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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ05

Prevailing Rate Systems; Change in the Survey Cycle for the Orleans, LA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will change the timing of local wage surveys in the Orleans, Louisiana, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change will help even out the local wage survey workload for the Department of Defense and improve the amount and quality of data it collects during local annual wage surveys in the Orleans wage area.

DATES: This interim rule is effective on April 24, 2000. The Office of Personnel must receive comments by April 24, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) requested that the Office of Personnel Management (OPM) change the timing of local wage surveys in the Orleans, LA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. Full-scale wage surveys currently begin in February of each odd-numbered fiscal year. Full-scale wage surveys will begin in the future in June of each even-numbered fiscal year. Under section 532.207 of title 5, Code of Federal Regulations, the scheduling of wage surveys takes into consideration the best timing in relation to wage adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

DOD asked OPM to change the starting time for local wage surveys in the Orleans wage area to June of even fiscal years to help spread out its survey workload. In addition, this change will avoid annual Mardi Gras festivities in New Orleans during the month of February. DOD will next conduct a full-scale wage survey in the Orleans wage area in June 2000. DOD will update the data collected in the full-scale wage survey during a ''wage change'' survey in June 2001.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Orleans NAF wage area from February of odd-numbered fiscal years to June of even-numbered fiscal years.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Under 5 U.S.C. 553(b)(3)(B), I find good cause to waive the general notice of proposed rulemaking. DOD and the local wage survey committee must begin preparations for the Orleans, LA, NAF wage area before a full-scale wage survey begins in June 2000.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532 [Amended]

2. Appendix B to Subpart B is amended by revising under the State of Louisiana the listing of beginning month of survey from ''February'' to ''June'' and the listing of fiscal year of full-scale survey from ''odd'' to ''even'' for the Orleans NAF wage area.

[FR Doc. 00–7141 Filed 3–22–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–034–2]

RIN 0579–AA96

Importation of Poultry Meat and Other Poultry Products From Sinaloa and Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of animal products to relieve certain restrictions on the importation of poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora. Because of the existence of exotic Newcastle disease in Mexico, we have required poultry meat and other poultry products from Sinaloa and Sonora to be cooked, sealed, and packaged to certain specifications to be eligible for entry into the United States. This rule establishes new, less restrictive conditions for the

importation of poultry meat and other poultry products from Sinaloa and Sonora into the United States. This action is based on a risk assessment indicating that such importations will present a negligible risk of introducing exotic Newcastle disease into the United States.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

The regulations in part 94 pertain to, among other things, the importation of meat and other animal products into the United States. Section 94.6 of the regulations governs the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) is considered to exist. Specifically, the regulations allow poultry carcasses, or parts or products of poultry carcasses, to be imported for consumption from regions where END is considered to exist if: (1) The poultry is packed in hermetically sealed containers and cooked by a commercial method after such packing to produce articles that are shelf stable without refrigeration; (2) the poultry is thoroughly cooked and appears to have a thoroughly cooked appearance throughout upon APHIS inspection at the port of arrival; or (3) the poultry is imported under permit after APHIS determines the importation as such will not constitute a risk of introducing or disseminating END into the United States.

On May 21, 1999, we published in the **Federal Register** (64 FR 27711–27717, Docket No. 98–034–1) a proposal to establish a new § 94.22 to allow the importation of poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, under conditions less restrictive than provided in § 94.6. We based our proposed rule on information presented to APHIS by the Mexican Government in 1994 in a request to recognize the Mexican States of Sinaloa and Sonora as free of END, and on a site visit that APHIS officials made to Mexico in 1997 to verify that Sinaloa and Sonora had the veterinary infrastructure, disease control programs, diagnostic capabilities, and surveillance programs necessary to diagnose and prevent an introduction of END. Following the site visit, we performed a qualitative risk assessment on the importation of poultry meat and other poultry products from federally inspected slaughtering and processing plants in Sinaloa and Sonora. The qualitative risk assessment indicated that such importations would present a negligible risk of introducing END into the United States.

Based on the finding of negligible risk, we proposed to relieve restrictions on the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico. However, we proposed to allow the poultry meat and other poultry products to be imported only under certain conditions, to help prevent the possibility that poultry meat and other poultry products from poultry raised in regions of Mexico other than Sinaloa or Sonora could be exported to the United States via Sinaloa or Sonora. We wanted to prevent the following possibilities: That poultry from regions of Mexico other than Sinaloa or Sonora could be moved to Sinaloa or Sonora for slaughter, processing, and export to the United States; that poultry meat or other poultry products from other regions could be moved to Sinaloa or Sonora for export to the United States; or that, once leaving Sinaloa or Sonora, poultry meat or other poultry products from Sinaloa or Sonora could be commingled with poultry meat or other poultry products from other regions of Mexico in transit to the United States. We stated our belief that the proposed import conditions would provide a higher degree of safety against the occurrence of any of these scenarios.

In the proposed rule, we set forth (1) our reasons for believing that the importation of poultry meat and other poultry products from Sinaloa and Sonora could be accomplished safely under certain conditions; (2) the proposed import conditions for poultry meat and other poultry products from Sinaloa and Sonora; and (3) our basis for the proposed import conditions. The proposed import conditions follow:

1. The poultry meat or other poultry products must be derived from poultry that were born and raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196.

2. If processed in any manner, the poultry meat or other poultry products must be processed at a federally inspected processing plant in Sinaloa or Sonora under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

3. The poultry meat or other poultry products may not have been in contact with poultry from any State in Mexico other than Sinaloa and Sonora or from any other region not listed in § 94.6 as a region where END is not known to exist.

4. The foreign meat inspection certificate for the poultry meat or other poultry products (required by the Food Safety and Inspection Service, USDA, under 9 CFR 381.197) must be signed by a full-time salaried veterinarian of the Government of Mexico. The certificate must include statements that certify the above conditions have been met. The certificate must also show the seal number on the shipping container if a seal is required (see below).

5. In addition, if the poultry meat or other poultry products are going to transit any State in Mexico other than Sinaloa or Sonora, or any other region not listed in § 94.6 as a region where END is not known to exist, en route to the United States, a full-time salaried veterinarian of the Government of Mexico must apply serially numbered seals to the containers carrying the poultry meat or other poultry products at the federally inspected slaughter or processing plant in Sinaloa or Sonora, and the seal numbers must be recorded on the foreign meat inspection certificate.

6. Prior to its arrival in the United States, the shipment of poultry meat or other poultry products may not have been in any State in Mexico other than Sinaloa or Sonora or in any other region not listed in § 94.6 unless the poultry meat or poultry products have remained under seal until arrival at the U.S. port and either (1) the numbers on the seals match the numbers on the foreign meat inspection certificate or (2) if the numbers on the seals do not match the numbers on the foreign meat inspection certificate, an APHIS representative at the port of arrival is satisfied that the poultry meat or poultry products were not contaminated during movement to the United States.

We solicited comments concerning our proposal for 60 days ending July 20, 1999. We received 14 comments by that date. They were from an association representing U.S. veterinarians, three associations representing the U.S. poultry industry, several associations representing the Mexican poultry industry, and one individual. The comments are discussed below by topic.

Eggs and Egg Products

Nine commenters supported the proposed rule but requested that APHIS clarify under what conditions eggs and egg products from Sinaloa and Sonora are eligible for importation into the United States. They also asked if the proposed rule relieved restrictions on the importation of eggs and egg products from Sinaloa and Sonora. One commenter requested that we include new conditions for importing eggs and egg products from Mexico in our proposal.

The proposed rule did not alter or otherwise affect the restrictions currently in place for eggs and egg products from Mexico. While our use of the term ''poultry meat and other poultry products'' in our proposal could be construed to include eggs and egg products, it was not our intent to allow eggs and egg products to be imported from Sinaloa and Sonora under conditions less restrictive than those currently in place. Further, our risk assessment did not take into account the risk associated with eggs and egg products, nor did we develop any new conditions specific to the importation of eggs and eggs products for this rule.

Because *Salmonella enteriditis* phage-type 4 is considered to exist in Mexico, eggs from any Mexican State, including Sinaloa and Sonora, may only be imported into the United States in accordance with the conditions contained in § 94.6(d) of the regulations. We are currently reviewing our *S. enteriditis* regulations, and should we determine that changes are warranted, we will publish a proposed rule in the **Federal Register** for comment.

Food Safety and Oversaturation of the U.S. Poultry Market

One commenter opposed the proposed rule based on concerns about food safety and the potential for oversaturating the U.S. poultry market. He cited concern about the potential for poultry meat and other poultry products from Sinaloa and Sonora to carry Salmonella, Listeria spp., and Campylobacter. The commenter suggested that poultry from Mexico should be clearly labeled in stores so it is not confused with poultry raised in the United States. The commenter also stated that there is little need for imports of poultry and eggs from Mexico, considering that the United States is experiencing an egg surplus and spent fowl with little or no market.

APHIS regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. Our chief responsibility is to safeguard American agriculture from foreign animal diseases. However, no poultry meat or other poultry products from Sinaloa or Sonora are eligible to enter into U.S. commerce until USDA's Food Safety and Inspection Service (FSIS) has approved such imports. Issues related to food safety and poultry imports from Mexico will be addressed by FSIS if and when FSIS approves such imports. Product labeling also falls under the jurisdiction of FSIS.

As stated earlier, we are not amending the restrictions currently in place for eggs from Mexico in this rule. Further, by amending the regulations regarding the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, as requested by the Government of Mexico, APHIS has acted in accordance with trade agreements entered into by the United States, including the North American Free Trade Agreement and the Uruguay Round of the General Agreement on Tariffs and Trade. APHIS is bound under these agreements to relieve restrictions on foreign imports of animals and animal products, if requested to do so, if we determine that decreased restrictions on imports will not result in a significant risk of introducing foreign animal diseases into the United States, regardless of the domestic need for such imports.

Compliance With the Regulations

Four commenters supported our proposal provided we could ensure compliance with the proposed regulations. In addition, one commenter stated that if APHIS amends the regulations to allow poultry meat and other poultry products from Sinaloa and Sonora to be imported into the United States under the conditions described in our proposal, APHIS should conduct an ongoing monitoring, evaluation, and verification program to ensure compliance with the regulations.

We will inspect shipments of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, upon arrival in the United States to review the foreign meat inspection certificate and to check the seals on containers. However, we do not intend to conduct a more rigorous monitoring, evaluation, and verification program because, as stated in our proposal and in this document, we believe both Sinaloa and Sonora have the veterinary infrastructure, disease control programs, diagnostic capabilities, and surveillance programs necessary to diagnose and prevent an introduction of END. It is in both States' interest to take measures necessary to prevent an outbreak of END and to comply with APHIS regulations. Should APHIS determine that poultry meat or other poultry products from Sinaloa or Sonora have not met all the conditions of this rule, the poultry meat or other poultry products will be refused entry into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis regarding the economic effect of this rule on small entities. This analysis also provides a cost-benefit analysis.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals from a foreign country into the United States.

This final rule relieves certain restrictions on the importation of poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, by establishing new conditions for the importation of poultry meat and other poultry products from Sinaloa and Sonora into the United States.

Currently, no poultry slaughter facilities in the States of Sinaloa or Sonora are approved by the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture to export poultry meat or other poultry products to the United States. Poultry processing facilities in Sinaloa and Sonora will need FSIS approval prior to exporting poultry meat or other poultry products to the United States. Further, based on the following analysis, we anticipate that, if and when Mexican facilities receive FSIS approval to export poultry meat or other poultry products to the United States, the economic effect

of those imports on U.S. producers and processors will be minimal.

As part of our analysis, we compared the expected benefits of importing poultry meat and other poultry products from Sinaloa and Sonora to the expected costs resulting from a possible disease outbreak. A qualitative risk assessment prepared by APHIS indicates that the expected costs of disease introduction are likely to be zero, as the imports pose a low probability of causing an outbreak of exotic Newcastle disease (END) in the United States.

The benefits of allowing poultry imports from Sinaloa and Sonora under less restrictive conditions are calculated as the net change in consumer and producer surplus that results from the estimated volume of trade. Assuming that, among other things, poultry meat and other poultry products from Sinaloa and Sonora will be a perfect substitute for domestic poultry meat and other poultry products, it is estimated that the net benefits of the imports will be positive. Allowing importations of poultry meat and other poultry products from Sinaloa and Sonora will cause U.S. farm gate prices to decrease marginally, benefiting U.S. consumers.

Our economic analysis examines the potential economic effects of such imports under low- (100 metric tons per year), medium- (1,000 metric tons per year), and high- (5,000 metric tons per year) volume scenarios. We chose these levels because 5,000 metric tons is the highest volume of poultry meat Mexico has ever exported to the world. Further, recently, there have been years when Mexico has exported no poultry meat. Therefore, we used the above import level scenarios based on Mexico's poultry export history.

For the low-volume scenario, consumer surplus is estimated to increase by $67,172 (1996 dollars) and producer surplus would decrease by $67,166, resulting in a net annual benefit of $6. The price of poultry would fall by $0.006 per metric ton. The medium-volume scenario shows an increase in consumer surplus of $671,734, a decrease in producer surplus of $671,645, and a net benefit of $89. The price of poultry would decrease by $0.063 per metric ton. Under the high-volume scenario, consumer surplus would rise by $3,358,942, and producer surplus would fall by $3,357,902, for a net benefit of $1,040. Poultry prices would decrease by $0.30 per metric ton. It is apparent that expected economic effects are very small for each of the scenarios.

The United States Poultry Market

Since the mid-1960s, there have been dramatic changes in the market structure, production technology, and retail marketing of broiler products. Production efficiency has been increased by continuing improvements in genetics, nutrition, housing, equipment, disease control, and management. Improved production efficiency is demonstrated in the reduction of feed and time required for producing a broiler chicken. Growing a 4.5 lb. broiler in 1940 required 14 weeks and 4 pounds of feed per pound of live bird. Today, the same size bird can be produced in 6.5 weeks with less than 2 pounds of feed per pound of bird.

Managerial decisionmaking has shifted from single proprietorship farming operations to vertically integrated poultry producing-processing-marketing firms, in which production and marketing decisions are centralized in a single entity that is either owned directly or controlled through contracts.

Improvement in poultry house technology enables producers to raise chickens in large confinement units throughout the year, resulting in increased production efficiency and consequent reductions in production cost. By 1995, almost all (99 percent) broilers were produced by vertically integrated companies. In 1978, in the United States, the four largest broiler companies controlled 21.4 percent of national production, and the eight largest broiler companies controlled 36 percent. By 1998 the four largest companies produced approximately 47 percent of national production, while the eight largest companies produced about 63 percent.

The potential economic effects of the importation of poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora on national, regional, and local poultry producers are dependent on a number of factors, such as where the products will be consumed in the United States. While it is currently unknown exactly how poultry meat and other poultry products from Sinaloa and Sonora will enter U.S. marketing and distribution channels and where they would ultimately be consumed, it is likely that they will be shipped by truck through Nogales, AZ. Other U.S. States in the region that could receive poultry from Sinaloa and Sonora are California, New Mexico, and Texas. It is unclear whether poultry from Sinaloa and Sonora will be consumed only in these four States. If poultry from Sinaloa and Sonora were purchased by a local retail chain or wholesaler, it would likely be consumed regionally. If it were purchased by a national wholesaler, it could be consumed anywhere in the United States. The effect on small producers will be more pronounced if Sinaloa and Sonora imports affect only California, Arizona, New Mexico, and Texas producers. For the purpose of this analysis, we examined both the possibility that poultry meat and other poultry products from Sinaloa and Sonora will be consumed locally in these four southwestern States and also the possibility that they will enter national distribution channels.

The Small Business Administration (SBA) defines small poultry farms (Standard Industrial Code 0251) as those earning less than $500,000 in annual sales, except for sales of chicken eggs. Industry experts suggest that only those poultry operations producing in excess of 270,000 broiler chickens earn $500,000 or more in sales annually.

According to the SBA definition, at least 99 percent of poultry farms in Arizona, New Mexico, and Texas and 97 percent of poultry farms in California are small entities. There were 1,241 small poultry farms in the four States in 1997, and only 4 farms with estimated annual revenues greater than $500,000. For the United States as a whole, in 1997, there were an estimated 10,289 small poultry farms. Although some structural changes may have occurred among broiler producers since the 1997 Census of Agriculture, it can be assumed that poultry farms remain predominantly small entities.

According to the Census of Agriculture, in 1997, Texas' average sales by small poultry farms ($75,294) were higher than the national average ($62,714), while sales in California were lower ($46,855). There are no comparable data for Arizona's and New Mexico's poultry farmers.

Whether we consider the United States as a whole or only selected southwestern States, the overwhelming majority of poultry farms are small entities. It is reasonable to conclude that, if U.S. poultry producers are affected by this rule, a substantial number will be small entities.

Economic Effects on Small Entities

There is no general rule that sets threshold or trigger levels for ''significant economic impact;'' however, it has been suggested that an economic effect that equals a small business' profit margin—5 to 10 percent of annual sales—could be considered significant.[1]

[1] Verkuil, *Duke Law Journal,* 1982.

We used estimated changes in producer surplus together with the 1997 Census of Agriculture data on poultry inventories and poultry sales to develop very rough estimates of the economic effects of this rule on small poultry farmers across the United States and in selected southwestern States. To do this, we assumed that losses in producer surplus are shared equally among all poultry farms in the geographic area under consideration (either the entire United States or selected southwestern States). We then compared per farm changes in producer surplus with small farms' annual sales to determine whether the economic effects approached the 5–10 percent threshold.

If poultry meat and other poultry products from Sinaloa and Sonora enter national distribution channels and, therefore, economic effects are shared by all U.S. producers, there will not be a significant economic effects on small entities no matter which level (low, medium, or high volume) of imports is assumed. Producer surplus losses per U.S. poultry farm will range from $2 to $103 per year, and these amounts are substantially less than 1 percent of the typical small poultry farmer's annual sales in every scenario.

If, under the high-volume scenario, the maximum 5,000 metric tons are imported annually from Sinaloa and Sonora and consumed locally in Arizona, California, New Mexico, and Texas, there likely will not be a significant economic effect on small entities no matter which level (low, medium, or high volume) of imports is assumed. Producer surplus losses per poultry farm in the selected southwestern States will range from $10 to $488 per year, and these amounts are less than 1 percent of the typical small California or Texas poultry farmer's annual sales in every scenario. Since we have no data available on sales in Arizona and New Mexico, we cannot determine the effect of this rule on producers in those States.

A substantial number (99 percent) of U.S. broiler farms meet the SBA size criteria for designation as small entities. However, this rule is not likely to have a significant economic effect on them. Even under the high-volume import assumption, there will not be a significant economic effect on small U.S. poultry farms, no matter where the Mexican poultry is imported and consumed. Under the most extreme assumptions (imports of 5,000 metric tons and limited geographic area affected), small poultry producers in California and Texas will experience losses in producer surplus equaling less than 1 percent of annual sales, which does not meet the suggested criteria for significant economic effect. Further, we expect that this action will have a similar effect on small poultry producers in Arizona and New Mexico, though we do not have the data to confirm this.

It is very unlikely that a volume of 5,000 metric tons of poultry meat or other poultry products will be exported from Sinaloa and Sonora to the United States since Mexico is not a major exporter of poultry meat or other poultry products. Mexico had yearly world exports of 5,000 metric tons of poultry meat and poultry products in 1990, 1991, and 1992. However, in 1993, 1994, 1995, Mexico exported no poultry meat and other poultry products, and since 1996 has exported less than 1,000 metric tons of poultry meat and other poultry products annually.

Further, even under the high-volume scenario (5,000 metric tons), Mexico's exports to the United States represent less than .05 percent of total U.S. poultry production (over 14 million metric tons in 1997).

Alternatives Considered

In developing this rule, we considered: (1) Making no changes to the existing regulations governing the importation of poultry meat and other poultry products from Sinaloa or Sonora, Mexico; (2) allowing the importation of poultry meat and other poultry products from Sinaloa and Sonora under conditions different from those set forth in this document; or (3) allowing the importation of poultry and poultry products from Sinaloa and Sonora under the conditions set forth in this document.

We rejected the first alternative because poultry meat and other poultry products from Sinaloa and Sonora appear to present little risk of introducing END into the United States, and taking no action would not be scientifically defensible and would be contrary to trade agreements entered into by the United States. We also rejected the second alternative, which would allow the importation of poultry meat and other poultry products from Sinaloa and Sonora under conditions other than those set forth in this document. In developing the criteria for the importation of such poultry meat and other poultry products, we determined that conditions less stringent than those set forth would present a risk of the introduction of END into the United States via poultry meat or other poultry products from regions of Mexico other than Sinaloa or Sonora. We further concluded that more stringent conditions would be unnecessarily restrictive.

