensive system of personnel development.

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

(a) *Data system on personnel and personnel development.* The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in 5 years based on projections of the number of individuals to be served, including individuals with significant disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The State plan must include the State agency's policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that all professional and paraprofessional personnel needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or -recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent that existing standards are not based on the highest requirements in the State, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step. The steps taken by the State unit under this paragraph must be described in a written plan that includes—

(A) Specific strategies for retraining, recruiting, and hiring personnel;

(B) The specific time period by which all State unit personnel will meet the standards described in paragraph (c)(1)(i) of this section;

(C) Procedures for evaluating the State unit's progress in hiring or retraining personnel to meet applicable personnel standards within the time period established under paragraph (c)(1)(ii)(B) of this section; and

(D) In instances in which the State unit is unable to immediately hire new personnel who meet the requirements in paragraph (c)(1)(i) of this section, the initial minimum qualifications that the designated State unit will require of newly hired personnel and a plan for training those individuals to meet applicable requirements within the time period established under paragraph (c)(1)(ii)(B) of this section.

(2) As used in this section—

(i) *Highest requirements in the State applicable to that profession or discipline* means the highest entry-level academic degree needed for any national or State-approved or -recognized certification, licensing, registration, or, in the absence of these requirements, other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.

(ii) *Profession or discipline* means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State unit; and

(C) Has a specified scope of responsibility.

(d) *Staff development.* (1) The State plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to assessment, vocational counseling, job placement, and rehabilitation technology; and

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to—

(i) Training regarding the Workforce Investment Act of 1998 and the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998;

(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and

(iii) Activities related to—

(A) Recruitment and retention of qualified rehabilitation personnel;

(B) Succession planning; and

(C) Leadership development and capacity building.

(e) *Personnel to address individual communication needs.* The State plan must describe how the State unit—

(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Coordination with personnel development under the Individuals with Disabilities Education Act.* The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under the Individuals with Disabilities Education Act.

(Authority: Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.19 Affirmative action for individuals with disabilities.

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.

(Authority: Section 101(a)(6)(B) of the Act; 29 U.S.C. 721(a)(6)(B))

§ 361.20 Public participation requirements.

(a) *Conduct of public meetings.* The State plan must assure that prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendments to the policies and procedures, the designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

(b) *Notice requirements.* The State plan must assure that the designated State agency, prior to conducting the public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(1) State law governing public meetings; or

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) *Summary of input of the State Rehabilitation Council.* The State plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the State plan and any amendment to the plan, in accordance with § 361.16(a)(2)(v).

(d) *Special consultation requirements.* The State plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(e) *Appropriate modes of communication.* The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(Authority: Sections 101(a)(16)(A) and 105(c)(3) of the Act; 29 U.S.C. 721(a)(16)(A), and 725(c)(3))

§ 361.21 Consultations regarding the administration of the State plan.

The State plan must assure that, in connection with matters of general policy arising in the administration of the State plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as appropriate, the individuals' representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

(e) The State Rehabilitation Council, if the State has a Council.

(Authority: Sections 101(a)(16)(B) of the Act; 29 U.S.C. 721(a)(16)(B))

§ 361.22 Coordination with education officials.

(a) *Plans, policies, and procedures.* The State plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency. These plans, policies, and procedures must provide for the development and completion of an individualized plan for employment in accordance with § 361.45 before each student determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student able to be served under the order leaves the school setting.

(b) *Formal interagency agreement.* The State plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of

their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services.

(Authority: Section 101(a)(11)(D) of the Act; 29 U.S.C. 721 (a)(11)(D)).

§ 361.23 Requirements related to the statewide workforce investment system.

(a) *Responsibilities as a partner of the One-Stop service delivery system.* As a required partner in the One-Stop service delivery system (which is part of the statewide workforce investment system under Title I of the Workforce Investment Act of 1998), the designated State unit must carry out the following functions consistent with the Act, this part, Title I of the Workforce Investment Act of 1998, and the regulations in 20 CFR part 662:

(1) Make available to participants through the One-Stop service delivery system the core services (as described in 20 CFR 662.240) that are applicable to the Program administered by the designated State unit under this part.

(2) Use a portion of funds made available to the Program administered by the designated State unit under this part, consistent with the Act and this part, to—

(i) Create and maintain the One-Stop service delivery system; and

(ii) Provide core services (as described in 20 CFR 662.240).