We consider the conditions set forth by this rule to be both effective and necessary in ensuring that the risk of END introduction via poultry meat and other poultry product imports from Sinaloa and Sonora remains at a negligible level.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, under the conditions specified in this rule will not present a significant risk of introducing or disseminating END into the United States and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

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

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

addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0144.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. A new § 94.22 is added to read as follows:

§ 94.22 Importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

Notwithstanding any other provisions of this part, poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, may be imported into the United States under the following conditions:

(a) The poultry meat or other poultry products are derived from poultry born and raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196.

(b) If processed, the poultry meat or other poultry products were processed in either Sinaloa or Sonora, Mexico, in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

(c) The poultry meat or other poultry products have not been in contact with poultry from any State in Mexico other than Sinaloa or Sonora or with poultry from any other region not listed in § 94.6 as a region where exotic Newcastle disease is not known to exist.

(d) The foreign meat inspection certificate accompanying the poultry meat or other poultry products (required by 9 CFR 381.197) includes statements certifying that the requirements in paragraphs (a), (b), and (c) of this section have been met and, if applicable, listing the numbers of the seals required by paragraph (e)(1) of this section.

(e) The shipment of poultry meat or other poultry products has not been in any State in Mexico other than Sinaloa or Sonora or in any other region not listed in § 94.6 as a region where exotic Newcastle disease is not known to exist, unless:

(1) The poultry meat or other poultry products arrive at the U.S. port of entry in shipping containers bearing intact, serially numbered seals that were applied at the federally inspected slaughter plant by a full-time salaried veterinarian of the Government of Mexico, and the seal numbers correspond with the seal numbers listed on the foreign meat inspection certificate; or

(2) The poultry meat or other poultry products arrive at the U.S. port of entry in shipping containers bearing seals that have different numbers than the seal numbers on the foreign meat inspection certificate, but, upon inspection of the hold, compartment, or container and all accompanying documentation, an APHIS representative is satisfied that the poultry containers were opened and resealed en route by an appropriate official of the Government of Mexico and the poultry meat or other poultry products were not contaminated or exposed to contamination during movement from Sinaloa or Sonora to the United States.

Done in Washington, DC, this 20th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7211 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 362

RIN 3064–AC38

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comment.

SUMMARY: The FDIC is adopting a rule on an interim basis to implement certain provisions of the Gramm-Leach-Bliley Act. The interim final rule impacts the FDIC's rules and regulations governing activities and investments of insured state banks. Under the rule, FDIC insured state nonmember banks must file a notice before they may conduct activities as principal through a subsidiary that a national bank can conduct only in a financial subsidiary. State nonmember banks must comply with four requirements to carry out these activities. Also, state nonmember banks along with their insured depository institution affiliates must have received a rating of not less than satisfactory under the Community Reinvestment Act. Under the rule, the FDIC may impose standards and prudential safeguards to insulate the bank from liability for activities of the subsidiary.

DATES: The interim final rule is effective March 11, 2000. Comments must be received by May 22, 2000.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. Fax number (202) 898–3838; Internet Address: comments @fdic.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist ((202) 898–6759), Division of Supervision; Linda L. Stamp, Counsel ((202) 898–7310) or Janet V. Norcom, Counsel ((202) 898–8886), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Financial Subsidiary Activities

On November 12, 1999, President Clinton signed the Gramm-Leach-Bliley Act (G–L–B Act) (Pub. L. 106–102) into law. Section 121(d) of the G–L–B Act amended the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1811 *et seq.*) by adding a new section 46 (12 U.S.C. 1831w). New section 46(a) of the FDI Act provides that an insured state bank may control or hold an interest in a subsidiary that engages as principal in activities that would be permissible for a national bank to conduct only through a ''financial subsidiary,'' subject to certain conditions.

A financial subsidiary is a new type of subsidiary for national banks, governed by new section 5136A of the Revised Statutes as created under section 121(a) of the G–L–B Act. Section 5136A permits a financial subsidiary to engage in specified, newly authorized activities that are financial in nature and in activities that are incidental to financial activities if the bank and the subsidiary meet certain requirements and comply with stated safeguards. A financial subsidiary also may combine these financial subsidiary activities with activities that are permissible for national banks to engage in directly. The financial subsidiary activities include many of the activities which are authorized for the new ''financial holding companies'' as laid out in new section 4(k) of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841 *et seq.*) as created by section 103(a) of the G–L–B Act. Section 5136A also permits the Secretary of the Treasury (in consultation with the Board of Governors of the Federal Reserve System) to determine that additional activities are authorized for a financial subsidiary.

A state bank seeking to engage as principal in a financial subsidiary activity under section 46(a) must comply with four conditions listed in section 46(a) itself. In addition, section 103(a) of the G–L–B Act added a new subsection (4)(l)(2) to the BHCA (12 U.S.C. 1843(l)(2)), which contains a mandatory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement enforceable by the FDIC. This differs from the situation before enactment of the G–L–B Act, when some of these activities were impermissible for a national bank and the FDIC reviewed such activities under section 24 of the FDI Act (12 U.S.C. 1831a) as implemented in part 362 of the FDIC's rules and regulations. Among other things, section 24 provides that a state bank subsidiary may not engage as principal in activities which are not permissible for a subsidiary of a national bank, unless the state bank meets its applicable capital requirements and the FDIC determines that the activity does not pose a significant risk to the appropriate deposit insurance fund.

Certain activities which the FDIC has addressed under subpart A of part 362, such as general securities underwriting, are now authorized for a financial subsidiary of a national bank. This means such activities will now be analyzed under section 46(a), and the restrictions the FDIC previously outlined in subpart A of part 362 will not apply to new state bank subsidiaries (or to existing state bank subsidiaries engaging in new financial activities). Existing state bank subsidiaries are grandfathered by section 46(b). 12 U.S.C. 1831w(b).

Where section 5136A of the Revised Statutes specifically prohibits financial subsidiaries from engaging in certain activities as principal, such as real estate development or investment, these activities are outside the scope of section 46(a) and will continue to be dealt with under section 24 and subpart A of part 362. Also, as the Secretary of the Treasury exercises his or her authority in the future to determine that additional activities are authorized for a financial subsidiary, such activities will cease being governed by section 24 or subpart A of part 362, and will begin being governed by section 46(a).

II. Status of Rulemakings Addressing State Bank Activities

Among other things, subpart B of part 362 creates safety and soundness guidelines for an insured state nonmember bank subsidiary which engages in real estate investment activities that would be permissible for a subsidiary of a national bank but not permissible for a national bank directly. On December 1, 1998, the FDIC proposed an amendment to subpart B that would have added safety and soundness guidelines to govern an insured state nonmember bank subsidiary which engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities activity that would be permissible for a subsidiary of a national bank but not permissible for a national bank directly.[1] These real estate and securities provisions were intended to address pending or approved applications under regulations issued by the Office of the Comptroller of the Currency (OCC) which permitted national banks to request OCC approval to engage in certain activities through subsidiaries, even though the activities were not permissible for the national bank itself.[2] In an effort to be proactive in terms of future approvals of activities by the OCC under these regulations, the FDIC also sought comment on a requirement that a notice be filed with the FDIC before an insured state nonmember bank subsidiary engages in any other activity permissible for a subsidiary of a national bank that is not permissible for the parent national bank directly. Now that the OCC is proposing to eliminate its regulations and the G–L–B Act, through section 5136A and section 46(a), has established a new analytical framework, the FDIC will not be pursuing these amendments to subpart B.

The FDIC's December 1, 1998 proposal to amend subpart B also included a proposal to consolidate the remaining provisions of the FDIC's securities activities regulation, § 337.4, into subpart B. In light of the changes made as a result of the G–L–B Act, these revisions will be technical in nature. The FDIC will deal with those aspects of its proposal when the FDIC finalizes the interim final rule adopted in this rulemaking, or at a later time.

The interim final rule adopted in this rulemaking establishes conditions and procedures that apply when a subsidiary of a state nonmember bank seeks to engage as principal in financial activities as authorized under section 46(a). The interim rule contains a general provision advising state nonmember banks of the inapplicability of subpart A of part 362, but the FDIC has not published revised regulatory text modifying subpart A provisions addressing those financial activities which are now addresed by section 46(a). When the FDIC adopts a final version of the interim final rule proposed in this rulemaking, the FDIC will revise current subpart A of part 362 to modify treatment of those activities, such as securities underwriting, which will now be treated under section 46(a) rather than section 24 and subpart A. Also, the real estate provisions of subpart B of part 362 are no longer of any effect, and will be removed. The FDIC invites public comment on such revisions.

[1] 63 FR 66339 (December 1, 1998).

[2] Part 5 of the OCC's regulations governs operating subsidiaries. Section 5.34(f), which confirmed that there could be activities not permissible for a national bank itself that could be conducted by an operating subsidiary, has been superseded. The OCC is currently proposing to eliminate that section of its rule. 65 FR 3157 (January 20, 2000).

III. Description of the Interim Final Rule

The implementation of section 46(a) is lodged in a new subpart E of part 362. Section 362.16 sets out the purpose and scope of the subpart, including the scope of the activities covered. Subpart E will apply to any ''financial subsidiary activity,'' which is defined as an activity which has been authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes and which may be conducted by a national bank only through a financial subsidiary. Similar to subpart A of part 362, the purpose and scope section also clarifies what is meant by ''as principal'' activities, and specifies that the financial subsidiary activity also must be in conformance with other applicable state and federal law.

Sections 362.18(a)–(c) reiterate the four statutory conditions applicable to financial subsidiary activities under section 46(a) as well as the mandatory CRA requirement under section 4(l) of the BHCA. Section 362.18(a) also provides the FDIC with a mechanism which gives the FDIC an opportunity to impose safety and soundness constraints or prudential safeguards on insured state nonmember bank subsidiaries that engage in financial subsidiary activities as principal. If a bank meeting the statuory requirements chooses to engage in such activities, then the bank must file a notice with the FDIC 30 days before the bank's subsidiary may engage in such activities. If the FDIC does not object, the bank's subsidiary may commence the activity. This 30-day advance notice is designed to allow the FDIC time to review the activity and consider whether safety and soundness considerations make it prudent that additional conditions be placed on the conduct of the activity.

The four statutory conditions contained in section 46(a) and reiterated in § 362.18(a) are:

- Each insured depository institution affiliate of the state bank must be well capitalized, and the state bank must be well capitalized after deducting the bank's investment, including retained earnings, in all subsidiaries engaged in financial subsidiary activities as principal.
- The state bank must disclose the capital deduction and the separate assets and liabilities of the subsidiary in any published financial statement.
- The state bank must comply with the financial and operational safeguards required by section 5136A(d) of the Revised Statutes of the United States, which require operational safeguards to separate the bank from the risks of the subsidiary.
- The state bank must comply with sections 23A and 23B of the Federal Reserve Act as amended by section 121(b) of the G–L–B Act, requiring certain transactional restrictions to be observed.

Section 362.18(b) provides that the bank must comply with the above requirements at the time of filing of its notice and continue to comply with these four requirements as long as the bank's subsidiary is engaged in the financial activity. In addition, as specified in § 362.18(c), a subsidiary of an insured state nonmember bank may not commence any financial subsidiary activity as principal if the state bank or any of the state bank's insured depository institution affiliates has received at each one's most recent examination a CRA rating of less than a satisfactory record of meeting community credit needs.[3]

The prior notice procedure under § 362.18 will give the FDIC an opportunity to review a state nonmember bank's proposal and, if necessary, impose additional prudential safeguards to insulate the bank from liability for the activities of the subsidiary. The FDIC holds authority to impose such safeguards under the FDIC's supervisory authority in section 8 of the FDI Act (12 U.S.C. 1818). In addition, section 114(c) of the G–L–B Act (12 U.S.C. 1828a(c)) confirms the FDIC's prudential authority to govern the relationships or transactions between a state nonmember bank and its subsidiaries. Although one of the four conditions imposed by section 46(a) itself requires the bank to have financial and operational safeguards to separate the bank from risks of the subsidiary, the FDIC believes that it is still necessary that the FDIC review the activities that state nonmember banks propose to undertake to evaluate whether the bank's financial and operational safeguards are sufficient. The financial and operational safeguard requirement in section 46(a) cross-references to the same requirement as imposed on financial subsidiaries of national banks under section 5136A(d) of the Revised Statutes, but the OCC has not released any guidance or interpretations of these financial and operational safeguards. The FDIC's review is likely to be especially important in the area of securities underwriting. The FDIC has a long history of imposing prudential safeguards to protect the bank from liability from subsidiaries and affiliates that engage in securities underwriting.[4]

Section 362.18(d) incorporates the grandfather provided under section 46(b), permitting insured state banks to retain their interests in subsidiaries lawfully held before the date of enactment of the G–L–B Act. Section 362.18(d) also clearly states that state banks may not apply to the FDIC under section 24 or subpart A of part 362 (as well as § 337.4 of the FDIC's rules) for approval to engage in a financial subsidiary activity subject to restrictions different than are contemplated under section 46.

The FDIC also has amended its notice processing rules at 303.122(a) to add a reference to the new notices required by the interim final rule.

IV. Administrative Procedure Act

The FDIC will make this interim final rule effective on March 11, 2000 without first reviewing public comments. Pursuant to 5 U.S.C. 553, the FDIC finds that it is impracticable to review public comments prior to the effective date of the interim final rule, and that there is good cause to make the interim rule effective on March 11, 2000, due to the fact that the rule sets forth procedures to implement statutory changes that will become effective on March 11, 2000. The FDIC is seeking public comment on all aspects of the interim final rule and will amend the rule as appropriate after reviewing the comments. The FDIC is specifically seeking comment on whether the FDIC should set forth specific standards applicable to activities conducted under the new section 46 of the FDI Act as it has done in subpart A with respect to activities conducted under section 24 of the FDI Act.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this rule has been submitted to OMB for review. OMB will take action within 60 days of this **Federal Register** publication. The FDIC will publish notice if OMB takes an action other than approval of the collection. The FDIC invites comment on:

(1) Whether the collection of information contained in the regulation

[3] This prohibition is required by section 4(l)(2) of the BHCA as enacted in section 103(a) of the G–L–B Act which is to be codified at 12 U.S.C. 1843(l)(2).

[4] See 12 CFR 337.4.

is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

For further information on the Paperwork Reduction Act aspect of this rule, contact Steven F. Hanft at FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, (202) 898–3907.

Title of the collection: The interim final rule modifies an information collection previously approved by OMB titled ''Activities and Investments of Insured State Banks'' under control number 3064–0111.

Summary of the collection: Generally, the collection includes the description of the activity in which an insured state bank or its subsidiary proposes to engage that would be impermissible absent the FDIC's consent or nonobjection, and information about the relationship of the activity to the bank's and/or subsidiary's operation and compliance with applicable laws and regulations.

Need and Use of the information: The FDIC uses the information to determine whether to grant consent or provide a nonobjection for the insured state bank or its subsidiary to engage in the activity that otherwise would be impermissible. The FDIC's uses its authority under section 8 of the FDI Act and 12 CFR part 362.

Changes to the collection: The interim final rule will modify the collection by adding at § 362.18(a) the requirement of a notice to the FDIC before the state nonmember bank engages through a subsidiary in activities that are authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes but are not permissible for the national bank itself. The contents of the notice are described at § 303.121(b).

Respondents: Banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

Estimated annual burden resulting from this rulemaking:

Frequency of response: Occasional.

Number of responses: 1.

Average number of hours to prepare a response: 8 hours.

Total annual burden: 8 hours.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. As noted above in connection with the Paperwork Reduction Act, the FDIC estimates that the incidences in which insured state nonmember banks will be required to file a notice under the rule will be infrequent and will not require significant time to complete. Furthermore, the interim final rule streamlines requirements for insured state nonmember banks. It simplifies the requirements that apply when insured state nonmember banks conduct certain activities through subsidiaries. Whenever possible, the interim final rule clarifies the expectations of the FDIC when it requires notices or applications to consent to activities by insured state banks. The interim final rule also will make it easier for small insured state banks to locate the rules that apply to their investments.

VII. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this regulation will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

VIII. Congressional Review Act

The OMB has determined that this interim final rule is not a ''major rule'' within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*). The FDIC will file the appropriate reports with Congress and the General Accounting Office so that this interim final rule can be reviewed.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and record keeping requirements, Savings associations.

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1828a, 1831a, 1831e, 1831*o,* 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108; 3207; 15 U.S.C. 1601–1607.

2. Section 303.120 is revised to read as follows:

§ 303.120 Scope.

This subpart sets forth procedures for complying with notice and application requirements contained in subpart A of part 362 of this chapter, governing insured state banks and their subsidiaries engaging in activities which are not permissible for national banks and their subsidiaries. This subpart sets forth procedures for complying with notice and application requirements contained in subpart B of part 362 of this chapter, governing certain activities of insured state nonmember banks, their subsidiaries, and certain affiliates. This subpart also sets forth procedures for complying with the notice requirements contained in subpart E of part 362 of this chapter, governing subsidiaries of insured state nonmember banks engaging in certain financial activities.

3. Section 303.121 is revised to read as follows:

§ 303.121 Filing procedures.

(a) *Where to file.* A notice or application required by subparts A, B or E of part 362 of this chapter shall be submitted in writing to the appropriate regional director (DOS).

(b) *Contents of filing.* A complete letter notice or letter application shall include the following information:

(1) *Filings generally.*—(i) A brief description of the activity and the manner in which it will be conducted;

(ii) The amount of the bank's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage

limitation detailed in subparts A, B or E of part 362 of this chapter;

(iii) A copy of the bank's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive office or principal shareholder of the bank or any related interest of such a person; and

(vii) A description of the bank's expertise in the activity.

(2) [Reserved]

(3) *Copy of application or notice filed with another agency.* If an insured state bank has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b)(1) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

4. In § 303.122, the first sentence of paragraph (a) is revised to read as follows:

§ 303.122 Processing.

(a) *Expedited processing.* A notice filed by an insured state bank seeking to commence or continue an activity under § 362.4(b)(3)(i), § 362.4(b)(5), § 362.8, or § 362.18(a) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. * * *

* * * * *

5. In § 303.123, paragraph (b) is revised to read as follows:

§ 303.123 Delegations of authority.

* * * * *

(b) *Other applications, notices, and actions.* The authority to review and act upon applications and notices filed pursuant to this subpart G and to take any other action authorized by this subpart G or subparts A, B and E of part 362 of this chapter is delegated to the Director (DOS), and except as limited by paragraph (a) of this section, to the Deputy Director and where confirmed in writing by the Director to an associate director and the appropriate regional director and deputy regional director.

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

6. The authority citation for part 362 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l) .

7. A new subpart E is added as follows:

Subpart E—Financial Subsidiary Activities of Insured State Nonmember Banks

Sec.

326.16 Purpose and scope.
326.17 Definitions.
326.18 Restrictions on financial subsidiary activities of insured state nonmember bank subsidiaries.

Subpart E—Financial Subsidiary Activities of Insured State Nonmember Banks

§ 362.16 Purpose and scope.

(a) This subpart, along with the notice procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. This subpart implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that notices be filed with the FDIC before subsidiaries of insured state nonmember banks conduct financial subsidiary activities. The phrase ''financial subsidiary activity'' means an activity which has been authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes (12 U.S.C. 24 A) and which may be conducted by a national bank only through a financial subsidiary. Under this subpart, the FDIC may impose standards and prudential safeguards when subsidiaries of insured state nonmember banks engage in financial subsidiary activities. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement applicable to these financial subsidiary activities.

(b) This subpart does not cover activities conducted other than ''as principal'', defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

(c) The FDIC intends to allow insured state nonmember bank subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state nonmember bank subsidiary to conduct activities that are not authorized or that are prohibited by either state or federal law.

§ 362.17 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Activity, company, control, insured depository institution, insured state bank, insured state nonmember bank,* and *subsidiary* have the same meaning as provided in subpart A of this part.

(b) *Affiliate* has the same meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

§ 362.18 Restrictions on financial subsidiary activities of insured state nonmember bank subsidiaries.

(a) *Financial subsidiary activities.* The FDIC Board of Directors has found that depending on the facts and circumstances of a particular case, the conduct of a financial subsidiary activity as principal in a subsidiary of an insured state nonmember bank may have adverse effects on the safety and soundness of the insured state nonmember bank. The FDIC Board of Directors has found that the FDIC cannot make a determination whether there are adverse effects on the safety and soundness of an insured state nonmember bank engaging in such activities through a subsidiary and whether additional prudential safeguards are necessary, unless the FDIC has had an opportunity for prior review of the activities. Therefore, an insured state nonmember bank may not establish, acquire or hold a subsidiary that engages in financial subsidiary activities as principal or commence any such new activity pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) unless:

(1) The insured state nonmember bank submits a notice under § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter. Consent only will be given if the FDIC determines the activity poses no adverse effects on the safety and soundness of

the insured state nonmember bank. Approvals granted under § 303.122(a) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, prevent unsafe or unsound banking practices, and/or ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(2) The insured state nonmember bank and the subsidiary comply with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), as if the subsidiary were a financial subsidiary within the meaning of section 23A(e)(1).

(3) All insured depository institution affiliates of the insured state nonmember bank are well-capitalized as defined in the appropriate capital regulation and guidance of each institution's primary federal regulator, and the insured state nonmember bank complies with the capital deduction requirement in accordance with § 362.4(e)(1) through (3), discloses that capital separation in any published financial statements and does not consolidate the subsidiary's assets and liabilities with those of the insured state bank in any published financial statements.

(4) The insured state nonmember bank and the subsidiary meet the financial and operational safeguards applicable to a financial subsidiary of a national bank conducting the same activities as provided in section 5136A(d) of the Revised Statutes of the United States (12 U.S.C. 24A(d)).

(b) *Time of compliance.* Any insured state nonmember bank that files a notice under paragraph (a) of this section to which the FDIC does not object must, at the time of the filing of such notice and as long as the insured state nonmember bank's subsidiary is engaged in the financial subsidiary activity, comply with the requirements of paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(c) *Community Reinvestment Act (CRA).* An insured state nonmember bank may not commence any new financial subsidiary activity through a subsidiary as principal or directly or indirectly establish or acquire control of a company engaged in any such activity pursuant to paragraph (a) of this section, if the bank or any of its insured depository institution affiliates received a CRA rating of less than ''satisfactory record of meeting community credit needs'' on its most recent CRA examination prior to when the bank files a notice under this section.

(d) *Coordination with section 24 of the Federal Deposit Insurance Act.* (1) *Grandfathered subsidiaries.* Notwithstanding paragraphs (a) through (c) of this section, an insured state bank may retain its interest in any subsidiary that:

(i) Was conducting the financial subsidiary activity as principal before November 12, 1999;

(ii) With authorization in accordance with section 24 of the Federal Deposit Insurance Act (12 USC 1831a) and its implementing regulation found in subpart A of this part 362; and

(iii) Which continues to meet the conditions and restrictions of the part 362 order or regulation approving the activity as well as other applicable law.

(2) *New financial subsidiary activities.* Notwithstanding subpart A of this part 362 or § 337.4 of this chapter, an insured state bank may not, on or after November 12, 1999, establish, acquire or hold a subsidiary that engages in financial subsidiary activities as principal or commence any such new activity other than as provided in this section.

By order of the Board of Directors.

Dated at Washington, D.C. this 9th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7161 Filed 3–22–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–36–AD; Amendment 39–11624; AD 2000–05–14]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. ALF502 and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD's), applicable to AlliedSignal Inc. ALF502 and LF507 series turbofan engines, that require rework or replacement of No. 4 and 5 bearing oil system hardware, initial and repetitive inspections of the oil system, optional installation of an improved oil filter bypass valve, and repetitive inspection of No. 4 and 5 bearing oil inlet tube, to ensure the integrity of the reduction gear system and overspeed protection system. This action would require replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly, and installation of a reworked or modified fourth turbine rotor disk assembly as a part of a design change to the new No. 4 bearing configuration that eliminates the requirement for repetitive inspections of oil system and No. 4 and 5 bearing oil inlet tube assembly. This amendment is prompted by one report of a contained power turbine rotor shaft separation forward of the Stage 4 low pressure turbine (LPT) rotor on an AlliedSignal Inc. ALF502R–5 engine. The LPT failure was caused by improper inspection of the engine oil system required by AD 97–05–11 R1.

The actions specified by this AD are intended to prevent a No. 4 and 5 duplex bearing failure, which can result in a Stage 4 LPT rotor failure, an uncontained engine failure, and damage to the airplane.

DATES: Effective date April 27, 2000.

The incorporation by reference of SB ALF 502R–72–0160, revision 2, dated May 26, 1987; ALF 502R–72–0160, revision 1, dated March 23, 1987; SB ALF502R 79–9 revision 1, dated November 27, 1996; SB ALF502L 79–0171, revision 1, dated November 27, 1996; SB ALF502R–79–0162, revision 2, dated September 8, 1987; SB ALF502R–79–0162, revision 1, dated May 26,1987; SB ALF502R–79–0162, dated March 23,1987; SB LF507–1F-79–5, revision 1, dated November 27, 1996; and SB LF507–1H 79–5, revision 1, dated November 27, 1996, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 16, 1997 (62 FR 15378).

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate,

3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone 562–627–5245; fax 562–627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 80–22–53, Amendment 39–3995 (45 FR 83202, December 18, 1980) and AD 97–05–11 R1, Amendment 39–10091 (62 FR 41262, August 1, 1997) which are applicable to AlliedSignal Inc. ALF502 and LF507 series turbofan engines was published in the **Federal Register** on October 14, 1998 (63 FR 55056). That action proposed to require rework or replacement of No. 4 and 5 bearing oil system hardware, initial and repetitive inspections of the oil system, optional installation of an improved oil filter bypass valve, a more stringent oil system inspection of the full flow chip detector, oil filter impending bypass button, oil acid number, oil color, and oil quantity.

Manufacturer Service Information

The FAA has reviewed and approved the technical contents of the accomplishment instruction paragraphs of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72–1030, Revision 2, dated December 14, 1998, and AlliedSignal Inc. SB No. ALF/LF 72–1040, Revision 1, dated December 14, 1998, that describe procedures for installation of a reworked or modified fourth turbine rotor disk assembly, and that describes procedures for replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly.

Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD supersedes AD's 80–22–53 and 97–05–11 R1 to require replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly, and installation of a reworked or modified fourth turbine rotor disk assembly as a part of design change to the new No. 4 bearing configuration, that eliminates the requirements for repetitive inspections of oil system and No. 4 and 5 bearing oil inlet tube assembly.

Correction to Note 2

Reference to Avco Lycoming Textron SB No. ALF 502R–72–0160, Revision 2, dated May 26, 1987, which was inadvertently omitted from the NPRM and has been added to Note 2. Revision 2 to SB No. ALF 502R–72–0160, dated May 26, 1987, was an editorial change to the SB and does not affect the technical content of the SB.

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

Economic Cost Analysis

There are approximately 1,500 AlliedSignal Inc. ALF502 and LF507 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $30,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,540,000.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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 39–3995 (45 FR 83202, December 18, 1980), and Amendment 39–10091 (62 FR 41262, August 1, 1997) and by adding a new airworthiness directive to read as follows:

2000–05–14 AlliedSignal Inc.: Amendment 39–11624. Docket 96–ANE–36–AD Supersedes AD 80–22–53, Amendment 39–3995, and AD 97–05–11 R1, Amendment 39–10091.

Applicability: Allied Signal Inc. (formerly Textron

Lycoming and Avco Lycoming) ALF502 and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146–100A, BAe 146–200A, BAe 146–300A, AVRO 146–RJ70A,

AVRO 146–RJ85A, AVRO 146–RJ100A, and Canadair Model CL–600–1A11 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously. To prevent a No. 4 and 5 duplex bearing failure, which can result in a Stage 4 low pressure turbine (LPT) rotor failure, an uncontained engine failure, and damage to the airplane, accomplish the following:

Replacement or Rework of the No. 4 and 5 Bearing Inlet Assembly

(a) For AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) ALF502L and ALF502L2 series engines, prior to further flight, rework or replace the following parts and reassemble in accordance with Avco Lycoming Service Bulletin (SB) No. ALF502–72–0008, Revision 1, dated October 14, 1980,

and SB No. ALF502–72–0010, dated October 14, 1980:

(1) Remove No. 4 and 5 bearing inlet tube assembly, part number (PN) 2–141–380–07/–08/–11/–12 and replace with PN 2–141–380–13/–14.

(2) Remove adapter assembly, PN 2–141–640–01 and replace with PN 2–141–640–02.

(3) If not previously incorporated, install Bracket, PN 2–143–049–01, spacer PN 2–143–051–01, two bolts PN STD3061–11, Clamp PN TA1501H05, Bolt PN MS9565–06, Nut PN STD3073–3, and Washer PN STD3035C2.

(4) Rework fourth stage turbine nozzle, PN 2–141–150–38, to PN 2–141–150–42, or PN 2–141–150–39 to PN 2–141–150–41 in accordance with SB No. ALF502–72–0010.

(5) Rework upper half of fire shield, PN 2–163–990–04 to 2–163–990–07, or PN 2–163–990–05 to 2–163–990–08 in accordance with SB No. ALF502–72–0010.

(6) Install: Washer, PN 2–163–585–01, and Spring PN 2–163–586–01, and Retainer PN 2–163–584–01.

(7) Remove oil feed line, PN 2–173–240–02 and replace with PN 2–303–377–01.

(8) Remove jam nut, PN R44118P05W. (The function of the jam nut is accomplished by the parts in paragraphs (a)(6) and (a)(7) of this AD.)

(9) Remove oil inlet support bracket, PN 2–141–335–02 and replace with PN 2–141–335–03.

(b) After replacement of the No. 4 and 5 bearing oil inlet tube and associated hardware in accordance with paragraph (a) of this AD, inspect the No. 4 and 5 bearing oil inlet tube at intervals not to exceed 100 hours time in service (TIS) since last inspection for chafing, in accordance with Avco Lycoming SB No. ALF502–72–0008, Revision 1, dated October 14, 1980. Prior to further flight, replace oil inlet tubes that exhibit chafing in excess of 0.010 inch deep with serviceable parts.

Inspection of Oil Filter Bypass Valve

(c) For ALF502R series engines equipped with oil filter bypass valve, PN 2–303–432–01, accomplish the following:

(1) Inspect the engine oil filter bypass valve for leakage within the next 25 hours TIS or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, or Revision 1, dated May 26, 1987. Prior to further flight, remove from service oil filters exhibiting any leakage and replace with serviceable parts.

(2) Thereafter, inspect the oil filter bypass valve for any leakage in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, or Revision 1, dated May 26, 1987, at intervals not to exceed 50 hours TIS or 50 flights in service since last inspection, whichever occurs first, and at the same time accomplish the following:

(i) Visually inspect the following engine chip detectors for metal contamination:

(A) For engines with a full flow chip detector installed, inspect the full flow chip detector.

(B) For engines without a full flow chip detector installed, inspect the chip detectors located in the accessory gearbox, Number 2 bearing scavenge line, and No. 4 and 5 bearing scavenge line.

(ii) For engines with engine chip detectors exhibiting Condition 3, or Condition 2, or Condition 1 where the oil filter bypass indicator is extended, prior to further flight, remove oil filter bypass valves exhibiting any leakage and replace with a serviceable part.

Note 2: Chip detector conditions are described in Figures 1, 2 and 3 of Avco Lycoming Textron SB No. ALF 502R–72–0160, Revision 1, dated March 23, 1987, or Revision 2, dated May 26, 1987.

(3) At the next engine shop visit, or within 2,500 hours TIS after the effective date of this AD, whichever occurs first, conduct the oil filter bypass valve spring compression force check, in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987. Oil filter bypass valves that do not comply with the spring compression force limits contained in Avco Lycoming Textron SB No. ALF502R–79–0162, Original, dated March 23, 1987, must be removed and replaced with oil filter bypass valve, PN 2–303–432–02. Replacement of oil filter bypass valve, PN 2–303–432–01, with the improved oil filter bypass valve, PN 2–303–432–02, constitutes terminating action for the inspection requirements of paragraphs (c)(1) and (c)(2) of this AD.

Definition of a Shop Visit

(4) For the purpose of this AD, an engine shop visit is defined as engine maintenance that entails any of the following:

(i) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a ''shop visit.''

(ii) Removal of a disk, hub, or spool.

(iii) Removal of the fuel nozzles.

(d) For ALF502R, ALF502L, LF507–1F, and LF507–1H series engines, equipped with the No. 4 and 5 duplex bearing assembly numbers 2–141–930–01, 2–141–930–02, or 2–141–930–03, perform the repetitive oil system maintenance and inspections in accordance with the intervals and procedures described in the Accomplishment Instructions paragraphs of the applicable AlliedSignal Inc. SBs referenced in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this AD, within the next 25 hours TIS or 25 flights in service, whichever occurs first, from the effective date of this AD.

(1) For ALF502R series engines, in accordance with AlliedSignal Inc. SB No. ALF502R 79–9, Revision 1, dated November 27, 1996.

(2) For ALF502L series engines, in accordance with AlliedSignal Inc. SB No. ALF502L 79–0171, Revision 1, dated November 27, 1996.

(3) For LF507–1F series engines, in accordance with AlliedSignal Inc. SB No. LF507–1F–79–5, Revision 1, dated November 27, 1996.

(4) For LF507–1H series engines, in accordance with AlliedSignal SB No. LF507–1H–79–5, Revision 1, dated November 27, 1996.

Modification of the No. 4 and 5 Duplex Bearing Assembly

(e) Modify the fourth turbine rotor disk assembly at the next access to the No. 4 and 5 duplex bearing assembly during the engine shop visit not to exceed 6,000 cycles in service (CIS) or 6,000 hours TIS, whichever occurs first, from the effective date of this AD, in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. SB No. ALF/LF 72–1030, Revision 2, dated December 14, 1998.

(f) Modify the power turbine bearing housing assembly at the next access to the No. 4 and 5 duplex bearing assembly during the engine shop visit not to exceed 6,000 CIS or 6,000 hours TIS, whichever occurs first, from the effective date of this AD, in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. SB No. ALF/LF 72–1040, Revision 1, dated December 14, 1998.

(g) Performance of the modifications described in paragraphs (e) and (f) of this AD constitutes terminating action to the rework and replacement requirements of paragraph (a), and the repetitive inspection requirements of paragraphs (b), (c), and (d) of this AD.

Note 3: Installation of a reworked or modified fourth turbine rotor disk assembly as a part of a design change to the new No. 4 bearing configuration that eliminates the requirements for repetitive inspections of oil system does not relieve the operators from accomplishment of the engine oil system inspection in accordance with the engine manufacturer's applicable maintenance documents.

Alternative Method of Compliance

(h) 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 Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

Special Flight Permits

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

Manufacturer Service Bulletins

(j)(1) The inspections, modifications, and rework shall be done in accordance with the following AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) service bulletins:

Document No.	Pages	Revision	Date;
ALF502–72–0008	All	1	October 14, 1980.
Total Pages: 6			
ALF502–72–0010	All	Original	October 14, 1980.
Total Pages: 8			
ALF/LF 72–1030	1–2	2	December 14, 1998.
	3	1	February 23, 1998.
	4	2	December 14, 1998.
	5	1	February 23, 1998.
	6–7	2	December 14, 1998.
	8–9	1	February 23, 1998.
	10	2	December 14, 1998.
	11–14	1	February 23, 1998.
	15	2	December 14, 1998.
	16–17	1	February 23, 1998.
	18–55	2	December 14, 1998.
	56 (blank)		
Total pages: 56			
ALF/LF 72–1040	1–3	1	December 14, 1998.
	4–13	Original	October 20, 1997.
	14–46	1	December 14, 1998.
Total pages: 46			

(2) The incorporation by reference of AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) service bulletins listed in paragraph (j)(1) of this AD was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(k) The incorporation by reference of SB ALF 502R–72–0160, revision 2, dated May 26, 1987; ALF 502R–72–0160, revision 1, dated March 23, 1987; SB ALF502R 79–9 revision 1, dated November 27, 1996; SB ALF502L 79–0171, revision 1, dated November 27, 1996; SB ALF502R–79–0162, revision 2, dated September 8, 1987; SB ALF502R–79–0162, revision 1, dated May 26,1987; SB ALF502R–79–0162, dated March 23,1987; SB LF507–1F–79–5, revision 1, dated November 27, 1996; SB LF507–1H 79–5, revision 1, dated November 27, 1996, was previously approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 16, 1997 (62 FR 15378).

Address for Obtaining Referenced Service Bulletins

(l) Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(m) This amendment becomes effective on April 27, 2000.

Issued in Burlington, Massachusetts, on March 6, 2000.

David A. Downey,

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

[FR Doc. 00–6033 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–349–AD; Amendment 39–11631; AD 2000–05–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, A321, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, A321, A330, and A340 series airplanes, that requires revising the Airplane Flight Manual to provide the flight crew with certain instructions associated with the Global Positioning System (GPS). This amendment also requires modification of the Global Positioning System Signal Unit (GPSSU) of the satellite navigational system. 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 position and altitude errors due to bad oscillator warm-up characteristics of the GPSSU, which could result in navigational errors that may exceed 0.5 nautical mile.

DATES: Effective April 27, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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 Airbus Model A319, A320, A321, A330, and A340 series airplanes was published in the **Federal Register** on January 10, 2000 (65 FR 1350). That action proposed to require revising the Airplane Flight Manual to provide the flight crew with certain instructions associated with the Global Positioning System (GPS). That action also proposed to require modification of the Global Positioning System Signal Unit (GPSSU) of the satellite navigational system.

Comments

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

Explanation of Change Made

Paragraphs (b)(3) and (b)(3)(i) of this AD have been changed to correct typographical errors that resulted in references to an incorrect service bulletin number. Paragraph (b)(3) of the proposed rule references ''Airbus Service Bulletin A30–34–4089, Revision 01, dated September 28, 1999'' as the appropriate source of service information for accomplishment of the modification required by paragraph (b) of the AD. Paragraph (b)(3)(i) of the proposed rule incorrectly references ''Airbus Service Bulletin A330–34–4089, Revision 01, dated September 28, 1999.'' This AD references the appropriate service bulletin as ''Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999, for accomplishment of the modification required by paragraph (b) of this AD.

Conclusion

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

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required Airplane Flight Manual (AFM) revision, 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 $60, or $60 per airplane.

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

It will take between 3 to 14 work hours per airplane to accomplish the additional modifications required to be accomplished prior to or concurrent with the required modification, at an average labor rate of $60 per work. Required parts will be provided by the vendor or manufacturer at no cost to the operators. Based on these figures, the cost impact of the additional modifications required by this AD on U.S. operators is estimated to be between $180 to $840 per airplane.

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

Regulatory Impact

The regulations 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:

2000–05–21 Airbus Industrie: Amendment 39–11631. Docket 99–NM–349–AD.

Applicability: Model A319, A320, A321, A330, and A340 series airplanes, certificated in any category, as follows:

1. Model A319, A320, and A321 series airplanes on which Airbus Modification 28578 (Airbus Service Bulletin A320–34–1191, dated July 12, 1999), or Airbus Modification 28579 (Airbus Service Bulletin A320–34–1196, dated July 15) has not been accomplished; equipped with a LITTON Global Positioning Satellite Signal Unit (GPSSU) having Part Number (P/N) 465205–0302–0303 installed in accordance with Airbus Service Bulletin A320–34–1119 (Airbus Modification 23885).

2. Model A330 series airplanes on which Airbus Modification 46961 (Airbus Service Bulletin A330–34–3082, Revision 01, dated September 28, 1999), or Airbus Modification 47327 (Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999) has not been accomplished; equipped with a LITTON GPSSU having P/N 465205–0302–0302 or 465205–0302–0303.

3. Model A340 series airplanes on which Airbus Modification 46961 (Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999), or Airbus Modification 47327 (Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999) has not been accomplished; equipped with a LITTON GPSSU having P/N 465205–0302–0302 or 465205–0302–0303.

Note 1: This AD applies to each airplane 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 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 position and altitude errors due to bad oscillator warm-up characteristics of the GPSSU, which could result in navigational errors that may exceed 0.5 nautical mile, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''Operation:

—GPS Stand-alone and GPS overlay non-precision approaches are not allowed.

—The GPS must be deselected before non-precision approach.

—The GPS must be deselected for the remainder of the flight if 'NAV FM/GPS POS DISAGREE' ECAM warning is triggered (in all phases of flight).

Dispatch:

—If one GPS is inoperative, GPS must be deselected.''

Note 2: The AFM revision may be accomplished by inserting a copy of Airbus Temporary Revision (TR) 2.05.00/40 (for Model A319, A320, and A321 series airplanes); TR 2.05.00/38 (for Model A330 series airplanes); or TR2.05.00/47 (for A340 series airplanes); into the applicable AFM.

Modification

(b) Within 2 months after the effective date of this AD, modify the GPSSU of the satellite navigational system, in accordance with (b)(1), (b)(2), or (b)(3) of this AD, as applicable. After accomplishment of the modification, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(1) For Model A319, A320, and A321 series airplanes: Modify the GPSSU in accordance with either Airbus Service Bulletin A320–34–1191, dated July 12, 1999, or Airbus Service Bulletin A320–34–1196, dated July 15, 1999.

(i) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A320–34–1191, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A320–34–1119, Revision 02, dated April 30, 1997, or A320–34–1196, dated July 15, 1999.

(ii) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A320–34–1196, prior to or concurrent with accomplishment of the modification, accomplish Airbus Service Bulletin A320–34–1119, Revision 02, dated April 30, 1997.

(2) For Model A330 series airplanes: Modify the GPSSU in accordance with either Airbus Service Bulletin A330–34–3082, Revision 01, dated September 28, 1999, or Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999.

(i) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A330–34–3082, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A330–34–3015, dated April 3, 1995, or Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999.