(3) Enter into a memorandum of understanding (MOU) with the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998 relating to the operation of the One-Stop service delivery system that meets the requirements of section 121(c) of the Workforce Investment Act and 20 CFR 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals.

(4) Participate in the operation of the One-Stop service delivery system consistent with the terms of the MOU and the requirements of the Act and this part.

(5) Serve as a representative on the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998.

(b) *Cooperative agreements with One-Stop partners.* (1) The State plan must assure that the designated State unit or the designated State agency enters into cooperative agreements with the other entities that are partners under the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998 and replicates those agreements at the local level between individual offices of the designated State unit and local entities carrying out the One-Stop service delivery system or other activities through the statewide workforce investment system.

(2) Cooperative agreements developed under paragraph (b)(1) of this section may provide for—

(i) Intercomponent training and technical assistance regarding—

(A) The availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and

(B) The promotion of equal, effective and meaningful participation by individuals with disabilities in the One-Stop service delivery system and other workforce investment activities through the promotion of program accessibility consistent with the requirements of the Americans with Disabilities Act of 1990 and section 504 of the Act, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology for individuals with disabilities;

(ii) The use of information and financial management systems that link all of the partners of the One-Stop service delivery system to one another and to other electronic networks, including nonvisual electronic networks, and that relate to subjects such as employment statistics, job vacancies, career planning, and workforce investment activities;

(iii) The use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

(iv) The establishment of cooperative efforts with employers to facilitate job placement and carry out other activities that the designated State unit and the employers determine to be appropriate;

(v) The identification of staff roles, responsibilities, and available resources and specification of the financial responsibility of each partner of the One-Stop service delivery system with respect to providing and paying for necessary services, consistent with the requirements of the Act, this part, other Federal requirements, and State law; and

(vi) The specification of procedures for resolving disputes among partners of the One-Stop service delivery system.

(Authority: Section 101(a)(11)(A) of the Act; 29 U.S.C. 721(a)(11)(A); Sections 121 and 134 of the Workforce Investment Act of 1998; 29 U.S.C. 2841 and 2864)

§ 361.24 Cooperation and coordination with other entities

(a) *Interagency cooperation.* The State plan must describe the designated State agency's cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs, to the extent that those agencies and programs are not carrying out activities through the statewide workforce investment system.

(b) *Coordination with the Statewide Independent Living Council and independent living centers.* The State plan must assure that the designated State unit, the Statewide Independent Living Council established under 34 CFR part 364, and the independent living centers established under 34 CFR part 366 have developed working relationships and coordinate their activities.

(c) *Cooperative agreement with recipients of grants for services to American Indians.*

(1) *General.* In applicable cases, the State plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) *Contents of formal cooperative agreement.* The agreement required under paragraph (a)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and

(iii) Provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to

improve the provision of services to American Indians who are individuals with disabilities.

(d) *Reciprocal referral services between two designated State units in the same State.* If there is a separate designated State unit for individuals who are blind, the two designated State units must establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(Authority: Sections 12(c) and 101(a)(11) (C), (E), and (F) of the Act; 29 U.S.C. 709(c) and 721(a)(11) (C), (E), and (F))

§ 361.25 Statewideness.

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with § 361.26.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.26 Waiver of statewideness.

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) For purposes other than those specified in § 361.60(b)(3)(i) and consistent with the requirements in § 361.60(b)(3)(ii), the State includes in its State plan, and the Secretary approves, a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.27 Shared funding and administration of joint programs.

(a) The designated State agency may share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, if the State submits to the Secretary, and the Secretary approves, a plan describing its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

(c) If a proposed joint program does not comply with the statewideness requirement in § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, if the designated State unit ensures that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewideness requirement in § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.

(a) *Comprehensive statewide assessment.* (1) The State plan must include—

(i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every 3 years describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this part; and

(C) Individuals with disabilities served through other components of the statewide workforce investment system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The State plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments.

(b) *Annual estimates.* The State plan must include, and must assure that the State will annually submit a report to the Secretary that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;

(2) The number of eligible individuals who will receive services provided with funds provided under part B of Title I of the Act and under part B of Title VI of the Act, including, if the designated State agency uses an order of selection in accordance with § 361.36, estimates of the number of individuals to be served under each priority category within the order; and

(3) The costs of the services described in paragraph (b)(1) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) *Goals and priorities.*—(1) *In general.* The State plan must identify the goals and priorities of the State in carrying out the program.