(ii) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A330–34–3086, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish Airbus Service Bulletin A330–34–3015, dated April 3, 1995.

(3) For Model A340 series airplanes: Modify the GPSSU in accordance with either Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999, or Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999.

(i) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A340–34–4089, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A340–34–4022, dated April 3, 1995, or Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999.

(ii) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A340–34–4092, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A340–34–4022, dated April 3, 1995, or Airbus Service Bulletin A340–34–4078, Revision 01, dated November 26, 1999, including Appendix 01, dated November 26, 1999.

Note 3: The Airbus service bulletins reference LITTON Service Bulletin 2001–34–13, dated July 8, 1999, and LITTON Service Bulletin 2001–34–14, dated July 5, 1999, as additional sources of service information for modifying the GPSSU.

(c) As of the effective date of this AD, no person shall install on any airplane a GPSSU having P/N 465205–0302–0302 or 465205–0302–0303.

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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance and Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: 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

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

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–34–1191, dated July 12, 1999; Airbus Service Bulletin A320–34–1196, dated July 15, 1999; Airbus Service Bulletin A320–34–1119, Revision 02, dated April 30, 1997; Airbus Service Bulletin A330–34–3082, Revision 01, dated September 28, 1999; Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999; Airbus Service Bulletin A330–34–3015, dated April 3, 1995; Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999; Airbus Service Bulletin A340–34–4022, dated April 3, 1995; Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999; or Airbus Service Bulletin A340–34–4078, Revision 01, including Appendix 01, dated November 26, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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 5: The subject of this AD is addressed in French airworthiness directives 1999–361–138(B), dated September 8, 1999; 1999–354–101(B), dated September 8, 1999; and 1999–355–123(B), dated September 8, 1999; in order to assure the continued airworthiness of these airplanes in France.

(g) This amendment becomes effective on April 27, 2000.

Issued in Renton, Washington, on March 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6160 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–49–AD; Amendment 39–11560; AD 2000–03–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2000–03–03 that is applicable to certain General Electric Company CF34 series turbofan engines that was published in the **Federal Register** on February 7, 2000 (65 FR 5759). Two subpart names and two mandatory inspections were inadvertently omitted from the Mandatory Inspection Requirements of Table 804. This document corrects this Table by adding the subparts and inspections.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to General Electric Company CF34 series turbofan engines, was published in the **Federal Register** on February 7, 2000 (65 FR 5759). In the compliance section, an omission was made in Table 804 of the Mandatory Inspection Requirements. This correction adds necessary subpart names and inspections to the mandatory inspection requirements:

§ 39.13 [Corrected]

1. On page 5760, in AD 2000–03–03, table 804 is corrected to read as follows:

* * * * *

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part name/part No.	Chapter/section subject	Mandatory inspection
Fan Disk (all)	72–21–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2]
Stage 1 HPT Rotor Disk (all)	72–46–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2] Boltholes (ECI) [2] Air Holes (ECI) [2]
Stage 2 HPT Rotor Disk (all)	72–46–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2]
(a) Boltless Rim Configuration		Boltholes (FPI) [1] Air Holes (FPI) [1]
(b) Bolted Rim Configuration		Boltholes (ECI) [2] Air Holes (ECI) [2]
HPT Rotor Outer Torque	72–46–00, INSPECTION	All Areas (FPI) [1]
Coupling (all)		Bores (ECI) [2]

[1] FPI = Fluorescent Penetrant Inspection Method.
[2] ECI = Eddy Current Inspection Method.

* * * * *

David A. Downey,

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

[FR Doc. 00–6489 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–49–AD; Amendment 39–11646; AD 2000–06–06]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. PA–31 series airplanes that are equipped with pneumatic deicing boots. This AD requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: May 5, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–49–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD? This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the potential impact if the FAA took no action? The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA taken any action to this point? Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply all Piper PA–31 series airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55204). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment? Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. The following paragraphs present the comments received on the NPRM. Also included is the FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

Comment Issue No. 1: Coordinate With Original Equipment Manufacturer

What is the Commenter's Concern? One commenter states that the FAA should coordinate with the original equipment manufacturer before issuing the AD.

What is the FAA's Response to the Concern? We concur. The FAA coordinates and will continue to coordinate with the manufacturer of any affected airplanes before issuing an AD.

Is it Necessary to Change the AD? No.

Comment Issue No. 2: Provide the Criteria for Determining Acceptable Stall Warning Margins

What is the Commenter's Concern? One commenter requests that the FAA provide the criteria for determining whether an airplane has an acceptable stall warning margin. The commenter references recent NPRM AD withdrawals in the FAA's Transport Airplane Directorate.

What is the FAA's Response to the Concern? We cannot provide such information because no regulatory basis exists for determining or applying a mandatory stall margin with contamination. We can review manufacturer-provided data to determine what testing was conducted, and then determine the effects of ice

accretion on the stall angle and the handling characteristics in the roll axis. This would include reviewing the service history of each airplane. With all of this information, we could determine whether the stall warning margin was acceptable and if the AD action could be withdrawn.

Such was the case with the NPRM withdrawals in the FAA's Transport Airplane Directorate. The airplanes affected were Cessna Models 500, 501, 550, 551, and 560 series airplanes, and British Aerospace Jetstream Model 4101 airplanes. You may find the specific justification for each of these withdrawals in the **Federal Register** through the following citations:

—For the Cessna airplanes: 64 FR 62995, November 18, 1999; and

—For the Jetstream airplanes: 64 FR 62990, November 18, 1999.

No specific information was submitted for the Piper PA–31 series airplanes.

Is it Necessary to Change the AD? No.

Comment Issue No. 3: Define the Term ''Modern'' Pneumatic Boot Systems

What is the Commenters' Concern? Two commenters request explanation on the use of the term ''modern'' in a similar AD action that the FAA's Transport Airplane Directorate initiated.

What is the FAA's Response to the Concern? The FAA's Transport Airplane Directorate addressed the issue of ''modern'' versus ''older'' pneumatic boot systems in a recent AD action. That information, in its entirety, follows:

''Several commenters request that the difference between the ''older'' and ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early deice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)''

Is it Necessary to Change the AD? No.

Comment Issue No. 4: No Justification for This AD

What is the Commenter's Concerns? One commenter cites reasons why the proposed AD is not justified. These consist of the following:

1. The original equipment manufacturer installs pneumatic airframe components based on ice impingement and accretion analysis and best engineering judgement. The pneumatic boot manufacturer performed ice tunnel testing of deicers representative of those installed on PA–31 series airplanes and has issued operating instructions for its components. The original equipment manufacturer performs flight test in natural icing conditions where the operating instructions on specific installations (with unique geometry, speeds, etc.) without flight testing to substantiate those procedures. This would seem to violate the current FAA rationale for testing for flight into known icing; and

2. There is no data in the NPRM that pertains to the Piper PA–31 series airplanes to justify AD action.

What is the FAA's Response to the Concerns? We do not concur that the AD is not justified. Our response to each concern is as follows:

1. While the information the commenter presents is accurate, the intent of this AD is to mandate when the pneumatic deicing boots should be activated. As the commenter discusses, the original equipment manufacturer tests the components and issues operating instructions for its components. The type certificate holder works with the original equipment manufacturer to assure that the operating instructions adhere to the original design configuration of the affected airplanes. This AD only provides the information for and mandates when the pneumatic deicing system is activated; and

2. The AD is based upon reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. Although Piper PA–31 series airplanes were not among those in the reports, these airplanes incorporate a similar type design. Therefore, the unsafe condition could exist on the Piper PA–31 series airplanes and AD action is appropriate.

Is it Necessary to Change the AD? No.

Comment Issue No. 5: Pneumatic Deicing Boot Manufacturer Should Issue Operating Instructions

What is the Commenter's Concern? One commenter states that the deice boot manufacturer should issue any change in the operating instructions of the pneumatic deicing system.

What is the FAA's Response to the Concern? We do not concur that the deice boot manufacturer is responsible for developing the operating instructions for a specific airplane. The original equipment manufacturer or airplane manufacturer should issue changes in the operating instructions of the pneumatic deicing system. As discussed in the previous comment, the original equipment manufacturer tests the components and issues operating instructions for its components. The type certificate holder works with the original equipment manufacturer to assure that the operating instructions adhere to the original design configuration of the affected airplanes. This AD only provides the information for and mandates when the pneumatic deicing system is activated.

Is it Necessary to Change the AD? No.

Comment Issue No. 6: The AD Should Also Apply to Other Airplane Models

What is the Commenter's Concern? One commenter suggests that the AD apply to other Piper airplanes that are of a similar type design. The commenter states that the AD should also apply to the following airplane models: PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, PA–42–720R, and PA–42–1000.

What is the FAA's Response to the Concern? We concur that all of these airplane models are of a similar type design and AD action should be taken to address the safety issues. However, the Models PA–31T1, PA–31T2, and PA–31T3 airplanes were included in the NPRM. Rather than hold up the AD, we will initiate a separate AD action (NPRM) for the Piper Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes.

Is it Necessary to Change the AD? No. However, as discussed above, we will initiate a separate AD action (NPRM) for the Piper Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes.

Comment Issue No. 7: Limit the AFM Change to Approach and Hold Phases of Flight

What is the Commenter's Concern? One commenter requests that the FAA limit the AFM change of operating the boots at the first sign of ice accretion to

the approach and hold phases of flight. This commenter references the work that the Ice Protection Harmonization Working Group (IPHWP) is currently doing. The commenter states that the IPHWP believes that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments. Since these operations occur at lower speeds, ice accumulating on the wing and tail surfaces could cause instability.

What is the FAA's Response to the Concern? We do not concur to limiting the AFM change to the holding and approach phases of flight. We acknowledge that the IPHWG is working on a proposed operations rule. The IPHWG continues to work on this proposed rule and has not reached technical agreement. We have records of in-flight roll upsets in icing during the climb and cruise phases of flight on small airplanes that are of a similar type design to the Piper PA–31 series airplanes.

We concur that the ice protection system should not be operated at times when no ice is accreting. We have changed the description of the atmospheric conditions that the deicing boots must be operated from ''icing conditions'' to ''known or observed/detected icing that the flight crew visually observed on the aircraft or was identified by the on-board sensors.'' *Is it Necessary to Change the AD?* Yes. We have made the change described above in the final rule.

Comment Issue No. 8: Require Action To Reduce Adhesion Characteristics

What is the Commenter's Concern? In response to previous NPRM's on this subject, a commenter has requested that the FAA mandate actions to minimize or reduce the ice adhesion characteristics of boot material. The commenter stated that one reason flightcrews see large amounts of residual ice is because residual ice sticks to the boot surface as the boot ages. This may increase if the adhesion qualities of the boot material are not maintained. The commenter suggested the use of certain compounds, such as ICEX™ (an ice-phobic chemical spray), to reduce ice adhesion.

What is the FAA's Response to the Concern? We concur that materials such as ICEX™ could reduce ice adhesion. However, factors such as normal wear and tear, patching, and oxidation of boot material, prevent us from establishing an effective level of application or adequate intervals of application. We included a **Note** in previous AD's to recommend regular treatment of deicing boots with use of approved ice release agents. This is in addition to the required actions.

Is it Necessary to Change the AD? No. However, as discussed above, the FAA included a **Note** in previous AD's to recommend regular treatment of deicing boots with use of approved ice release agents. We are including this **Note** in this AD also.

The FAA's Determination

What is the FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—The change in the description of the atmospheric conditions that the deicing boots must be operated;
—The addition of the NOTE to recommend regular treatment of deicing boots with use of approved ice release agents; and
—Minor editorial corrections.

How does the change, addition, and corrections affect the AD? We have determined that the change, addition, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that 2,314 airplanes in the U.S. registry will be affected.

What is the cost impact of the affected airplanes on the U.S. Register? There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–06–06 The New Piper Aircraft, Inc.: Amendment 39–11646; Docket No. 99–CE–49–AD.

(a) *What airplanes are affected by this AD?* PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes, all serial numbers, that are:

(1) equipped with pneumatic deicing boots; and

(2) certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to

include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

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

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

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

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

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—after the airplane is determined to be clear of ice.''

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX™, in accordance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 17, 2000.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7224 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29960; Amdt. No. 1983]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regualtory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment, state the

affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 17, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

** * * Effective April 20, 2000*

Oklahoma City, OK, Sundance Airpark, VOR or GPS RWY 17, Orig-A, CANCELLED
Oklahoma City, OK, Sundance Airpark, VOR RWY 17, Orig-A
Oklahoma City, OK, Sundance Airpark, VOR/DME RNAV or GPS RWY 35, Amdt 1, CANCELLED
Oklahoma City, OK, Sundance Airpark, VOR/DME RNAV RWY 35, Amdt 1
Eastland, TX, Eastland Muni, NDB or GPS RWY 35, Amdt 2, CANCELLED
Eastland, TX, Eastland Muni, NDB RWY 35, Amdt 2

[FR Doc. 00–7195 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29959; Amdt. No. 1982]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Administration (14 CFR part

97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 17, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/07/00	NJ	Newark	Newark Intl	0/1238	ILS Rwy 4L Amdt 12... This Corrects FDC 0/1238 in TL 00–06.
02/11/00	CA	Burbank	Burbank-Glendale-Pasadena	0/1433	ILS Rwy 8 Amdt 35... This corrects FDC 01/1433 in TL00–06.
02/24/00	VT	Rutland	Rutland State	0/1782	LOC Rwy 19, Orig... This corrects FDC 0/1782 in TL00–07.
03/01/00	CA	Monterey	Monterey Pennisula	0/2080	GPS Rwy 28L Amdt 1... This corrects FDC 0/2080 in TL 00–07.
03/01/00	CO	Akron	Akron-Washington County	0/2061	VOR Rwy 29, Orig...
03/01/00	CO	Fort Collins	Fort Collins-Loveland Muni	0/2056	VOR/DME RNAV Rwy 15, Amdt 4B...
03/01/00	CO	Rifle	Garfield County Regional	0/2063	GPS Rwy 8, Orig...
03/01/00	CO	Rifle	Garfield County Regional	0/2064	GPS Rwy 26, Orig...
03/01/00	FL	Tallahassee	Tallahassee Regional	0/2089	GPS Rwy 27, Orig...

FDC date	State	City	Airport	FDC No.	SIAP
03/01/00	IL	Bloomington/Normal	Central IL Regl Arpt at Bloomington-Normal.	0/2058	VOR Rwy 11, Amdt 12A...
03/01/00	IL	Bloomington/Normal	Central IL Regl Arpt at Bloomington-Normal.	0/2059	LOC BC Rwy 11, Amdt 8...
03/01/00	OR	Salem	McNary Field	0/2054	LOC BC Rwy 13 Amdt 6A...
03/02/00	CA	Monterey	Monterey Peninsula	0/2121	LOC/DME Rwy 28L Amdt 3B...
03/02/00	CA	Monterey	Monterey Peninsula	0/2139	GPS Rwy 10R, Amdt 1...
03/02/00	CO	Colorado Springs	City of Colorado Springs Muni	0/2130	GPS Rwy 35R Orig...
03/02/00	CO	Cortez	Cortez, Muni	0/2129	GPS Rwy 3 Amdt 1...
03/02/00	CO	Lamar	Lamar Muni	0/2126	VOR Rwy 18 Amdt 10...
03/02/00	CO	Lamar	Lamar Muni	0/2127	GPS Rwy 36 Amdt 1...
03/02/00	CT	Oxford	Waterbury-Oxford	0/2141	GPS Rwy 36 Orig...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2145	NDB Rwy 11, Amdt 21...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2146	VOR Rwy 23, Amdt 8B...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2147	ILS Rwy 11, Amdt 24...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2149	NDB or GPS Rwy 29, Amdt 6...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2150	ILS Rwy 29, Amdt 4...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2162	GPS Rwy 23, Orig-A...
03/02/00	MD	Mitchellville	Freeway	0/2155	VOR or GPS Rwy 36 Orig...
03/02/00	MI	Detroit	Detroit Metropolitan Wayne County	0/2173	ILS Rwy 21R, Amdt 26A...
03/02/00	MI	Detroit	Detroit Metropolitan Wayne County	0/2174	ILS Rwy 21L, Amdt 8B...
03/02/00	NY	Monticello	Sullivan County Intl	0/2144	NDB or GPS Rwy 15 Amdt 6...
03/02/00	OR	Portland	Portland Intl	0/2163	ILS Rwy 28L, Orig...
03/03/00	SD	Madison	Madison Muni	0/2181	GPS Rwy 33 Orig...
03/03/00	VT	Barre-Montpelier	Edward F. Knapp State	0/2198	VOR/DME Rwy 35 Amdt 1...
03/03/00	VT	Barre-Montpelier	Edward F. Knapp State	0/2199	VOR Rwy 35 Amdt 3...
03/03/00	VT	Barre-Montpelier	Edward F. Knapp State	0/2200	GPS Rwy 35 Orig...
03/06/00	CA	Carlsbad	McClellan-Palomar	0/2248	ILS Rwy 24, Amdt 8...
03/06/00	CA	Palo Alto	Palo Alto Airport of Santa Clara County.	0/2244	GPS Rwy 30, Amdt 1...
03/06/00	FL	Orlando	Orlando Executive	0/2247	VOR/DME Rwy 7, Orig...
03/06/00	FL	Orlando	Orlando Executive	0/2249	NDB Rwy 7, Amdt 15...
03/06/00	NY	Farmingdale	Republic	0/2237	GPS Rwy 14 Orig...
03/06/00	SC	Greer	Greenville-Spartanburg Intl	0/2240	ILS Rwy 22, Amdt 3A...
03/06/00	TX	Houston	George Bush Intercontinental Airport/ Houston.	0/2256	ILS Rwy 27, Amdt 3 (CAT I, II, III)...
03/07/00	OR	North Bend	North Bend Muni	0/2296	NDB or GPS Rwy 4 Amdt 4...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2286	ILS Rwy 17C (CAT I, II, III), Amdt 7A...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2288	GPS Rwy 35L, Orig...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2289	GPS Rwy 35C, Orig...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2290	NDB Rwy 35C, Amdt 10...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2291	ILS Rwy 35L, Amdt 2A...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2293	ILS Rwy 35C, Amdt 6C...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2294	Converging ILS Rwy 35, Amdt 4B...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2300	Converging ILS Rwy 35L, Amdt...
03/08/00	IN	Terre Haute	Terre Haute International-Hulman Field	0/2322	ILS Rwy 5, Amdt 22B...
03/08/00	IN	Terre Haute	Terre Haute International-Hulman Field	0/2323	LOC BC Rwy 23, Amdt 18A...
03/08/00	IN	Terre Haute	Terre Haute International-Hulman Field	0/2327	VOR/DME Rwy 5, Amdt 17...
03/08/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2314	Converging, ILS Rwy 17C, Amdt 4B...
03/08/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2342	Converging ILS Rwy 36R, Amdt 1C...
03/09/00	AMD	CA VOR/DME Rwy 2	Arcata-Eureka	0/2355	7...
03/09/00	CA	Crescent City	Jack McNamara Field	0/2356	VOR/DME Rwy 35, Amdt 10...
03/09/00	GA	Thomson	Thomson-McDuffie County	0/2363	NDB or GPS Rwy 28 Orig... GPS Rwy 28 Orig...
03/09/00	OH	Lebanon	Lebanon-Warren County	0/2372	RNAV Rwy 1 Orig...
03/09/00	OH	Lebanon	Lebanon-Warren County	0/2373	RNAV Rwy 19 Orig...
03/10/00	AK	Kalskag	Kalskag	0/2386	GPS Rwy 6, Orig...
03/10/00	AK	Kalskag	Kalskag	0/2387	GPS Rwy 24, Orig...
03/10/00	AK	Koliganek	Koliganek	0/2383	GPS Rwy 9, Orig...
03/10/00	AK	Koliganek	Koliganek	0/2384	GPS Rwy 27, Orig...
03/10/00	AK	Mountain Village	Mountain Village	0/2388	GPS Rwy 20, Orig...
03/10/00	AK	Mountain Village	Mountain Village	0/2389	GPS Rwy 2, Orig...
03/10/00	FL	Melbourne	Melbourne Intl	0/2385	GPS Rwy 9L, Orig-B...
03/10/00	GA	Thomson	Thomson-McDuffie County	0/2381	VOR/DME or GPS–A, Amdt 3...
03/13/00	GA	Jekyll Island	Jekyll Island	0/2512	GPS Rwy 36 Orig-A...
03/13/00	GA	Jekyll Island	Jekyll Island	0/2513	VOR or GPS–A Amdt 9A...
03/13/00	OH	Middletown	Hook Field Muni	0/2482	NDB or GPS Rwy 23, Amdt 8B...
03/14/00	LA	New Orleans	New Orleans Intl (Moisant Field)	0/2498	ILS Rwy 28, Amdt 4...
03/14/00	NE	Wayne	Wayne Muni	0/2530	NDB or GPS Rwy 22, Amdt 3...
03/15/00	OH	Middletown	Hook Field Muni	0/2569	LOC Rwy 23, Amdt 7C...

[FR Doc. 00–7194 Filed 3–22–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.29958; Amdt. No.1981]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment is part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

L. Nicholas Lacey,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 20, 2000*

Salisbury, NC, Rowan County, VOR OR GPS RWY 2, Amdt 5B, CANCELLED
Salisbury, NC, Rowan County, VOR OR GPS RWY 20, Amdt 1B CANCELLED
Salisbury, NC, Rowan County, VOR OR GPS–A, Amdt 7A, CANCELLED
Wallops Island, VA, Wallops Flight Facility, VOR/DME OR TACAN RWY 10, Amdt 5

** * * Effective May 18, 2000*

Grinnell, IA, Grinnell Regional, NDB RWY 31, Amdt 2
Grinnell, IA, Grinnell Regional, GPS RWY 31 Orig
Claremore, OK, Clarmore Muni, VOR/DME OR GPS–B, Amdt 1
Llano, TX, Llano Muni, VOR OR GPS–A, Amdt 3
Marlin, TX, Marlin, VOR/DME OR GPS–A, Amdt 7

** * * Effective June 15, 2000*

Mobile, Al, Mobile Downtown, VOR OR GPS RWY 14, Amdt 6
Anchorage, AK, Anchorage Intl, LOC RWY 6L, Amdt 9A, CANCELLED
Homer, AK, Homer, LOC/DME BC RWY 21, Amdt 4B
Homer, AK Homer, GPS RWY 21, Orig-B
Jacksonville, FL, Cecil Field, RADAR-1, Orig
Jacksonville, FL, Craig Muni, VOR OR GPS RWY 14, Amdt 3
Dodge City, KS Dodge City Regional, VOR RWY 14, Amdt 18A
Dodge City, KS, Dodge City Regional, VOR/DME OR GPS RWY 32, Amdt 4A
Hays, KS, Hays Muni, VOR/DME RWY 16, Amdt 3B
Hays, KS, Hays Muni, NDB OR GPS RWY 34, Amdt 2B
Hays, KS, Hays Muni, GPS RWY 16, Orig-B
Independence, KS, Independence Muni, ILS RWY 35, Amdt 1
Liberal, KS, Liberal Muni, VOR/DME OR GPS RWY 17, Amdt 3A
Liberal, KS, Liberal Muni, NDB RWY 35, Amdt 3A
Owensboro, KY, Owensboro-Daviess County, NDB OR GPS RWY 36, Amdt 8A
Alexandria, LA, Alexandria Intl, VOR OR GPS RWY 14, Amdt 1
Cameron, MO, Cameron Memorial, NDB RWY 35, Amdt 2
Cameron, MO, Cameron Memorial, RNAV RWY 17, Orig
Cameron, MO, Cameron Memorial, RNAV RWY 35, Orig
Jefferson City, MO, Jefferson City Memorial, NDB RWY 30, Orig-A
Albion, NE, Albion Muni, NDB RWY 33, Amdt 1
Albion, NE, Albion Muni, RNAV RWY 15, Orig
Albion, NE, Albion Muni, RNAV RWY 33, Orig
Albuquerque, NM, Albuquerque Intl Sunport, NDB OR GPS RWY 35, Amdt 7A
Carlsbad, NM, Cavern City Air Terminal, VOR OR GPS RWY 32L, Amdt 5A
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 8B
Las Cruces, NM, Las Cruces International, NDB RWY 30, Orig-A
Roswell, NM, Roswell Industrial Air Center, NDB RWY 21, Amdt 16A
Hickory, NC, Hickory Regional, NDB RWY 24, Amdt 5A
Raleigh-Durham, NC, Raleigh-Durham International, NDB OR GPS RWY 5R, Amdt 20A
Raleigh-Durham, NC, Raleigh-Durham International, NDB OR GPS RWY 23L, Amdt 4B
Bismarck, ND, Bismarck Muni, NDB OR GPS RWY 31, Amdt 30B
Fargo, ND, Hector Intl, VOR/DME OR TACAN OR GPS RWY 17, Orig-C
Fargo, ND, Hector Intl, NDB RWY 17, Amdt 14C
Grand Forks, ND, Grand Forks Intl, VOR OR GPS RWY 17R, Amdt 5B
Grand Forks, ND, Grand Forks Intl, LOC BC RWY 17R, Amdt 12C
Grand Forks, ND, Grand Forks Intl, GPS RWY 26, Orig-B
Jamestown, ND, Jamestown Muni, NDB RWY 31, Amdt 6C
Minot, ND, Minot Intl, LOC BC RWY 13, Amdt 6B
Columbus, OH, Ohio State University, NDB RWY 9R, Amdt 2B
Columbus, OH, Port Columbus Intl, NDB OR GPS RWY 10R, Amdt 7A
Columbus, OH, Port Columbus Intl, NDB RWY 28R, Orig-C
Columbus, OH, Port Columbus Intl, NDB OR GPS RWY 28L, Amdt 13A
Oklahoma City, OK, Sundance Airpark, RNAV RWY 17, Orig
Oklahoma City, OK, Sundance Airpark, RNAV RWY 35, Orig
Oklahoma City, OK, Wiley Post, VOR RWY 35R, Amdt 3
Oklahoma City, OK, Wiley Post, ULS RWY 17L, Amdt 10
Erie, PA, Erie International, VOR OR GPS RWY 6, Amdt 15B
Erie, PA, Erie International, NDB RWY 24, Amdt 17B
Erie, PA, Erie International, VOR/DME OR GPS RWY 24, Amdt 11B
Aberdeen, SD, Aberdeen Regional, LOC/DME BC RWY 13, Amdt 10A
Aberdeen, SD, Aberdeen Regional, NDB RWY 31, Amdt 10A
Aberdeen, SD, Aberdeen Regional, GPS RWY 35, Orig-A
Huron, SD, Huron Regional, NDB RWY 12, Amdt 20B
Pierre, SD, Pierre Regional, VOR/DME OR TACAN OR GPS RWY 7, Amdt 4B
Rapid City, SD, Rapid City Regional, NDB RWY 32, Amdt 3B
Eastland, TX, Eastland Muni, RNAV RWY 35, Orig
Falfurrias, TX, Brooks County, GPS RWY 17, Orig-A
Falfurrias, TX, Brooks County, GPS RWY 35, Orig-A
Hebbronville, TX, Jim Hogg County, GPS RWY 13, Amdt 1A
Kingsville, TX, Kleberg County, NDB RWY 13, Amdt 5A
Kingsville, TX, Kleberg County, GPS RWY 13, Orig-A
Lockhart, TX, Lockhart Muni, GPS RWY 36, Orig-A
Robstown, TX, Nueces County, GPS RWY 12, Orig-B
Uvalde, TX, Garner Field, NDB RWY 33, Amdt 2
Uvalde, TX, Garner Field, RNAV RWY 33, Orig
Ogden, UT, Ogden-Hickley, GPS RWY 7, Orig-B
Richmond, VA, Chesterfield County, VOR/DME OR GPS RWY 15, Orig-B
Richmond, VA, Chesterfield County, NDB OR GPS RWY 33, Amdt 7C

[FR Doc. 00–7193 Filed 3–22–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 94F–0334]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide used alone or in combination with several optional substances as a heat stabilizer for use in rigid poly(vinyl chloride) (PVC) and rigid vinyl chloride copolymers intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants. This action is in response to a petition filed by Morton International, Inc.

DATES: This rule is effective March 23, 2000. Submit written objections and requests for a hearing by April 24, 2000.

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

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1994 (59 FR 53193), FDA announced that a food additive petition (FAP 4B4430) had been filed by Morton International, Inc., 2000 West St., Cincinnati, OH 45215. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide mixtures as heat stabilizers for use in PVC pipes intended for transporting water for food contact.

Subsequent to the filing of the petition, FDA determined that methyltin-2-mercaptoethyloleate sulfide is a complex mixture. In addition, FDA determined that the petition also proposed that methyltin-2-mercaptoethyloleate sulfide may be used in combination with certain optional substances. Therefore, in a notice published in the **Federal Register** of September 7, 1999 (64 FR 48655), FDA announced that it was amending the filing notice of October 21, 1994, to indicate that the petitioner requests that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide as a heat stabilizer for use in rigid PVC and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980 (21 CFR 177.1950 and 177.1980), respectively, intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants. For these purposes, methyltin-2-mercaptoethyloleate sulfide is defined as one or more of the following:

1. 9-Octadecenoic acid (Z)-, 2-mercaptoethyl ester, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 68442–12–6); or

2. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, 2-mercaptoethyl decanoate, 2-mercaptoethyl octanoate, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 151436–98–5); or

3. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 201687–57–2).

In addition, FDA announced in the September 7, 1999, notice that it was amending the filing notice of October 21, 1994, to indicate that the petitioner requested that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide as a heat stabilizer for use in rigid PVC and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980, respectively, intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants, in combination with the following optional substances:

1. 2-Mercaptoethyl oleate (CAS Reg. No. 59118–78–4), or 2-mercaptoethyl tallate (CAS Reg. No. 68440–24–4), or 2-mercaptoethyl octanoate (CAS Reg. No. 57813–59–9), or 2-mercaptoethyl decanoate (CAS Reg. No. 68928–33–6), alone or in combination;

2. 2-Mercaptoethanol (CAS Reg. No. 60–24–2);

3. Mineral oil (CAS Reg. No. 8012–95–1); or

4. Butylated hydroxytoluene (CAS Reg. No. 128–37–0).

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in 21 CFR 178.2010 should be amended as set forth below.

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

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 4B4430 (64 FR 48655). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

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

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 24, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

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

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

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

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

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * *	
Methyltin-2-mercaptoethyloleate sulfide, which is defined as one or more of the following: 1. 9-Octadecenoic acid (Z)-, 2-mercaptoethyl ester, reaction products with dichlorodime thylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 68442–12–6); 2. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, 2-mercaptoethyl decanoate, 2-mercaptoethyl octanoate, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 151436–98–5); or 3. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 201687–57–2);and which has the following specifications: Tin content (as Sn) 5 to 21 percent by weight; mercaptosulfur content 5 to 13 percent by weight; acid value no greater than 4. Methyltin-2-Mercaptoethyloleate sulfide may also be used with one or more of the following optional substances: 1.1a 2-Mercaptoethyl oleate (CAS Reg. No. 59118–78–4), 1.1b 2-Mercaptoethyl tallate (CAS Reg. No. 68440–24–4), 1.1c 2-Mercaptoethyl octanoate (CAS Reg. No. 57813–59–9), 1.1d 2-Mercaptoethyl decanoate (CAS Reg. No. 68928–33–6), alone or in combination; not to exceed 40 percent by weight of the stabilizer formulation; 2.1 2-Mercaptoethanol (CAS Reg. No. 60–24–2): Not to exceed 2 percent by weight of the stabilizer formulation. 3.1 Mineral oil (CAS Reg. No. 8012–95–1): Not to exceed 40 percent by weight of the stabilizer formulation. 4.1 Butylated hydroxytoluene (CAS Reg. No. 128–37–0): Not to exceed 5 percent by weight of the stabilizer formulation. The total of the optional substances (1.1a through 4.1) shall not exceed 60 percent by weight of the stabilizer formulation.	For use only in rigid poly(vinyl chloride) and rigid vinyl chloride copolymers complying with §§ 177.1950 and 177.1980 of this chapter, respectively, used in the manufacture of pipes and pipe fittings intended for contact with water in food processing plants, at levels not to exceed: 1. 1.0 percent by weight in pipes, and 2. 2.0 percent by weight in pipe fittings.
* * * * * * *	

Dated: February 29, 2000.

L. Robert Lake,

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

[FR Doc. 00–7011 Filed 3–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8864]

RIN 1545–AV87; 1545–AT97

Substantiation of Business Expenses; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This correction relates to final regulations which were published on Wednesday, January 26, 2000 (65 FR 4121), relating to certain business expenses under section 274 of the Internal Revenue Code affecting individuals and other taxpayers who claim or reimburse certain business expenses.

DATES: This correction is effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon at (202) 622–4920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 274 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8864) contain an omission in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations in TD 8864, which were the subject of FR Doc. 00–1382, is corrected as follows:

§ 1.274–5 [Corrected]

1. On page 4123, column 1, in § 1.274–5(c), add paragraphs (c)(3) through (7) to read as follows:

§ 1.274–5 Substantiation requirements.

* * * * *

(c) * * *

(3) through (7) [Reserved]. For further guidance, see § 1.274–5T(c)(3) through (7).

* * * * *

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5240 Filed 3–22–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8878]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to section 125 cafeteria plans. The final regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The final regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage or group-term life insurance coverage.

DATES: *Effective Date:* These regulations are effective March 23, 2000.

Applicability Date: These regulations are applicable for cafeteria plan years beginning on or after January 1, 2001. See the **Scope of Regulations and Effective Date** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer or Christine L. Keller at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125. Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and ''qualified benefits.'' A qualified benefit generally is any benefit that is excludable from gross income under an express provision of the Internal Revenue Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.[1] Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[2] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[3] Specifically, Q&A–8 of § 1.125–1 and Q&A–6(b), (c), and (d) of § 1.125–2 permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations.[4]

These final regulations, which replace the 1997 temporary regulations, clarify the circumstances under which a cafeteria plan may permit an employee to revoke an existing election with respect to accident or health coverage, or group-term life insurance coverage, and make a new election during a period of coverage.

Explanation of Provisions

A. Summary

These regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage or group-term life insurance coverage during the plan year. The regulations generally follow the existing temporary regulations, and include a variety of examples illustrating how the rules apply in specific situations.

The final regulations include two principal changes that have been made in response to public comments. First, the regulations differ from the 1997 regulations with respect to change in status events resulting from a change in employment. Commentators requested a loosening of the rules regarding when a cafeteria plan election can be changed. In response, the final rules incorporate a more flexible rule under which any change in the employment status of the employee (or a spouse or dependent of the employee) that affects that individual's eligibility under a cafeteria plan or qualified benefits plan constitutes a change in status for purposes of permitting a mid-year election change. Second, in the event of a change in an employee's marital status or the employment status of the employee's spouse or dependent, the final regulations permit the employee to elect either to increase group-term life insurance coverage or to decrease group-term life insurance coverage. A similar rule applies with respect to disability income plans.

These final regulations were developed as part of an integrated package with proposed regulations that are being published elsewhere in this issue of the **Federal Register**. Those proposed regulations provide guidance on election changes on account of changes in status with respect to dependent care assistance and adoption assistance and provide guidance on election changes on account of changes in cost or coverage with respect to dependent care assistance, adoption assistance, accident or health coverage, and group-term life insurance coverage. The integrated package of final and proposed regulations is intended to provide clear standards for plan administration and for administration of the tax law. The standards are designed to accommodate the most common types of events of independent significance that do not occur on a regular, periodic basis and that are likely to affect an employee's decisions with respect to qualified benefits coverage.

B. Changes in Status

Commentators on the 1997 temporary and proposed regulations requested that the description of changes in status be expanded to include work-related changes of an employee, the employee's spouse, or the employee's dependent in addition to termination or commencement of employment or change in worksite. In response to these comments, the description of changes in

[1] The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarshps under section 117; educational assistance programs under section 127; and fringe benefits under section 132.

[2] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[3] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), an FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

[4] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS Announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of those proposed and temporary regulations so that they will not be effective before plan years beginning at least 120 days after further guidance is issued.

status has been broadened to include a strike or lockout, and a commencement of or return from an unpaid leave of absence. In addition, the final rules incorporate a more flexible rule for other change in employment status events. Specifically, if there is a change in the employment status of the employee (or a spouse or dependent of the employee) that affects that individual's eligibility under a cafeteria plan or qualified benefits plan, then that change constitutes a change in status. For example, if an employee switches from salaried to hourly-paid status, resulting in the employee ceasing to be eligible for coverage under the plan, then that change constitutes a change in status.

Some commentators expressed concern that the 1997 temporary and proposed regulations did not permit an employee to make an election change to cover additional individuals under an accident or health plan when an employer changed its policy (e.g., to permit coverage for a parent or for a domestic partner pursuant to local law requirements). Under the 1997 temporary and proposed regulations, a change in status includes an event that causes an employee's dependent to satisfy or cease to satisfy the eligibility requirements for coverage under a plan. Thus, if an individual who is a dependent of an employee becomes eligible for coverage under the employer's health plan as a result of an amendment made to the plan during the year, that is a change in status event and, accordingly, the cafeteria plan may permit an election change by the employee to cover the individual. These final regulations retain the rule from the 1997 temporary and proposed regulations.

These final regulations do not address when a bona fide termination of employment occurs. However, these regulations retain the example (*Example 8* under paragraph (c)(4) of these final regulations) from the 1997 temporary and proposed regulations addressing the situation in which an employee terminates and resumes employment within 30 days. The effect of this example is to provide a practical safe harbor that generally may be applied by cafeteria plans without regard to other facts and circumstances. Under this example, if an employee terminates and resumes employment within 30 days and the cafeteria plan provides that the employee's election is automatically reinstated, the employer is not required to determine whether a bona fide change in status has occurred with respect to termination of employment. Conversely, the cafeteria plan may permit an employee who resumes employment more than 30 days following termination to be automatically reinstated to the prior election or to make a new election.[5]

C. Consistency Rule

As under the 1997 temporary and proposed regulations, the final regulations require that an election change as a result of a change in status also satisfy a consistency requirement. In response to comments, the final regulations expand and clarify the consistency requirement with respect to change in status events for group-term life insurance. Under the 1997 regulations, in the case of a commencement of employment, marriage, birth, adoption, or placement for adoption, an employee could elect to increase (but not decrease) group-term life insurance coverage. The 1997 regulations also permitted an employee to elect to decrease (but not to increase) group-term life insurance coverage in the case of divorce, legal separation, annulment, or death of a spouse or dependent. Commentators suggested that these rules were too restrictive. For example, in the case of divorce, an employee may reasonably seek to increase coverage because the employee may become the sole wage-earner for the family unit as a result of the divorce. Accordingly, the final regulations provide flexibility by stating that, in the event of a change in an employee's marital status or the employment status of the employee's spouse or dependent, an employee may elect either to increase group-term life insurance coverage or to decrease group-term life insurance coverage. Also, in response to comments, a similar rule has been added that applies to election changes made with respect to disability income coverage (i.e., accident or health coverage that is neither for medical care as defined under section 213(d) nor for payments described in section 105(c)).

D. Other Changes

Some commentators requested that the regulations prescribe a period of time by which election changes, as a result of a change in status, should be made. Consistent with the approach taken in the 1997 regulations and in the interest of providing employers and plan administrators flexibility, the final regulations do not prescribe such a period. However, nothing in the final regulations would prevent a cafeteria plan by its terms from requiring that any election change (other than those made in connection with rights for which there are specific minimum election periods, such as under section 9801 (as added by HIPAA) and section 4980B (relating to COBRA coverage)), must be made within a specified period after a change in status event. The consistency rule in the final regulations does require that an election change made pursuant to a change in status be ''on account of'' a gain or loss of eligibility for coverage. This requirement follows the ''on account of'' language contained in the 1989 proposed regulations under § 1.125–2, Q&A–6(c), and is intended to add a general condition that the election change not be made so long after the event permitting the election change that the election is not on account of the event.

In accordance with comments, examples in the regulations clarify that if, in accordance with special enrollment rights provided by HIPAA , an employee, spouse, or new dependent is entitled to enroll in a group health plan, a cafeteria plan may permit the employee to elect to enroll pre-existing dependents in the underlying group health plan.[6] Likewise, the examples clarify that if, in accordance with the change in status rules relating to a new spouse or dependent, an employee is entitled to elect family coverage under a group health plan, then other family members are permitted to become covered under the family coverage as a result of the election change.[7]

In response to comments, the final regulations also clarify that, in the event of a loss of Medicare or Medicaid entitlement by an employee or by the employee's spouse or dependent, a cafeteria plan may permit the employee to add health coverage under the employer's accident or health plan (and may permit cancellation or reduction in coverage if an employee, spouse, or dependent who is enrolled in an accident or health plan becomes entitled to Medicare or Medicaid).

Scope of Regulations and Effective Date

These final regulations address all of the changes in status for which a cafeteria plan may permit election

[5] Alternatively, the cafeteria plan may prohibit an employee from participating in the cafeteria plan for that plan year upon reemployment.

[6] No inference is intended from these or any other examples in the final regulations concerning the interpretation of special enrollment rights under section 9801(f).

[7] Provisions in paragraph (b) of the final regulation allowing election changes in connection with special enrollment under section 9801(f) may overlap the provisions in paragraphs (c) through (e) of the final regulations permitting election changes in other circumstances. Thus, no inference is intended that an election change permitted under paragraphs (c) through (e) is not also permitted under paragraph (b).

changes with respect to an accident or health plan or group-term life insurance plan. However, future guidance under the cost or coverage change provision (reserved at paragraph (f) of these final regulations and included in paragraph (f) of the proposed regulations being published elsewhere in this issue of the **Federal Register**), rather than the change in status rules, would determine whether a cafeteria plan may permit affected employees to elect a new HMO option that is made available during a period of coverage. Similarly, election changes may be made under the special rules relating to changes in elections by employees taking leave under the Family and Medical Leave Act of 1993 (Public Law 103–3) [8] (as referenced at paragraph (g) of these final regulations).