(2) *Council.* The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) *Submission.* The State plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities.

(4) *Basis for goals and priorities.* The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under § 361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) *Service and outcome goals for categories in order of selection.* If the designated State agency uses an order of selection in accordance with § 361.36, the State plan must identify the State's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) *Strategies.*

The State plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those services and devices will be provided to individuals with disabilities on a statewide basis;

(2) Outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(3) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(4) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act; and

(5) Strategies for assisting other components of the statewide workforce investment system in assisting individuals with disabilities.

(e) *Evaluation and reports of progress.* (1) The State plan must include—

(i) The results of an evaluation of the effectiveness of the vocational rehabilitation program; and

(ii) A joint report by the designated State unit and the State Rehabilitation Council, if the State unit has a Council, to the Secretary on the progress made in improving the effectiveness of the program from the previous year. This evaluation and joint report must include—

(A) An evaluation of the extent to which the goals and priorities identified in paragraph (c) of this section were achieved;

(B) A description of the strategies that contributed to the achievement of the goals and priorities;

(C) To the extent to which the goals and priorities were not achieved, a description of the factors that impeded that achievement; and

(D) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(2) The State plan must assure that the designated State unit and the State Rehabilitation Council, if the State unit has a Council, will jointly submit to the Secretary an annual report that contains the information described in paragraph (e)(1) of this section.

(Authority: Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

§ 361.30 Services to American Indians.

The State plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Authority: Sections 101(a)(13) and 121(b)(3) of the Act; 29 U.S.C. 721(a)(13) and 741(b)(3))

§ 361.31 Cooperative agreements with private nonprofit organizations.

The State plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Authority: Sections 101(a)(24)(B); 29 U.S.C. 721(a)(24)(B))

§ 361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if the designated State agency has determined that for-profit agencies are better qualified to provide needed vocational rehabilitation services than nonprofit agencies and organizations.

(Authority: Section 101(a)(24)(A) of the Act; 29 U.S.C. 721(a)(24)(A))

§ 361.33 [Reserved]

§ 361.34 Supported employment State plan supplement.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed annual revisions, must be submitted as a supplement to the State plan submitted under this part.

(Authority: Sections 101(a)(22) and 625(a) of the Act; 29 U.S.C. 721(a)(22) and 795(k))

§ 361.35 Innovation and expansion activities.

(a) The State plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act—

(1) For the development and implementation of innovative

approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, consistent with the findings of the comprehensive, statewide assessment of the rehabilitation needs of individuals with disabilities under § 361.29(a) and the State's goals and priorities under § 361.29(c); and

(2) To support the funding of—

(i) The State Rehabilitation Council, if the State has a Council, consistent with the resource plan identified in § 361.17(i); and

(ii) The Statewide Independent Living Council, consistent with the plan prepared under 34 CFR 364.21(i).

(b) The State plan must—

(1) Describe how the reserved funds will be used; and

(2) Include, on an annual basis, a report describing how the reserved funds were used during the preceding year.

(Authority: Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

§ 361.36 Ability to serve all eligible individuals; order of selection for services.

(a) *General provisions.* (1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and § 361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the State plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range vocational rehabilitation services to all eligible individuals in the State who apply for the services, the State plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under § 361.29(c)(5); and

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under § 361.37.

(b) *Basis for assurance that services can be provided to all eligible individuals.*

(1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for vocational rehabilitation services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) Circumstances that have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year;

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(c) *Time for determining need for an order of selection.*

(1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals.

(d) *Establishing an order of selection.*

(1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of ''individual with a significant disability'' in section 7(21)(A) of the Act and § 361.5(b)(31).

(2) *Factors that cannot be used in determining order of selection of eligible*

individuals. An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, gender, race, color, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual's family.

(e) *Administrative requirements.* In administering the order of selection, the designated State unit must—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and

(4) Ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(f) *State Rehabilitation Council.* The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

(1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;

(2) Priority categories of the particular order of selection;

(3) Criteria for determining individuals with the most significant disabilities; and

(4) Administration of the order of selection.

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Act; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii), and 794(a))

§ 361.37 Information and referral services.

(a) *General provisions.* The State plan must assure that—

(1) The designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce investment system.