Finally, these regulations do not override other cafeteria plan requirements. For example, although an employee's termination of employment is a change in status, some election changes made with respect to coverage under a health FSA on account of the termination of employment would fail to be consistent with the requirement that the operation of such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance under § 1.125–1, Q&A–17 and § 1.125–2, Q&A–7 of the proposed regulations. Thus, a cafeteria plan could not permit individuals terminating employment to change their health FSA elections to match the amount of premiums paid prior to termination (i.e., stop paying premiums), and continue to receive health FSA reimbursements with respect to the remainder of the period of coverage.

These regulations are applicable for cafeteria plan years beginning on or after January 1, 2001. Until the beginning of the first plan year beginning on or after January 1, 2001, taxpayers may rely on these regulations. In addition, until the beginning of the first plan year beginning on or after January 1, 2001, taxpayers may continue to rely on the change in status rules in the 1997 regulations, as well as the change in family status rules in the pre-1997 proposed regulations.

Pursuant to section 7805(e), the 1997 temporary regulations § 1.125–4T will expire within three years of the date of issuance (November 7, 2000). This Treasury decision amends the 1997 temporary regulations to add this expiration in the text of the regulations (§ 1.125–4T(l)).

[8] See § 1.125.3, published as a proposed rule at 60 FR (December 21, 1995).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal authors of these regulations are Janet A. Laufer and Christine L. Keller, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. § 1.125–4 is added to read as follows:

§ 1.125–4 Permitted election changes.

(a) *Election changes.* A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (g) of this section. Section 125 does not require a cafeteria plan to permit any of these changes. See paragraph (h) of this section for special provisions relating to qualified cash or deferred arrangements, and paragraph (i) of this section for special definitions used in this section.

(b) *Special enrollment rights*—(1) *In general.* A cafeteria plan may permit an employee to revoke an election for coverage under a group health plan during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f).

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. (i) Employer *M* provides health coverage for its employees pursuant to a plan that is subject to section 9801(f). Under the plan, employees may elect either employee-only coverage or family coverage. *M* also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. *M*'s employee, *A,* is married to *B* and they have a child, *C.* In accordance with *M*'s cafeteria plan, Employee *A* elects employee-only health coverage before the beginning of the calendar year. During the year, *A* and *B* adopt a child, *D.* Within 30 days thereafter, *A* wants to revoke *A*'s election for employee-only health coverage and obtain family health coverage for *A*'s spouse, *C,* and *D* as of the date of *D*'s adoption. Employee *A* satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that *A* may enroll in family coverage under *M*'s accident or health plan in order to provide coverage effective as of the date of *D*'s adoption.

(ii) *M*'s cafeteria plan may permit *A* to change *A*'s salary reduction election to family coverage for salary not yet currently available. The increased salary reduction is permitted to reflect the cost of family coverage from the date of adoption. (*A*'s adoption of *D* is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under paragraph (c) of this section, *M*'s cafeteria plan could permit *A* to elect family coverage prospectively in order to cover *B, C,* and *D* for the remaining portion of the period of coverage.)

Example 2. (i) The employer plans and permissible coverage are the same as in *Example 1.* Before the beginning of the calendar year, Employee *E* elects employee-only health coverage under *M*'s cafeteria plan. Employee *E* marries *F* during the plan year. *F*'s employer, *N,* offers health coverage to *N*'s employees, and, prior to the marriage, *F* had elected employee-only coverage. Employee *E* wants to revoke the election for employee-only coverage under *M*'s cafeteria plan, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) *M*'s cafeteria plan may permit *E* to change *E*'s salary reduction election to reflect the change to family coverage under *M*'s group health plan because the marriage would result in special enrollment rights under section 9801(f), pursuant to which an election of family coverage under *M*'s group health plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan. (*E*'s marriage to *F* is also a change in status under paragraph (c) of this section, as illustrated in *Example 1* of paragraph (c)(4) of this section.)

(c) *Changes in status*—(1) *In general*—(i) *Change in status rule.* A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefits plan

to which this paragraph (c) applies and make a new election for the remaining portion of the period (referred to in this section as an election change) if, under the facts and circumstances—

(A) A change in status described in paragraph (c)(2) of this section occurs; and

(B) The election change satisfies the consistency rule of paragraph (c)(3) of this section.

(ii) *Application to accident or health plans and group-term life insurance plans.* This paragraph (c) applies to plans providing accident or health coverage and plans providing group-term life insurance coverage.

(iii) *Application to other qualified benefits.* [Reserved]

(2) *Change in status events.* The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status.* Events that change an employee's legal marital status, including the following: marriage; death of spouse; divorce; legal separation; and annulment.

(ii) *Number of dependents.* Events that change an employee's number of dependents, including the following: birth; death; adoption; and placement for adoption.

(iii) *Employment status.* Any of the following events that change the employment status of the employee, the employee's spouse, or the employee's dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the cafeteria plan or other employee benefit plan of the employer of the employee, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this paragraph (c) (*e.g.,* if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid with the consequence that the employee ceases to be eligible for the plan, then that change constitutes a change in employment status under this paragraph (c)(2)(iii)).

(iv) *Dependent satisfies or ceases to satisfy eligibility requirements.* Events that cause an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstance.

(v) *Residence.* A change in the place of residence of the employee, spouse, or dependent.

(3) *Consistency rule*—(i) *Application to accident or health coverage and group-term life insurance.* An election change satisfies the requirements of this paragraph (c)(3) with respect to accident or health coverage or group-term life insurance only if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan.

(ii) *Application to other qualified benefits.* [Reserved]

(iii) *Application of consistency rule.* If the change in status is the employee's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy the eligibility requirements for coverage, an employee's election under the cafeteria plan to cancel accident or health insurance coverage for any individual other than the spouse involved in the divorce, annulment or legal separation, the deceased spouse or dependent, or the dependent that ceased to satisfy the eligibility requirements for coverage, respectively, fails to correspond with that change in status. Thus, if a dependent dies or ceases to satisfy the eligibility requirements for coverage, the employee's election to cancel accident or health coverage for any other dependent, for the employee, or for the employee's spouse fails to correspond with that change in status. In addition, if an employee, spouse, or dependent gains eligibility for coverage under a family member plan (as defined in paragraph (i)(5) of this section) as a result of a change in marital status under paragraph (c)(2)(i) of this section or a change in employment status under paragraph (c)(2)(iii) of this section, an employee's election under the cafeteria plan to cease or decrease coverage for that individual under the cafeteria plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan. However, if the change in status is a change in the employee's marital status under paragraph (c)(2)(i) of this section or a change in the employment status of the employee's spouse or dependents under paragraph (c)(2)(iii) of this section, an election to increase, or an election to decrease, group-term life insurance or disability income coverage corresponds with that change in status.

(iv) *Exception for COBRA.* If the employee, spouse, or dependent becomes eligible for continuation coverage under the group health plan of the employee's employer as provided in section 4980B or any similar state law, a cafeteria plan may permit the employee to elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Examples.* The following examples illustrate the application of this paragraph (c):

Example 1. (i) Employer *M* provides health coverage (including a health FSA) for its employees through its cafeteria plan. Before the beginning of the calendar year, Employee *A* elects employee-only health coverage under *M*'s cafeteria plan and elects salary reduction contributions to fund coverage under the health FSA. Employee *A* marries *B* during the year. Employee *B*'s employer, *N,* offers health coverage to *N*'s employees (but not including any health FSA), and, prior to the marriage, *B* had elected employee-only coverage. Employee *A* wants to revoke the election for employee-only coverage, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) Employee *A*'s marriage to *B* is a change in status under paragraph (c)(2)(i) of this section, pursuant to which *B* has become eligible for coverage under *M*'s health plan under paragraph (c)(3)(i) of this section. Two possible election changes by *A* correspond with the change in status: Employee *A* may elect family health coverage under *M*'s plan to cover *A* and *B*; or *A* may cancel coverage under *M*'s plan, if *B* elects family health coverage under *N*'s plan to cover *A* and *B.* Thus, *M*'s cafeteria plan may permit *A* to make either election change.

(iii) Employee *A* may also increase salary reduction contributions to fund coverage for *B* under the health FSA.

Example 2. (i) Employee *C,* a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer *O.* Employee *C* and *C*'s 21-year old child, *D,* are covered under *O*'s health plan. During the year, *D* graduates from college. Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. Employee *C* wants to revoke *C*'s election for family health coverage and obtain employee-only coverage under *O*'s cafeteria plan.

(ii) *D*'s loss of eligibility for coverage under the terms of the health plan is a change in status under paragraph (c)(2)(iv) of this section. A revocation of *C*'s election for family coverage and new election for employee-only coverage corresponds with the change in status. Thus, *O*'s cafeteria plan may permit *C* to elect employee-only coverage.

Example 3. (i) Employee *E* is married to *F* and they have one child, *G.* Employee *E* is employed by Employer *P,* and *P* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, *E* elects family health coverage for *E, F,* and *G. E* and *F* divorce during the year and *F* loses eligibility for coverage under *P*'s plan. *G* does not lose eligibility for health coverage under *P*'s plan upon the divorce. *E*

now wants to revoke *E*'s election under the cafeteria plan and elect no coverage.

(ii) The divorce is a change in status under paragraph (c)(2)(i). A change in the cafeteria plan election to cancel health coverage for *F* is consistent with that change in status. However, an election change to cancel *E*'s or *G*'s health coverage does not satisfy the consistency rule under paragraph (c)(3)(iii) of this section regarding cancellation of coverage for an employee's other dependents in the event of divorce. Therefore, the cafeteria plan may not permit *E* to elect no coverage. However, an election to change to employee-plus-one-dependent health coverage would correspond with the change in status, and thus the cafeteria plan may permit *E* to elect employee-plus-one-dependent health coverage.

Example 4. (i) Employer *R* maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees who work in the respective service areas of the two HMOs. Employee *A*, who works in the service area of HMO #1, elects the HMO #1 option. During the year, *A* is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) The transfer is a change in status under paragraph (c)(2)(iii) of this section (relating to a change in worksite), and, under the consistency rule in paragraph (c)(3) of this section, the cafeteria plan may permit *A* to make an election change to either the indemnity option or HMO #2.

Example 5. (i) Employer *S* maintains a calendar year cafeteria plan that allows employees to elect coverage under an accident or health plan providing indemnity coverage and coverage under a health FSA. Prior to the beginning of the calendar year, Employee *B* elects employee-only indemnity coverage, and elects salary reduction contributions of $600 during the year to fund coverage under the health FSA for up to $600 of reimbursements for the year. Employee *B*'s spouse, *C*, has employee-only coverage under an accident or health plan maintained by *C*'s employer. During the year, *C* terminates employment and loses coverage under that plan. *B* now wants to elect family coverage under *S*'s accident or health plan and increase *B*'s FSA election.

(ii) *C*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, the cafeteria plan may permit *B* to elect family coverage under *S*'s accident or health plan and to increase *B*'s FSA coverage.

Example 6. (i) Employer *T* provides group-term life insurance coverage as described under section 79. Under *T*'s plan, an employee may elect life insurance coverage in an amount up to $50,000. *T* also maintains a calendar year cafeteria plan under which qualified benefits, including the group-term life insurance coverage, are funded through salary reduction. Employee *D* has a spouse and a child. Before the beginning of the year, *D* elects $10,000 of group-term life insurance coverage. During the year, *D* is divorced.

(ii) The divorce is a change in status under paragraph (c)(2)(i) of this section. Under paragraph (c)(3)(iii) of this section, either an increase or a decrease in coverage is consistent with this change in status. Thus, *T*'s cafeteria plan may permit *D* to increase or to decrease *D*'s group-term life insurance coverage.

Example 7. (i) Employee *E* is married to F and they have one child, *G*. Employee *E*'s employer, *U*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *U*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *E* elects family health coverage and no vision coverage under *U*'s cafeteria plan. Employee *F*'s employer, *V*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *V*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *F* elects no health coverage and employee-only vision coverage under *V*'s plan. During the year, *F* terminates employment with *V* and loses vision coverage under *V*'s plan. Employee *E* now wants to elect family vision coverage under *U*'s group health plan.

(ii) *F*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, *U*'s cafeteria plan may permit *E* to elect family vision coverage (covering *E* and *G* as well as *F*) under *U*'s group health plan.

Example 8. (i) Before the beginning of the year, Employee *H* elects to participate in a cafeteria plan maintained by *H*'s employer, *W*. However, in order to change the election during the year so as to cancel coverage, and by prior understanding with *W*, *H* terminates employment and resumes employment one week later.

(ii) In this *Example 8*, under the facts and circumstances, a principal purpose of the termination of employment was to alter the election, and reinstatement of employment was understood at the time of termination. Accordingly, *H* does not have a change in status under paragraph (c)(2)(iii) of this section.

(iii) However, *H*'s termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if *H*'s original cafeteria plan election for the period of coverage was reinstated upon resumption of employment (for example, if *W*'s cafeteria plan contains a provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

(iv) If, instead, *H* terminates employment and cancels coverage during a period of unemployment, and then returns to work more than 30 days following termination of employment, the cafeteria plan may permit *H* the option of returning to the election in effect prior to termination of employment or making a new election under the plan. Alternatively, the cafeteria plan may prohibit *H* from returning to the plan during that plan year.

(d) *Judgment, decree, or order*—(1) *Conforming election change.* This paragraph (d) applies to a judgment, decree, or order (order) resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order as defined in section 609 of the Employee Retirement Income Security Act of 1974 (Public Law 93–406 (88 Stat. 829))) that requires accident or health coverage for an employee's child or for a foster child who is a dependent of the employee. A cafeteria plan will not fail to satisfy section 125 if it—

(i) Changes the employee's election to provide coverage for the child if the order requires coverage for the child under the employee's plan; or

(ii) Permits the employee to make an election change to cancel coverage for the child if the order requires the spouse, former spouse, or other individual to provide coverage for the child.

(2) *Example.* The following example illustrates the application of this paragraph (d):

Example. (i) Employer *M* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. *M*'s employee, *A*, is married to *B* and they have one child, *C*. Before the beginning of the year, *A* elects employee-only health coverage. Employee *A* divorces *B* during the year and, pursuant to *A*'s divorce agreement with *B*, *M*'s health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act of 1974) during the plan year. The order requires *M*'s health plan to cover *C*.

(ii) Under this paragraph (d), *M*'s cafeteria plan may change *A*'s election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover *C*.

(e) *Entitlement to Medicare or Medicaid.* If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., becomes enrolled) under Part A or Part B of Title XVIII of the Social Security Act (Medicare) (Public Law 89–97 (79 Stat. 291)) or Title XIX of the Social Security Act (Medicaid) (Public Law 89–97 (79 Stat. 343)), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make a prospective election change to

cancel or reduce coverage of that employee, spouse, or dependent under the accident or health plan. In addition, if an employee, spouse, or dependent who has been entitled to such coverage under Medicare or Medicaid loses eligibility for such coverage, the cafeteria plan may permit the employee to make a prospective election to commence or increase coverage of that employee, spouse, or dependent under the accident or health plan.

(f) *Significant cost or coverage changes.* [Reserved]

(g) *Special requirements relating to the Family and Medical Leave Act.* An employee taking leave under the Family and Medical Leave Act (FMLA) (Public Law 102–530 (88 Stat. 829)) may revoke an existing election of group health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.

(h) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with section 401(k) and (m) and the regulations thereunder.

(i) *Definitions.* Unless otherwise provided, the definitions in paragraphs (i)(1) though (8) of this section apply for purposes of this section.

(1) *Accident or health coverage.* Accident or health coverage means coverage under an accident or health plan as defined in regulations under section 105.

(2) *Benefit package option.* A benefit package option means a qualified benefit under section 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a dependent of both parents.

(4) *Disability income coverage.* Disability income coverage means coverage under an accident or health plan that provides benefits due to personal injury or sickness, but does not reimburse expenses incurred for medical care (as defined in section 213(d)) of the employee or the employee's spouse and dependents, and does not provide for payments described in section 105(c).

(5) *Family member plan.* A family member plan means a cafeteria plan or qualified benefit plan sponsored by the employer of the employee's spouse or the employee's dependent.

(6) *FSA, health FSA.* An FSA means a qualified benefits plan that is a flexible spending arrangement as defined in section 106(c)(2) . A health FSA means a health or accident plan that is an FSA.

(7) *Placement for adoption.* Placement for adoption means placement for adoption as defined in regulations under section 9801.

(8) *Qualified benefits plan.* A qualified benefits plan means an employee benefit plan governing the provision of one or more benefits that are qualified benefits under section 125(f).

(j) *Effective date.* This section is applicable for cafeteria plan years beginning on or after January 1, 2001.

Par. 3. § 1.125–4T is amended by revising paragraph (l) to read as follows:

§1.125–4T Permitted election changes (temporary).

* * * * *

(l) *Effective date.* This section is applicable for plan years beginning after December 31, 1998, and on or before November 6, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: February 23, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–5817 Filed 3–22–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–127–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Pennsylvania program to incorporate changes made by Pennsylvania regarding administration of the Small Operators Assistance Program (SOAP).

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated November 8, 1999, (Administrative Record Number PA 846.02), Pennsylvania submitted an amendment to the Pennsylvania program. The amendment resulted from regulations the Pennsylvania Department of Environmental Protection (PADEP) published in the Pennsylvania Bulletin (28 Pa. B. 15, January 3, 1998). The regulations were published to revise Pennsylvania's existing SOAP regulations to be consistent with the federal SOAP revisions and because of the Department's Regulatory Basics Initiative (RBI). Under the RBI, regulations are revised because they were considered unclear, unnecessary or were more stringent than the corresponding federal regulations. Pennsylvania also published the regulations to address an amendment required by OSM [see 30 CFR 938.16(ooo)].

The proposed amendment was published in the **Federal Register** (64

FR 66598, November 29, 1999), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 29, 1999. No public hearings were requested or held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program.

A. 25 PA Code 86.80. Definitions

The definition of the phrase, ''qualified consultant and qualified laboratory'' was moved to this newly created section from 25 PA Code 86.91. There was only a slight wording change when it was moved. The use of the term ''qualified consultant'' was discussed and approved in a previous Pennsylvania amendment regarding SOAP (60 FR 16789 and 16791, April 3, 1995). In approving that amendment, the Director found that use of the term ''qualified consultant'' was consistent with the intent of the federal regulations and did not render the Pennsylvania program less effective than the counterpart regulations at 30 CFR part 795. With regard to the current amendment, the Director finds that moving of the definition and the slight wording change to the definition of ''qualified consultant and qualified laboratory'' is no less effective than the federal definition found at 30 CFR 795.3.

B. 25 PA Code 86.81, Program Services

The first change proposed to 25 PA Code 86.81 is the deletion of the phrase ''for qualified small operators who request assistance'' in subsection (a) when describing the Department's duties. A new subsection (1) which requires the Department to, ''Review requests for assistance'' is proposed to be added. While there is no direct federal counterpart to this regulation, the Director finds the amendment to be consistent with 30 CFR 795.9 regarding administration of the SOAP program and data requirements and therefore approves the change.

PADEP further changed this section by moving the referenced regulations of subsection (a)(1)(iii) to newly created subsections (a)(2)(iii)(A), (B), and (C) and by stating that the Department will select and pay a qualified consultant to provide a description of the existing resources within and adjacent to the proposed permit area in accordance with one of those subsections. In moving the referenced regulations, PADEP dropped references to 25 PA Code §§ 87.48, 87.49, 87.52, 87.53, 88.28, 88.29, 88.30, 88.32, 88.33, 89.37, 89.38, 89.71, 89.72, 89.73, 89.102, 89.121, 89.122, 89.141, and 89.142(a). The remaining references are: (A) Sections 87.41–87.47, 87.50 and 87.54, (B) 88.21–88.27 and 88.31, and (C) 89.33–89.36, 89.38 and 89.74. The cross references listed in (C) that in 1995 (60 FR 16788) were approved previously remain approved except as noted later in the discussion regarding § 89.34.

Similarly, the Department changed subsection (a)(1)(iv) by moving referenced regulations to newly created subsections (a)(2)(iv)(A), (B), and (C) and by stating that the Department will select and pay a qualified consultant to provide a detailed description, to include maps, plans, and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with one of those subsections. In moving the referenced regulations, PADEP dropped references to 25 PA Code §§ 87.68, 87.70–87.76 (inclusive), and 87.78–87.83 (inclusive), 88.41–88.44 (inclusive), 88.46, 88.48, 88.50–88.55 (inclusive), 88.57–88.61 (inclusive). The remaining references are: (A) Sections 87.69, 87.77 and 87.84 and (B) Sections 88.49, 88.56 and 88.62.