(b) *Criteria for appropriate referrals.* In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

(i) A notice of the referral by the designated State agency to the agency carrying out the program;

(ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and

(iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(c) *Order of selection.* In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and § 361.40, the number of eligible individuals who did not meet the agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

(Authority: Sections 101(a)(5)(D) and (20) and 101(a)(10)(C)(ii) of the Act; 29 U.S.C. 721(a)(5)(D) and (20) and (a)(10)(C)(ii))

§ 361.38 Protection, use, and release of personal information.

(a) *General provisions.* (1) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information

containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.*

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with § 361.47(a)(12).

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.*

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(A))

§ 361.39 State-imposed requirements.

The designated State unit must, upon request, identify those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Section 17 of the Act; 29 U.S.C. 714)

§ 361.40 Reports.

(a) The State plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(1) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services under this part; and

(2) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—

(i) Permit the greatest possible cross-classification of data; and

(ii) Protect the confidentiality of the identity of each individual.

(b) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(Authority: Section 101(a)(10)(A) and (F) of the Act; 29 U.S.C. 721(a)(10)(A) and (F))

Provision and Scope of Services

§ 361.41 Processing referrals and applications.

(a) *Referrals.* The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in One-Stop centers established under section 121 of the Workforce Investment Act of 1998, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with § 361.42(e) or, if appropriate, an extended evaluation is

carried out in accordance with § 361.42(f).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate—

(i)(A) Has completed and signed an agency application form;

(B) Has completed a common intake application form in a One-Stop center requesting vocational rehabilitation services; or

(C) Has otherwise requested services from the designated State unit;

(ii) Has provided to the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and

(iii) Is available to complete the assessment process.

(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998.

(Authority: Sections 101(a)(6)(A) and 102(a)(6) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(6))

§ 361.42 Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements*—(1) *Basic requirements.* The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment.

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(iv) A presumption, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(2) *Presumption of benefit.* The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

(3) *Presumption of eligibility for Social Security recipients and beneficiaries.*

(i) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is—

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in § 361.5(b)(31).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(4) *Achievement of an employment outcome.* Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) *Interpretation.* Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

(b) *Interim determination of eligibility.*

(1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in § 361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—

(i) Establish criteria and conditions for making those determinations;

(ii) Develop and implement procedures for making the determinations; and

(iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(c) *Prohibited factors.*

(1) The State plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—

(i) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(ii) The eligibility requirements are applied without regard to the—

(A) Age, gender, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services; and

(D) Particular service needs or anticipated cost of services required by

an applicant or the income level of an applicant or applicant's family.

(d) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (e) of this section, the designated State unit—

(1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(i) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and

(ii) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

(2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) *Trial work experiences for individuals with significant disabilities.*

(1) Prior to any determination that an individual with a significant disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that—

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) *Extended evaluation for certain individuals with significant disabilities.*

(1) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the State unit is able to make the determinations described in paragraph (e)(2)(iii) of this section, the designated State unit must conduct an extended evaluation to make these determinations.

(2) During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(3) During the extended evaluation period, the designated State unit must develop a written plan for providing services necessary to make a determination under paragraph (e)(2)(iii) of this section.

(4) During the extended evaluation period, the designated State unit provides only those services that are necessary to make the determinations described in paragraph (e)(2)(iii) of this section and terminates extended evaluation services when the State unit is able to make the determinations.

(g) *Data for determination of priority for services under an order of selection.* If the designated State unit is operating under an order of selection for services, as provided in § 361.36, the State unit must base its priority assignments on—

(1) A review of the data that was developed under paragraphs (d) and (e) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(2)(A), 7(2)(B)(ii)(I), 7(2)(C), 7(2)(D), 101(a)(12), 102(a)(1), 102(a)(2), 102(a)(3), 102(a)(4)(A), 102(a)(4)(B), 102(a)(4)(C), 103(a)(1), 103(a)(9), 103(a)(10) and 103(a)(14) of the Act; 29 U.S.C. 705(2)(A), 705(2)(B)(ii)(I), 705(2)(C), 705(2)(D), 721(a)(12), 722(a)(1), 722(a)(2), 722(a)(3), 722(a)(4)(A), 722(a)(4)(B), 722(a)(4)(C), 723(a)(1), 723(a)(9), 723(a)(10) and 723(a)(14))

§ 361.43 Procedures for ineligibility determination.

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program;

(d) Refer the individual to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act; and

(e) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(Authority: Sections 102(a)(5) and 102(c) of the Act; 29 U.S.C. 722(a)(5) and 722(c))

§ 361.44 Closure without eligibility determination.

The designated State unit may not close an applicant's record of services prior to making an eligibility

determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.45 Development of the individualized plan for employment.

(a) *General requirements.* The State plan must assure that—

(1) An individualized plan for employment (IPE) meeting the requirements of this section and § 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with § 361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the IPE.

(b) *Purpose.* (1) The designated State unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE.

(2) The IPE must—

(i) Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(ii) To the maximum extent appropriate, result in employment in an integrated setting.

(c) *Required information.* The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) *Options for developing an IPE.* Information on the available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit; or

(C) Other resources outside of the designated State unit.

(2) *Additional information.* Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including—

(i) Information describing the full range of components that must be included in an IPE;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an IPE;

(B) Information on the availability of assistance in completing State unit forms required as part of the IPE; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the IPE;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in § 361.57; and

(iv) A description of the availability of a client assistance program established under 34 CFR part 370 and information on how to contact the client assistance program.

(d) *Mandatory procedures.* The designated State unit must ensure that—

(1) The IPE is a written document prepared on forms provided by the State unit;

(2) The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with § 361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The IPE is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the IPE and a copy of any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The IPE is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The IPE is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated State unit; and

(8) An IPE for a student with a disability receiving special education services is developed—

(i) In consideration of the student's IEP; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under § 361.22.

(e) *Standards for developing the IPE.* The designated State unit must establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.

(f) *Data for preparing the IPE.*—(1) *Preparation without comprehensive assessment.* To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's IPE must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the IPE of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of § 361.5(b)(6)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including—

(A) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Information provided by the individual and the individual's family; and

(C) Information obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

(Authority: Sections 7(2)(B),101(a)(9), 102(b)(1), 102(b)(2), 102(c) and 103(a)(1); 29 U.S.C. 705(2)(B), 721(a)(9), 722(b)(1), 722(b)(2), 722(c) and 723(a)(1))

§ 361.46 Content of the individualized plan for employment.

(a) *Mandatory components.* Regardless of the approach in § 361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—

(1) A description of the specific employment outcome that is chosen by the eligible individual that—

(i) Is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice; and

(ii) To the maximum extent appropriate, results in employment in an integrated setting;

(2) A description of the specific rehabilitation services under § 361.48 that are—

(i) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(3) Timelines for the achievement of the employment outcome and for the initiation of services;

(4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(6) The terms and conditions of the IPE, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in § 361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(b) *Supported employment requirements.* An IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;

(5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) *Post-employment services.* The IPE for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(d) *Coordination of services for students with disabilities who are receiving special education services.* The IPE for a student with a disability who is receiving special education services must be coordinated with the IEP for that individual in terms of the goals, objectives, and services identified in the IEP.

(Authority: Sections 101(a)(8), 101(a)(9), 102(b)(3), and 625(b)(6) of the Act; 29 U.S.C. 721(a)(8), 721(a)(9), 722(b)(3), and 795(k))

§ 361.47 Record of services.

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under § 361.42.

(2) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in § 361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under § 361.42(e) and (f).

(6) The IPE, and any amendments to the IPE, consistent with the requirements under § 361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the IPE with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that the IPE provides for services or an employment outcome in a non-integrated setting, a justification to support the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(b)(11)(ii).

(10) In the event that an individual obtains an employment outcome in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act, documentation of the results of the annual reviews required under § 361.55, the individual's input into those reviews, and the individual's or, if appropriate, the individual's representative's acknowledgement that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under § 361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under § 361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under § 361.37, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.

(14) In the event an individual's record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.

(Authority: Sections 101(a)(6), (9), (14), (20) and 102(a), (b), and (d) of the Act; 29 U.S.C. 721(a)(6), (9), (14), (20) and 722(a), (b), and (d))

§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(a) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.42.

(b) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.45.

(c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with § 361.52.

(d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with §§ 361.23 and 361.24, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(e) In accordance with the definition in § 361.5(b)(39), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in § 361.5(b)(10)).

(f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(g) Maintenance, in accordance with the definition of that term in § 361.5(b)(35).

(h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(b)(55).

(i) Vocational rehabilitation services to family members, as defined in § 361.5(b)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(j) Interpreter services for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(k) Reader services, rehabilitation teaching services, and orientation and

mobility services for individuals who are blind.