For Chapter 89 references to subsection (a)(2)(iv)(C), PADEP added §§ 89.33, 89.34, and 89.35 while deleting references to §§ 89.31, 89.32, 89.37, 89.71–89.73 (inclusive), 89.102, 89.122(b), 89.141, and 89.142(a). Two of the added Chapter 89 references (§§ 89.33 and 89.35) deal with geology and prediction of the hydrologic consequences for underground mines and coal preparation facilities. The information required by these sections will be used to determine the probable hydrologic consequences and the geology information as provided for in 30 CFR 795.9(b)(1) and (2). Therefore, the Director finds the addition of these references makes this portion of the amendment to be no less effective than the federal rule and approves the change.

The third Chapter 89 reference, § 89.34, deals with hydrology for underground mines and coal preparation facilities. Subsections (a)(1)(i)and (ii), (a)(2)(i), and (b) deal with collection of groundwater and surface water information for the proposed permit and adjacent areas. The information required by these subsections will be used to determine the probable hydrologic consequences information as provided for in 30 CFR 795.9(b)(1). However, subsections (a)(1)(iii) and (a)(2)(ii) deal respectively with groundwater and surface water monitoring plans. The information required by these subsections is not of the nature that would be funded under federal SOAP guidelines. In 1995, OSM had inadvertently approved in 86.81 (a)(1)(iii), the cross reference to § 89.34(a)(1)(iii) and (a)(2)(ii). Now, however, the Director is approving incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The Director is not approving the incorporation of this references into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

PADEP changed the references to the regulations at 86.81(a)(2)(iii) and 86.81(a)(2)(iv) in response to OSM's comments to Pennsylvania's previous SOAP amendment (60 FR 16788). In reviewing that amendment, OSM required PADEP to correct regulatory citations that are beyond the scope of services authorized by 30 CFR 795. While PADEP deleted most of the regulatory citations OSM felt were beyond the scope of services authorized by 30 CFR 795, there are still several that remain including references in 25 PA Code 86.81(a)(2)(iii)(A) and (B) to §§ 87.41, 87.42(1), 88.21, and 88.22(1). Sections 25 PA Code 87.41 and 88.21 correspond to 30 CFR 779.11, (description in permit application of existing, premining environmental resources that may be affected or impacted) and 25 PA Code 87.42(1) and 88.22(1) correspond to 30 CFR 779.12(a) (description and identification of lands, etc.). Neither the requirements noted in 30 CFR 779.11 nor 779.12(a) are referenced in federal regulations as being authorized for payment under the SOAP program. The Director is approving subsections 86.81(a)(2)(iii)(A) and (B) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(a)(2)(iii)(A) and (B) to the extent that the proposed

subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

In the 1995 SOAP amendment, OSM also noted that the permitting requirements at 25 PA Code 87.77, 88.56 and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks (60 FR 16790). The references to public parks remain in subsections 86.81(a)(2)(iv)(A), (B) and (C). The Director is approving the reference of §§ 87.77, 88.56 and 89.38 in subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The Director is not approving the incorporation of these references into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

Finally, PADEP added subsection (b) which provides that the applicant is responsible for costs exceeding the amount of funds allocated for the services to the applicant. This requirement was moved from 25 PA Code 86.94(c). While there is no direct federal counterpart to subsection (b), the Director finds this proposal is consistent with the federal requirements at 30 CFR 795.11(b) regarding allocation of funds and approves this change.

C. 25 PA Code 86.82, Responsibilities

This subsection removes language that states the Department will review requests for assistance and determine qualified operators. This change does not significantly impact the Department's procedures and does not diminish the duties of the program administrator as required in 30 CFR §§ 795.8 and 795.9 since the authority by the Department to approve or deny an application for assistance is still provided for in 25 PA Code 86.85. Accordingly, the Director finds that the deletion does not render the Pennsylvania program less effective than the federal program and therefore approves this change.

D. 25 PA Code 86.83, Eligibility for Assistance

The previous language of this section read that an applicant is eligible for assistance if the probable total and attributed production from the applicant's operations during the 12-month period immediately following the date on which the applicant is issued the mining activities permit will not exceed 300,000 tons. Subsection 25 PA Code 86.83(a)(2) now reads, ''establishes that the probable total attributed annual production from all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons.'' PADEP included the phrase ''all locations'' in this subsection to make clear the extent of operations to be included in the tonnage requirements.

A second change was made to this subsection to address a program amendment required by OSM in the 1995 SOAP approval (60 FR 16790). The required regulatory program amendment at 30 CFR 938.16(ooo) required Pennsylvania to amend 25 PA Code 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year. The current proposed amendment removed the phrase, ''the applicant's operations during the 12-month period immediately following the date.'' This removal makes it clear that the 300,000 ton limit as required by the federal regulations now applies in Pennsylvania for all years following permit issuance. The Director finds that the changes are no less effective than the federal requirements of 30 CFR 795.6(a)(2) and can be approved. The required regulatory program amendment at 30 CFR 938.16 (ooo) is removed and reserved.

The final change to 25 PA Code 86.83 is the addition of subsection (c) which states, ''For the purpose of this subchapter, measurement of coal production will be based on the production reported to the Office of Surface Mining Reclamation and Enforcement for the purpose of the reclamation fee payment.'' This section was formerly located in 25 PA Code 86.95 which was previously approved by OSM. There were no substantive changes in the language. Therefore, the Director finds that this section is no less effective than the federal regulations and approves the change.

E. 25 PA Code 86.84, Applications for Assistance

Pennsylvania proposed to delete subsection (a) which provides, ''Persons wishing to receive assistance shall file a Small Operator Assistance Program application with the Department at any time after initiation of the program.'' Former subsection (b) is now designated as subsection (a).

Subsection (b)(2)(iii) which required applicants for SOAP benefits to submit a surface mining operator's license as part of the application was also deleted. The requirement to submit information regarding a mine operator's license was added as subsection (a)(7). This subsection requires the mine operator's license number to be submitted as part of the application.

The final change to this subsection was made to former subsection (c) which is now designated as subsection (b). Previously, this subsection required two copies of the application for assistance to be submitted, one of which was to be attested by a notary public or district justice. The subsection now reads, ''The application shall be attested by a notary public or district justice.''

There are no specific federal counterparts to the deleted language. The deletions do not render the Pennsylvania program less effective than the federal requirements and therefore are approved.

F. 25 PA Code 86.85, Application approval and notice

This section was amended by adding subsection (a)(3) which requires PADEP to provide the applicant a copy of the contract or other appropriate work order for the qualified consultant's services and the consultants' report within 15 Days of the Department's final approval. Subsection (c) was added which requires the Department to inform the applicant in writing of a decision to deny the application with 45 days of receipt of an application for assistance. The regulations require the Department to state the reason for the denial.

The federal rules at 30 CFR 795.8 require written notification to the applicant when the program administrator finds the applicant either eligible or ineligible for assistance. They do not specify how many days before a decision must be made on the application for assistance. The Director finds 45 days is a reasonable time period and finds that these subsections are no less effective than the federal regulations at 30 CFR 795.8 (a) and (b) and can be approved.

Subsection (b) was modified to make it clear that granting of assistance under the SOAP program does not imply that the Department will approve a subsequent permit action. While there is no federal counterpart to this requirement, the Director finds that this change is not inconsistent with SMCRA and the federal regulations.

G. 25 PA Code 86.86, Notice

This provision is being deleted in its entirety. The provisions requiring the Department to notify the applicant of decisions regarding the application are now found in 25 PA Code 86.85(a) and (c).

The Director finds that this proposed deletion does not render the Pennsylvania program less effective than the federal program and approves the deletion.

H. 25 PA Code 86.87, Determination of data requirements

Subsection (a) was rewritten by moving a phrase to clarify the section. No language was deleted or added. This section provides that the Department will determine the data collection requirements to meet the objectives of the program. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.

While there is no direct counterpart in the federal regulations, the Director finds the provision is consistent with the SOAP provision at 30 CFR 795.9(c) which allow data collection and analysis to proceed concurrently with the development of mining and reclamation plans and approves the change.

I. 25 PA Code 86.91, Definitions and Responsibilities

This provision is being deleted in its entirety. This section contained the definitions for the terms ''qualified consultant'' and ''qualified laboratory.'' These definitions are found in the newly created section 25 PA Code 86.80.

Subsection (b) contained the procedures people who desired to be included in the list of qualified consultants or qualified laboratories must follow. These requirements are now found at newly created 25 PA Code 86.92(c).

Finally, subsection (c) which required the Department to designate and maintain a list of qualified consultant and qualified laboratories is eliminated. There is no federal requirement that a list of qualified consultants or laboratories be maintained by Pennsylvania. Pursuant to 25 PA Code 86.92, Pennsylvania still determines which laboratories or consultants can provide services under the SOAP program.

The Director finds that the moving of subsections (a) and (b) and the deletion of subsection (c) does not render the Pennsylvania program less effective than the federal regulations and approves the changes.

J. 25 PA Code 86.92, Basic Qualifications

As stated in the discussion regarding 25 PA Code 86.91 above, subsection (c) was added to define the procedures people must follow to be included in PADEP's list of qualified consultants or qualified laboratories.

This requirement was formerly found at 25 PA Code 86.91(b) which was previously approved by OSM. There were no substantive changes in the language of the requirement. Therefore, the Director finds that this section is no less effective than the federal regulations and approves the change.

K. 25 PA Code 86.94, Applicant Liability

Subsection (a) describes the circumstances under which an operator will be liable for reimbursing the cost of services performed. One of those circumstances as found in Subsection (a)(3) was changed from failing to mine within three years after obtaining a permit to failure to commence mining within three years after obtaining a permit.

The federal regulation at 30 CFR 795.12 does not specify what stage of mining an operator must be in before he or she is liable for reimbursement to the SOAP program. Pursuant to 30 CFR 773.19(e) and 25 PA Code 86.40(b), a permit is terminated for failing to start mining within three years of permit issuance. Accordingly, it is a reasonable interpretation that the SOAP program should be reimbursed for any funds distributed to that terminated permit. Thus, the Director finds that this subsection is consistent with the federal regulations at 30 CFR 795.12 and can be approved.

Subsection (c) was deleted and moved to 25 PA Code 86.81(b). This subsection provided that the applicant was responsible for costs exceeding the amount of funds allocated for the services to the applicant. The Director finds that moving this subsection does not render the Pennsylvania program less effective than the federal regulations and therefore approves the change.

L. 86.95, Measurement

This section was deleted in its entirety. The requirement to use coal production as reported to the Office of Surface Mining Reclamation and Enforcement for fee payment purposes also for eligibility for participating in SOAP was moved to 86.83(c). The Director finds that deletion of this subsection does not render the Pennsylvania program less effective than the federal requirements and is approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various federal agencies with an actual or potential interest in the Pennsylvania program.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) commented that the word ''either'' after the phrase ''in accordance with'' found at 86.81(a)(2)(iii) should be deleted. The Director agrees that this typographical error should be deleted but its inclusion does not render the program less effective nor does it cause confusion. MSHA also commented that the agency reference at 86.84(a)(3)(ii) to ''Mining Enforcement and Safety Administration'' should be replaced with the ''Mine Safety and Health Administration.'' The Director agrees that this is an incorrect reference. However, subsection 86.84(a)(3)(ii) is outside the scope of the amendment since it was not amended by the proposed submission. Pennsylvania should correct this reference in future amendments.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 29, 1999, **Federal Register** (64 FR 66598). The comment period closed on December 29, 1999. No one requested an opportunity to testify at a public hearing, so no hearing was held.

The only written comments received were from the Pennsylvania Historical and Museum Commission. The Commission stated that it will continue to assist operators qualifying under the SOAP program to identify impacts to cultural resources within the proposed project areas.

The proposed amendment does not modify this relationship and therefore the Commission had no substantive comments about the amendment.

Environmental Protection Agency

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to

those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On November 16, 1999, OSM solicited EPA's concurrence and comments on the proposed amendment (Administrative Record No. PA–864.03). EPA responded on November 29, 1999, (Administrative Record No. PA 846.05) by stating it had no specific comments.

V. Director's Decision

Based on the findings above the Director is approving, except as noted below, Pennsylvania's SOAP amendment as submitted by Pennsylvania on November 8, 1999.

As noted in section III. B. above, the Director is approving incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) concerning fundable program services to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The Director is not approving the incorporation of this references into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

Also noted in III. B. above there are several regulatory citations in the 1995 SOAP approval that OSM felt were beyond the scope of services authorized by 30 CFR 795 that still remain in this amendment including: 25 PA Code §§ 87.41, 87.42(1), 88.21, and 88.22(1). These requirements are not referenced in federal regulations as being authorized for payment under the SOAP program. The Director is approving subsections 86.81(a)(2)(iii)(A) and (B) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(a)(2)(iii)(A) and (B) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

Finally, also discussed in III. B. above, OSM noted in the 1995 SOAP amendment approval that the permitting requirements at 25 PA Code 87.77, 88.56 and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks. The references to public parks remain in subsections 86.81(a)(2)(iv)(A), (B) and (C). The Director is approving the reference of §§ 87.77, 88.56 and 89.38 into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The Director is not approving the incorporation of these references into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

The Federal regulations at 30 CFR 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget [*19820] (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic

impact, the Department relied upon the date and assumptions for the corresponding federal regulations.

Unfunded Mandates

This rule will not impose a cost of $ 100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

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

2. Section 938.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 938.15—Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
November 8, 1999	March 23, 2000	25 PA Code §§ 86.80, 86.81, 86.82, 86.83, 86.84, 86.85, 86.86 (deleted), 86.87, 86.91 (deleted), 86.92, 86.94, 86.95 (deleted). Note: The incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is approved to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The incorporation of this reference into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1). 25 PA Code 86.81(a)(2)(iii) is approved to the extent that the SOAP funds are not used to fund the activities required under 25 PA Code §§ 87.41 and 87.42(1) or §§ 88.21 and 88.22(1). The reference of §§ 87.77, 88.56 and 89.38 (regarding archaeological and historic information) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is approved to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The incorporation of these references (regarding public parks) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraph (000).

[FR Doc. 00–7207 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–00–005]

RIN 2115–AE46

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 for the 21st Annual Safety at Sea Seminar, a marine event to be held March 25, 2000, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.511 is effective from 11:30 a.m. to 3 p.m. on March 25, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy Sailing Squadron will sponsor the 21st Annual Safety at Sea Seminar on the waters of the Severn River and Spa Creek at Annapolis, Maryland. Waterborne activities will include demonstrations of life rafts, pyrotechnics, man overboard procedures, and a helicopter rescue. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 10, 2000.

J.E. Shkor,

Vice Admiral, Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 00–7206 Filed 3–21–00; 9:38 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 22, 24, 80, 90, 99

[GN Docket No. 93–252; FCC 00–66]

Petitions for Reconsideration; Regulation of Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document denies petitions for reconsideration of the Second Report and Order (Second R&O) in this proceeding, regarding regulatory treatment of mobile services. Some of the petitions are dismissed because they provide no new information warranting reconsideration of the Second R&O, and others are dismissed because the issues raised are either moot or beyond the scope of this proceeding.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in GN Docket No. 93–252, FCC 00–66, adopted February 25, 2000, and released March 10, 2000. The complete text of this document is available on the Commission's Internet site, at *www.fcc.gov*. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Order

1. On February 3, 1994, the Commission adopted the CMRS Second Report and Order (59 FR 18493, April 19, 1994), which implemented revisions to sections 3(n) and 332 of the Communications Act of 1934, which were enacted in the Omnibus Budget Reconciliation Act of 1993. These revisions created a comprehensive framework for the regulation of mobile radio services, including existing common carrier mobile services, private land mobile services, and new services such as Personal Communications Services. Between May 19 and July 1, 1994, the Commission received 15 petitions for reconsideration of the CMRS Second Report and Order, 19 oppositions, and 12 reply comments addressing a broad range of issues. (A list of parties filing petitions for reconsideration, oppositions and comments, and reply comments to the oppositions may be found in Appendix A of the full text of this Order.)

2. Some issues raised by petitioners on reconsideration are outside the scope of the CMRS Second Report and Order and are dismissed on that basis. (*see*, for example, footnote 3 of the full text of the Order.) Many of the issues raised on reconsideration have subsequently given rise to, or been addressed in, separate proceedings. (*see* footnote 4 of the full text of the Order.) Still others, including several requests for clarification, have been rendered moot by other subsequent events or Commission actions. (See footnote 5 of the full text of the Order.) The Commission in the CMRS Second Report and Order addressed several of the remaining issues previously. Because none of the petitioners has presented new information or argument that would warrant reversal, the Commission denies these petitions.

3. The two remaining issues, raised by McCaw Cellular Communications, Inc., concern requests that the Commission preempt states from requiring CMRS providers to file informational tariffs and from imposing their own interconnection requirements on CMRS providers. In the absence of evidence in the record that states are attempting to exercise jurisdiction with respect to informational tariffs and CMRS interconnection requirements, there appears to be neither a reason to address these issues nor a record sufficient to support substantive decisions with respect to them. Consequently, the Commission denies this petition.

Ordering Clause

4. The petitions for reconsideration, or portions thereof, filed by the American Mobile Telecommunications Association, McCaw Cellular Communications, Inc., MCI Telecommunications Corporation, the Personal Communications Industry Association, and the National Cellular Resellers Association with respect to the CMRS Second Report and Order in GN Docket No. 93–252 are denied on the merits. The remaining petitions, or portions thereof, filed by the American Mobile Telecommunications Association, Ameritech, CUE Network Corporation, GTE Service Corporation, McCaw Cellular Communications, Inc., MCI Telecommunications Corporation, the National Association of Regulatory Utility Commissioners, the National Cellular Resellers Association, the New York Department of Public Service, Pacific Bell, the Pennsylvania Public Utility Commission, SEIKO Telecommunications Systems, Inc., and the Waterway Communications System, Inc. are dismissed because the issues raised are either moot or beyond the scope of this proceeding.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7131 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99–363; FCC 00–99]

Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity

AGENCY: Federal Communications Commission.

ACTION: Final rule; procedures.

SUMMARY: This document implements aspects of the Satellite Home Viewer Improvement Act of 1999, enacted on November 29, 1999, and adopts regulations and procedures governing the negotiation of agreements in connection with the retransmission of television broadcast station signals by multichannel video programming distributors (''MVPDs''), including satellite carriers and cable systems. It establishes the standards for implementing a good faith negotiation requirement of broadcasters to MVPDs to ensure that negotiations are conducted in an atmosphere of honesty, purpose and clarity of process. This proceeding also adopts implementing rules and provides clarification regarding the prohibition against exclusive retransmission consent agreements. In addition, this document provides that voluntary mediation is an option that can be utilized by parties in protracted negotiations to aid in facilitating retransmission consent. We also establish that existing Commission complaint procedures provide an appropriate framework for parties alleging violations of the good faith negotiation requirement and the prohibition against exclusive agreements. Pursuant to the provisions of section 325(b)(3)(C) of the Communications Act, this document also concludes that the prohibitions on exclusive retransmission consent agreements and the good faith negotiation requirement terminate on January 1, 2006.

DATES: Effective March 23, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW,

Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 12th Street, SW, Washington DC 20554, or via the Internet at *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Broeckaert at (202) 418–7200 or via internet at s*broecka@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, FCC 00–99, adopted March 14, 2000; released March 16, 2000. The full text of the Commission's First Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/.*

Synopsis of the First Report and Order

I. Introduction

1. In this First Report and Order (''Order''), we adopt rules implementing certain aspects of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). SHVIA authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to subscribers who previously have been prohibited from receiving broadcast fare via satellite under compulsory licensing provisions of the copyright law. The legislation generally seeks to place satellite carriers on an equal footing with local cable operators when it comes to the availability of broadcast programming, and thus give consumers more and better choices in selecting a multichannel video program distributor (''MVPD'').

2. Among other things, section 325(b)(3)(C) of the Communications Act requires satellite carriers to obtain retransmission consent for the local broadcast signals they carry, requires broadcasters, until 2006, to negotiate in good faith with satellite carriers and other MVPDs with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission consent agreements. Section 325(b)(3)(C) required the Commission to commence a rulemaking within 45 days of the enactment of SHVIA and to complete all actions necessary to prescribe regulations within 1 year after such date of enactment. The Commission issued a Notice of Proposed Rulemaking (''Notice'') on December 22, 1999 (64 FR 72985). The Commission received numerous comments and reply comments to the Notice. We conclude the good faith negotiation and exclusivity portion of this rulemaking well ahead of our statutory deadlines for doing so because of the importance of implementing these provisions to MVPD competition and the growth of satellite service.

II. Background

3. In 1988, Congress passed the Satellite Home Viewer Act (''1988 SHVA'') in order to provide people in unserved areas of the country with access to broadcast programming via satellite. The 1988 SHVA enabled satellite carriers to provide broadcast programming to those satellite subscribers who were unable to obtain broadcast network programming over-the-air. As a general matter, however, the 1988 SHVA did not permit satellite carriers to retransmit local broadcast television signals directly to consumers.