(l) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(m) Supported employment services in accordance with the definition of that term in § 361.5(b)(52).

(n) Personal assistance services in accordance with the definition of that term in § 361.5(b)(38).

(o) Post-employment services in accordance with the definition of that term in § 361.5(b)(41).

(p) Occupational licenses, tools, equipment, initial stocks, and supplies.

(q) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(43), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(r) Transition services in accordance with the definition of that term in § 361.5(b)(53).

(s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(Authority: Section 103(a) of the Act; 29 U.S.C. 723(a))

§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

(a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment, including, under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of ''special circumstances'' include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) ''Management services and supervision'' includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. ''Management services and supervision'' may be provided throughout the operation of the small business enterprise.

(ii) ''Initial stocks and supplies'' includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed 6 months.

(iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(Authority: Sections 12(c), 101(a)(6)(A), and 103(b) of the Act; 29 U.S.C. 709(c), 721(a)(6), and 723(b))

§ 361.50 Written policies governing the provision of services for individuals with disabilities.

(a) *Policies.* The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the

rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(b) *Out-of-State services.*

(1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(c) *Payment for services.* (1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(d) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's individualized plan for employment.

(e) *Authorization of services.* The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Authority: Sections 12(c) and 101(a)(6) of the Act and 29 U.S.C. 709(c) and 721(a)(6))

§ 361.51 Standards for facilities and providers of services.

(a) *Accessibility of facilities.* The State plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) *Affirmative action.* The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) *Special communication needs personnel.* The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English speaking ability; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

(Authority: Section 101(a)(6)(B) and (C) of the Act; 29 U.S.C. 721(a)(6)(B) and (C))

§ 361.52 Informed choice.

(a) *General provision.* The State plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) *Written policies and procedures.* The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives in acquiring information that enables them to exercise informed choice in the development of their IPEs with respect to the selection of the—

(i) Employment outcome;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In developing an individual's IPE, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers; and

(5) Degree to which services are provided in integrated settings.

(d) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) State or regional lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, local consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Act; 29 U.S.C. 709(c), 721(a)(19); 722(b)(2)(B) and 722(d))

§ 361.53 Comparable services and benefits.

(a) *Determination of availability.* The State plan must assure that prior to providing any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.* (1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.* (1) The State plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of vocational rehabilitation services (other than those services listed in paragraph (b) of this section) that are included in the IPE, including the provision of those vocational rehabilitation services during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

(i) A State statute or regulation;

(ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) *Agency financial responsibility.* An identification of, or description of a method for defining, the financial responsibility of the public entity for providing the vocational rehabilitation services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) *Conditions, terms, and procedures of reimbursement.* Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) *Interagency disputes.* Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.

(iv) *Procedures for coordination of services.* Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services other than those listed in paragraph (b) of this section.

(e) *Responsibilities under other law.* (1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Investment Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (*e.g.,* interpreter services under § 361.48(j)), other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

§ 361.54 Participation of individuals in cost of services based on financial need.

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under § 361.42(e) or during an extended evaluation under § 361.42(f) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under § 361.48(a), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under § 361.42(e) or an extended evaluation under § 361.42(f).

(B) Assessment for determining vocational rehabilitation needs under § 361.48(b).

(C) Vocational rehabilitation counseling and guidance under § 361.48(c).

(D) Referral and other services under § 361.48(d).

(E) Interpreter services under § 361.48(j).

(F) Reader services under § 361.48(k).

(G) Job-related services under § 361.48(l).

(H) Personal assistance services under § 361.48(n); or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.55 Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act.

The State plan must assure that the designated State unit—

(a) Annually reviews and reevaluates the status of each individual with a disability served under the vocational rehabilitation program who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act for 2 years after the individual achieves the employment outcome (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

(b) Enables the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and documents that input in the record of services, consistent with § 361.47(a)(10), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(c) Makes maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individuals identified in paragraph (a) of this section in engaging in competitive employment as defined in § 361.5(b)(11).

(Authority: Section 101(a)(14) of the Act; 29 U.S.C. 721(a)(14))

§ 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) *Employment outcome achieved.* The individual has achieved the employment outcome that is described in the individual's IPE in accordance with § 361.46(a)(1) and is—

(1) Consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(2) In the most integrated setting possible, consistent with the individual's informed choice.

(b) *Employment outcome maintained.* The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) *Satisfactory outcome.* At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) *Post-employment services.* The individual is informed through appropriate modes of communication of

the availability of post-employment services.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

§ 361.57 Review of State unit personnel determinations.

(a) *Procedures.* The designated State unit must develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) *General requirements.*—(1) *Notification.* Procedures established by the State unit under this section must provide an applicant or eligible individual or, as appropriate, the individual's representative notice of—

(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(2) *Timing.* Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State's order of selection, if the State has established an order of selection under § 361.36;

(iii) At the time the IPE is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) *Evidence and representation.* Procedures established under this section must—

(i) Provide an applicant or eligible individual or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position; and

(ii) Enable an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(4) *Impact on provision of services.* The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a decision by a mediator, hearing officer, or reviewing official or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(5) *Ineligibility.* Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to § 361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) *Informal dispute resolution.* The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State's informal process must not be used to deny the right of an applicant or eligible individual to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) *Mediation.* (1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to allow an applicant or eligible individual and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party may elect to terminate the mediation and pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in § 361.5(b)(42), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis; or

(B) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is issued by the impartial and qualified mediator

and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or eligible individual authorized under paragraph (b)(3)(ii) of this section.

(e) *Impartial due process hearings.* The State unit must establish and implement formal review procedures, as required under paragraph (b)(1)(i) of this section, that provide that—

(1) A hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 45 days of an applicant's or eligible individual's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 45th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or eligible individual or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) *Selection of impartial hearing officers.* The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative.

(g) *Administrative review of hearing officer's decision.* The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under § 361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or eligible individual or, as appropriate, the individual's representative and to the State unit within 30 days of the request for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this section to any officer or employee of the designated State unit.

(4) The reviewing official's decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) *Implementation of final decisions.* If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) *Civil action.* (1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A fair hearing board as defined in § 361.5(b)(22) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this

section do not apply to fair hearing boards under this paragraph (j).

(k) *Data collection.* (1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Commissioner of the Rehabilitation Services Administration (RSA) for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or eligible individual;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or eligible individual; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Commissioner of RSA copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and eligible individuals maintained by the State unit may not preclude the access of the RSA Commissioner to those records for the purposes described in this section.

(Authority: Section 102(c) of the Act; 29 U.S.C. 722(c))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share.*—(1) *General.* Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the State plan, including expenditures for the provision of vocational rehabilitation services and the administration of the State plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) *Non-Federal share.*—(1) *General.* Except as provided in paragraph (b) (2) and (3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the State plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under § 361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with § 361.25, unless a waiver of statewideness is obtained under § 361.26; and

(iii) Any other purpose under the State plan, provided the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 101(a)(3), 101(a)(4) and 104 of the Act; 29 U.S.C. 706(14), 721(a)(3), 721(a)(4) and 724))

Example: Contributions may be earmarked in accordance with § 361.60(b)(3)(iii) for providing particular services (*e.g.,* rehabilitation technology services); serving individuals with certain types of disabilities (*e.g.,* individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (*e.g.,* students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan in accordance with the requirements in § 361.60(b)(3)(ii).

§ 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Act; 29 U.S.C. 721(a)(17)(A))

§ 361.62 Maintenance of effort requirements.

(a) *General requirements.* (1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those expenditures for the fiscal year 2 years prior to the previous fiscal year.

Example: For fiscal year 2000, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1998. Thus, if the State's non-Federal expenditures in 2000 are less than they were in 1998, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 2001 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State provides for the construction of a facility for community rehabilitation

program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to the previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

§ 361.63 Program income.

(a) *Definition.* For purposes of this section, *program income* means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the State plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of Title I of the Act (client assistance), part B of Title VI of the Act (supported employment), and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income cannot be used to meet the non-Federal share requirement under § 361.60.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

§ 361.64 Obligation of Federal funds and program income.

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 716)

§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

[FR Doc. 00–4426 Filed 2–25–00; 8:45 am]

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Federal Register

Monday,
February 28, 2000

Part IV

The President

Presidential Determination No. 2000–13 of February 16, 2000—Determination on Eligibility of the Economic Community of West African States (ECOWAS) To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Presidential Determination No. 2000–14 of February 18, 2000—Vietnamese Cooperation in Accounting for United States Prisoners of War and Missing in Action (POW/MIA)

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Presidential Documents

Title 3—

The President

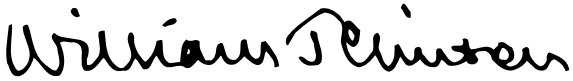
Presidential Determination No. 2000–13 of February 16, 2000

Determination on Eligibility of the Economic Community of West African States (ECOWAS) To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Economic Community of West African States will strengthen the security of the United States and promote world peace.

You are directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 16, 2000.

[FR Doc. 00–4816
Filed 2–25–00; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 2000–14 of February 18, 2000

Vietnamese Cooperation in Accounting for United States Prisoners of War and Missing in Action (POW/MIA)

Memorandum for the Secretary of State

As provided under section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000, as contained in the Consolidated Appropriations Act for FY 2000 (Public Law 106–113), I hereby determine, based on all information available to the United States Government, that the Government of the Socialist Republic of Vietnam is fully cooperating in good faith with the United States in the following four areas related to achieving the fullest possible accounting for Americans unaccounted for as a result of the Vietnam War:

1) resolving discrepancy cases, live sightings, and field activities;

2) recovering and repatriating American remains;

3) accelerating efforts to provide documents that will help lead to the fullest possible accounting of POW/MIAs; and,

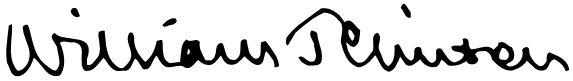
4) providing further assistance in implementing trilateral investigations with Laos.

I further determine that the appropriate laboratories associated with POW/MIA accounting are thoroughly analyzing remains, material, and other information and fulfilling their responsibilities as set forth in subsection (B) of section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and information pertaining to this accounting is being made available to immediate family members in compliance with 50 U.S.C. 435 note.

I have been advised by the Department of Justice and believe that section 610 is unconstitutional because it purports to use a condition on appropriations as a means to direct my execution of responsibilities that the Constitution commits exclusively to the President. I am providing this determination as a matter of comity, while reserving the position that the condition enacted in section 610 is unconstitutional.

In making this determination, I have taken into account all information available to the U.S. Government as reported to me, the full range of ongoing accounting activities in Vietnam, including joint and unilateral Vietnamese efforts, and the concrete results we have attained as a result. Finally, in making this determination, I wish to reaffirm my continuing personal commitment to the entire POW/MIA community, especially to the immediate families, relatives, friends, and supporters of these brave individuals, and to reconfirm that the central, guiding principle of my Vietnam policy is to achieve the fullest possible accounting of our prisoners of war and missing in action.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 18, 2000.

[FR Doc. 00–4817
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Government property; comments due by 3-10-00; published 1-10-00

TRANSPORTATION DEPARTMENT

Coast Guard

Bulk dangerous cargoes:

Barges carrying liquid hazardous material; comments due by 3-7-00; published 9-9-99

Drawbridge operations:

Massachusetts; comments due by 3-7-00; published 1-7-00

Ports and waterways safety:

Monongahela River, PA; regulated navigation area terminated; comments due by 3-7-00; published 1-7-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Grand Canyon National Park, AZ—

Special flight rules in vicinity (SFAR No. 50-2); comments due by 3-6-00; published 2-3-00

Airline employees; occupational safety and health issues; meeting; comments due by 3-8-00; published 10-19-99

Airworthiness directives:

Agusta S.p.A.; comments due by 3-6-00; published 1-5-00

Airbus; comments due by 3-8-00; published 2-7-00

Boeing; comments due by 3-7-00; published 1-7-00

Eurocopter France; comments due by 3-10-00; published 1-10-00

Fokker; comments due by 3-6-00; published 2-4-00

General Electric Co.; comments due by 3-6-00; published 1-6-00

Class E airspace; comments due by 3-6-00; published 1-21-00

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 ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2130/P.L. 106–172

Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000 (Feb. 18, 2000)

Last List February 16, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
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10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
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11	(869–038–00029–6)	20.00	Jan. 1, 1999
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220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
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13	(869–038–00036–9)	25.00	Jan. 1, 1999
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200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
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141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
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400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
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21 Parts:			
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300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
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200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
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§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
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§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
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600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
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200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
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1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
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1–190	(869–038–00114–4)	46.00	July 1, 1999
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630–699	(869–038–00117–9)	23.00	July 1, 1999
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125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
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300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
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18–End	(869–038–00132–2)	41.00	July 1, 1999
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200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.