4. The Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act'') amended the Communications Act, *inter alia,* to include section 325, which provides television stations with certain carriage rights on local market cable television systems. Within local market areas, commercial television stations may elect cable carriage under either the retransmission consent or mandatory carriage requirements. Section 325 as initially enacted contained no standards pursuant to which broadcasters were required to negotiate with MVPDs. The Commission established rules related to the retransmission/mandatory carriage election cycle, but did not adopt rules governing the negotiation process of retransmission consent.

5. SHVIA revises the 1988 SHVA and reflects changes not only involving the satellite industry and subscribers, but television broadcast stations and terrestrial MVPDs. SHVIA adopts changes in several areas, including retransmission consent, must-carry, and retransmission of local broadcast signals. In particular, SHVIA addresses several limitations previously placed on satellite carriers, including the issue of satellite carrier retransmission of local broadcast programming.

III. Summary of Decision

6. The Order determines that the statute does not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission. Instead, the order concludes that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement. Consistent with this conclusion, the Order adopts a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a broadcaster may not put forth a single, unilateral proposal. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide considered reasons for rejecting any aspects of the MVPD's offer. Sixth, a broadcaster is prohibited from entering into an agreement with any party conditioned upon denying retransmission consent to any MVPD. Finally, a broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement between the broadcaster and the MVPD.

7. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith.

8. The Order concludes that it is not practicably possible to discern objective competitive marketplace factors that broadcasters must discover and base any negotiations and offers on, and that it is the retransmission consent negotiations that take place that are the market through which the relative benefits and costs to the broadcaster and MVPD are established. The Order provides examples of negotiation proposals that presumptively are consistent and inconsistent with ''competitive marketplace considerations.'' At the same time, the Order provides that it is implicit in section 325(b)(3)(C) that any effort to further anti-competitive ends

through the negotiation process would not meet the good faith negotiation requirement. Considerations that are designed to frustrate the functioning of a competitive market are not ''competitive marketplace considerations.'' Conduct that is violative of national policies favoring competition—that is, for example, intended to gain or sustain a monopoly, is an agreement not to compete or to fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard included in the statute. The Commission's rules regarding the good faith negotiation requirement sunset on January 1, 2006.

9. As for the prohibition on exclusivity, the Order interprets the phrase ''engaging in'' broadly. Thus, the Order would prohibit not only entering into exclusive retransmission consent agreements, but also negotiating exclusive agreements that would take effect after the sunset of the prohibition. The Commission's rules regarding exclusive retransmission consent agreements sunset on January 1, 2006.

10. An MVPD believing itself to be aggrieved under section 325(b)(3)(C) may file a complaint with the Commission. The Order provides that the procedural provisions of 47 CFR 76.7 will govern good faith and exclusivity complaints. The Order directs Commission staff to expedite resolution of good faith and exclusivity complaints. The Order provides that the burden of proof with regard to such complaints is on the MVPD complainant.

IV. Good Faith Negotiation Requirement

A. Congressional Intent in Amending Section 325 of the Communications Act

11. In SHVIA, Congress amended section 325(b) of the Communications Act, requiring the Commission to revise its regulations so that they shall:

> * * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from * * * failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Joint Explanatory Statement of the Committee of Conference (''Conference Report'') does not explain or clarify the statutory language, merely stating that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from * * * refusing to negotiate in good faith regarding retransmission consent agreements. A television station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors. The [Commission] may determine that such different terms represent a failure to negotiate in good faith only if they are not based on competitive marketplace considerations.

The Notice sought comment on the correct interpretation of the good faith negotiation requirement of section 325(b)(3)(C).

12. At the outset of our discussion, we note that section 325(b)(2)(E) of the Communications Act grants satellite carriers a six-month period during which they may retransmit the signals of local broadcasters without a broadcaster's express retransmission consent. As discussed in further detail below, section 325 also requires strict enforcement of, and severe penalties for, satellite carrier retransmission of local broadcast signals without consent after this six-month period expires. We have adopted these rules before the end of the six-month period provided by section 325(b)(2)(E) so that MVPDs, particularly satellite carriers, and broadcasters understand their rights and obligations under section 325(b)(3)(C) before that period expires. These rules will provide a framework under which broadcasters and satellite carriers can achieve retransmission consent before the expiration of the six-month period set forth in section 325(b)(2)(E) so as to avoid the highly undesirable interruption of local broadcast signals that satellite carriers have begun to provide to their subscribers in many cities across the nation. On an ongoing basis, we intend these rules to govern the negotiation of retransmission consent between broadcasters and all MVPDs.

13. The statute does not appear to contemplate an intrusive role for the Commission with regard to retransmission consent. Section 325(b)(3)(C) instructs the Commission to ''revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection. . . .'' The fact that Congress instructed the Commission to ''revise'' its existing retransmission consent regulations, coupled with the determinedly brief discussion of section 325(b)(3)(C) in the Conference Report, leads us to conclude that, in addition to the guidance that can be gleaned from SHVIA, we should also look for guidance in the legislative history of the retransmission consent provisions of the 1992 Cable Act. When Congress first applied retransmission consent to MVPDs in 1992, it stated that ''it is the Committee's intention to *establish a marketplace* for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in this bill to *dictate the outcome of the ensuing marketplace negotiations.''*

14. Based on this language, the Commission concluded in the *Broadcast Signal Carriage Order* that Congress did not intend that the Commission should intrude in the negotiation of retransmission consent. We do not interpret the good faith requirement of SHVIA to alter this settled course and require that the Commission assume a substantive role in the negotiation of the terms and conditions of retransmission consent. We note that Congress considered and explicitly rejected a comprehensive regime that required the Commission to:

> prohibit television broadcast stations that provide retransmission consent from engaging in discriminatory practices, understandings, arrangements, and activities, including exclusive contracts for carriage, that prevent a multichannel video programming distributor from obtaining retransmission consent from such stations.

Where Congress expressly considers and rejects such an approach, the rules of statutory construction do not favor interpreting a subsequent statutory provision to require the rejected alternative. Given the express congressional rejection of this anti-discrimination provision, we will not adopt rules to recreate this provision by regulation.

15. In support of the position that intrusive Commission action is unnecessary to implement the good faith negotiation requirement, commenters point to the fact that thousands of retransmission consent agreements have been successfully concluded between local broadcasters and MVPDs since adoption of the 1992 Cable Act. In addition, commenters note that within days after enactment of SHVIA, DIRECTV and EchoStar announced that they had entered into retransmission consent agreements with the owned-and-operated affiliates of several of the major television networks. As a result, these commenters argue that it would be wholly inappropriate to impose ''shotgun wedding'' style regulations on a marketplace that is already functioning. DIRECTV, however, argues that the existence of

these agreements does not ensure that agreements that have yet to be completed will progress as smoothly.

16. One commenter maintains that the purpose of the good faith requirement is merely to bring the parties to the bargaining table, stating that ''Congress signaled its desire only that broadcasters, having once made the decision to provide retransmission consent, should be required to negotiate with all interested MVPDs and not engage in an outright refusal to deal.'' Several broadcast commenters assert that Congress merely intended the Commission to revise its existing regulations to account for retransmission consent agreements between broadcasters and satellite carriers that now qualify for compulsory copyright license to provide local television stations to satellite subscribers.

17. ALTV advises the Commission to focus on Congress' overarching purpose in enacting section 325 in the 1992 Cable Act—assuring broadcasters the opportunity to secure compensation for the value of the retransmission of their signals by MVPDs. Conversely, other commenters assert that Congress intended the Commission to begin with the premise that television broadcast programming is an indispensable component of any MVPD's service package and that alternative MVPDs cannot compete effectively with incumbent cable operators if they are denied full and fair access to that programming in local markets.

18. We find instructive the legislative history of a previous version of SHVIA that was considered, but not enacted, by Congress. During the consideration of the House version of SHVIA, Representative Tauzin explained to Representative Dingell that the House bill, which included a detailed, anti-discrimination provision, would permit:

> [A] broadcast station * * * for example, [to] negotiate a cash payment from one video distributor for retransmission consent and reach an agreement with other distributors operating in the same market that contains different prices or other terms * * * [Indeed], as long as a station does not refuse to deal with any particular distributor, a station's insistence on different terms and conditions in retransmission agreements based on marketplace considerations is not intended to be prohibited by this bill * * * if a station negotiates in good faith with a distributor, the failure to reach an agreement with that distributor would not constitute a discriminatory act that is intended to be barred by this section.

In discussing this same previous version of SHVIA, Representative Berman echoed a similar sentiment stating ''[W]hile it is important that MVPDs have the opportunity to negotiate for retransmission consent, we do not in this bill subject the prices or other terms and conditions of nonexclusive retransmission consent agreements to [Commission] scrutiny.'' Again, these statements reflect consideration of the more onerous House version of SHVIA and its anti-discrimination requirement. We find it difficult to reconcile commenters arguments that SHVIA as enacted contains a broad grant of Commission authority to analyze and prohibit the substantive terms of retransmission consent with these statements.

19. Commenters argue that the statutory imposition of a good faith negotiation requirement is in derogation of the long-standing common law right to contract and therefore the duty, though statutorily imposed, must be narrowly construed. Commenters assert that even a statutory duty to negotiate in good faith does not require parties to do anything contrary to their own self-interest or make any particular concessions. Accordingly, argues Disney, the Commission is not empowered to become involved in the substance of retransmission consent negotiations.

20. We agree with those commenters that assert that section 325(b)(3)(C) should be narrowly construed. As commenters indicate, congressional language in derogation of the common law should be interpreted to implement the express directives of Congress and no further. The United States Supreme Court has reiterated this rule of statutory construction on several occasions, holding that [s]tatutes which invade the common law* * * are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident.'' In addition, the Court has stated that, when a statutory provision does derogate from the common law, it ''must be strictly construed for no statute is to be construed as altering the common law, farther [sic] than its words import.''

21. Commenters state that, in other contexts, the good faith standard has a well understood meaning that Congress must be presumed to have intended, particularly, where, as here, nothing in the statute or the legislative history suggests that Congress intended the Commission to develop its own definition of good faith. These commenters argue that SHVIA cannot be read to grant the Commission new, wholesale authority to define good faith or engage in a detailed case-by-case review of the retransmission terms offered to one MVPD as compared to another. These commenters assert that the most appropriate statutory example to follow is that of the good faith requirement of section 8(d) of the Taft-Hartley Act.

22. Given the dearth of guidance in the statute and legislative history, we believe that Congress signaled that the good faith negotiation requirement adopted in section 325(b)(3)(C) was sufficiently well understood that further explication was unnecessary. In such situations, we believe that Congress intends the Commission look to analogous statutory standards from which to draw guidance. While commenters offer various sources on which to rely, we agree with those commenters suggesting that the good faith bargaining requirement of section 8(d) of the Taft-Hartley Act is the most appropriate source of guidance. Section 8(d) of the Taft-Hartley Act details the collective bargaining duty of both employers and labor representatives, providing that:

> To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment* * * but such obligation does not compel either party to agree to a proposal or require the making of a concession.

There are significant parallels between the congressional policy goal of good faith negotiation underlying both section 325(b)(3)(C) and section 8(d) of the Taft-Hartley Act. In this regard, there is substantial National Labor Relations Board (''NLRB'') precedent that the good faith negotiation requirement applies solely to the process of the negotiations and does not permit the NLRB to require agreement or impose terms or conditions on collective bargaining agreements. The Supreme Court has made this determination with force and clarity, stating that:

> It was recognized from the beginning that agreement might be impossible, and it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement.

23. Congress clearly did not intend the Commission to sit in judgement of the terms of every retransmission consent agreement executed between a broadcaster and an MVPD. Even if the Commission had the resources to accomplish such a delegation, we can divine no intent in either the statute or its legislative history to achieve such a result. As commenters indicated, when Congress intends the Commission to

directly insert itself in the marketplace for video programming, it does so with specificity. Despite the arguments of the satellite industry and other MVPDs, we find nothing supporting a construction of section 325(b)(3)(C) that would grant the Commission authority to impose a complex and intrusive regulatory regime similar to the program access provisions or the interconnection requirements of section 251 of the Communications Act. While the Commission generally will not intrude into the substance of particular retransmission consent negotiations and agreements, we note that section 325(b)(3)(C) sanctions only those retransmission consent agreements containing different terms and conditions, including price terms, with different MVPDs if such different terms and conditions are based upon competitive marketplace considerations.

24. Having reached this conclusion, we do not interpret section 325(b)(3)(C) as ''largely hortatory'' as suggested by some commenters. As we stated in the Notice, ''Congress has signaled its intention to impose some heightened duty of negotiation on broadcasters in the retransmission consent process.'' In other words, Congress intended that the parties to retransmission consent have negotiation obligations greater than those under common law. Absent fraudulent intent, common law imposes no obligation on parties to negotiate in good faith prior to the formation of a contract. We believe that, by imposing the good faith obligation, Congress intended that the Commission develop and enforce a process that ensures that broadcasters and MVPDs meet to negotiate retransmission consent and that such negotiations are conducted in an atmosphere of honesty, purpose and clarity of process.

B. Mutual Good Faith Negotiation Requirement

25. As a preliminary matter, we must determine to whom the ''good faith'' negotiation obligation applies. The Notice requested comment on whether the duty of good faith negotiation applies equally to the broadcaster and MVPD negotiating a retransmission consent agreement. Several commenters assert that the good faith negotiation requirement is a mutual obligation and that the Commission must consider and weigh the conduct of the MVPD in assessing whether the broadcaster has failed to satisfy the good faith negotiation requirement. Only DIRECTV asserts that the good faith negotiation requirement applies solely to broadcasters. DIRECTV argues that the language of section 325(b)(3)(C) applies solely to ''broadcast television stations'' and in no way, express or implied, is imposed on MVPDs.

26. We agree with DIRECTV that the language of section 325(b)(3)(C) on its face applies only to ''television broadcast station[s].'' To read the provision as a mutual obligation would contradict the express language of the statute and controvert Congress' intent. Moreover, Congress has demonstrated its ability to expressly impose a good faith negotiation obligation on both parties in other provisions of the Communications Act. Accordingly, we conclude that the good faith negotiation requirement in section 325(b)(3)(C) was intended to apply only to broadcasters. However, we caution MVPDs that seek retransmission consent that their conduct is relevant in determining whether a broadcaster has complied with its obligation to negotiate retransmission consent in good faith. Insistence by an MVPD on unreasonable terms and conditions or negotiating procedures will be taken into account by the Commission in assessing a broadcaster's observance of its good faith negotiation obligations.

C. Definition of Good Faith

27. The Notice sought comment on the criteria that should be employed to define ''good faith'' and sought comment on whether the Commission should explicitly define what constitutes good faith under section 325(b)(3)(C). The Notice requested comment on whether to adopt a two-part test for good faith similar to that embraced by the NLRB and by the Commission pursuant to section 251 of the Communications Act. The Commission also sought comment on any other specific legal precedent upon which we should rely and any other regulatory approach that might appropriately implement the good faith negotiation requirement of section 325(b)(3)(C) of the Communications Act.

28. Several commenters argue that both the NLRB and the section 251 good faith negotiation regimes are based upon the premise that one party to the negotiation may not have an interest in reaching an agreement. These commenters argue that, because broadcasters want their programming transmitted to the widest possible audience to increase advertising revenue and MVPDs desire valuable broadcast programming, both broadcasters and MVPDs have strong incentives for reaching retransmission consent. Several commenters support a two-part test to determine good faith similar to that suggested in the Notice. Fox asserts that, if the Commission adopts a two-part test for determining good faith, the specific actions that would constitute lack of good faith should be ''narrowly drawn to encompass only the most obvious and egregious breaches of good faith negotiating practices, and the Commission should always examine the factual context in which each alleged prohibition occurred.''

29. Time Warner proposes that the Commission adopt a ''zone of reasonableness'' standard for good faith in which, even if the broadcaster satisfies all of the procedural indicia of good faith, the Commission could determine that it violated its duty to negotiate in good faith ''if it insists [on] a level of consideration that is so plainly uneconomic that an MVPD would suffer greater financial harm from accepting the broadcaster's terms than from refusing to carry the station.'' NBC maintains that the Commission should contrive no standards before the fact. Instead, to the extent standards are appropriate, they should be developed out of actual experience in adjudicated controversies. Several commenters argue that the Commission should judge the conduct of the parties only by examining the totality of the circumstances.

30. We will adopt a two part test for good faith negotiation as proposed in the Notice. We believe that this test best implements Congress' intent in adopting the good faith negotiation requirement. A two-part test follows well established precedent in the field of labor law. In addition, the Commission has used a similar test in implementing its statutory obligations under section 251 of the Communications Act. Through the objective standards, this approach gives immediate guidance to the parties to retransmission consent negotiations that certain conduct will not be tolerated. Through the broader, totality of the circumstances test, the Commission will have the ability to prohibit conduct that, while not constituting a failure of good faith in all circumstances, does violate the good faith negotiation requirement in the context of a given negotiation. The totality of the circumstances test will also enable the Commission to continue refining and clarifying the responsibilities of parties to retransmission consent negotiations.

31. The first part of the test will consist of a brief, objective list of negotiation standards. Because the list consists of *per se* standards, of necessity, the standards must be concise, clear and constitute a violation of the good faith standard in all possible instances. Should an MVPD demonstrate to the Commission that a

broadcaster, in the conduct of a retransmission consent negotiation, has engaged in actions violative of an objective negotiation standard, the Commission would find that the broadcaster has breached its duty to negotiate in good faith. We disagree with those commenters who assert that the Commission should only define violations on a prospective adjudicatory basis. Given the short, six-month, period in which satellite carriers have to negotiate retransmission consent before expiration of the compulsory license of section 325(b)(2)(E), we believe it incumbent upon us to provide as much initial guidance as possible through which the parties may pursue negotiations.

32. The second part of the test is a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the objective standards, given the totality of the circumstances reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith. We do not intend the totality of the circumstances test to serve as a ''back door'' inquiry into the substantive terms negotiated between the parties. While the Commission will not ordinarily address the substance of proposed terms and conditions or the terms of actual retransmission consent agreements, we will entertain complaints under the totality of the circumstances test alleging that specific retransmission consent proposals are sufficiently outrageous, or evidence that differences among MVPD agreements are not based on competitive marketplace considerations, as to breach a broadcaster's good faith negotiation obligation. However, complaints which merely reflect commonplace disagreements encountered by negotiating parties in the everyday business world will be promptly dismissed by the Commission.

33. The Commission sought comment on specific actions or practices that would constitute *per se* violations of the duty to negotiate in good faith in accordance with section 325(b)(3)(C). In addition to any other actions or practices, the Commission asked commenters to address whether it would be appropriate to include in any such list provisions similar to the violations of the obligation to negotiate interconnection agreements in good faith set forth in 47 CFR 51.301. The Commission acknowledged, however, that the good faith standard of SHVIA is different in significant respects to that contained in 47 CFR 51.301.

34. Commenters proposed numerous standards that the Commission should consider in adopting rules to enforce the good faith negotiation requirement. Broadcasters generally argue that, to the extent it does anything, the Commission should adopt streamlined rules that apply only to the process of the negotiations between broadcasters and MVPDs. The other group, consisting of satellite carriers, small cable operators and alternative MVPDs, argues that the only way the Commission can effectively enforce the good faith negotiation requirement is to involve itself in the substantive terms of retransmission consent agreements as well as the process of negotiations. These commenters propose that the Commission adopt an extensive list of substantive terms and conditions that should be prohibited as violations of the obligation to negotiate retransmission consent agreements in good faith.

35. Broadcast commenters propose several standards based on experience gathered in the NLRB field, the absence of which indicates a lack of good faith, including: (1) a party must have a sincere desire to reach agreement, (2) a party's negotiator must have authority to conclude a deal, (3) a party must offer to meet at reasonable times and convenient places, and (4) a party must agree to execute a written agreement once all terms have been agreed on. NBC proposes that extrinsic evidence that a party never intended to reach agreement, or extrinsic evidence of an understanding with a third party that the negotiating party will not enter into a retransmission consent agreement, should also evidence violations of the good faith negotiation requirement. Other commenters would prohibit a broadcaster from insisting on terms so unreasonable that they are tantamount to a refusal to deal. EchoStar argues that such procedural violations are meaningless because ''no bad faith actor would be so inept or so artless as to display its bad faith by not agreeing to a convenient time and place to meet, not appointing a representative to negotiate, and not committing to writing a retransmission agreement once a deal has been reached.''

36. DIRECTV proposes the following list of good faith negotiation standards based upon examples from labor law precedent, the Commission's program access rules, the interconnection provisions of the 1996 Act, and recognized marketplace dynamics. DIRECTV, supported by other commenters, proposes that, during the negotiation of a retransmission consent agreement, a broadcaster may not:

(a) Intentionally seek to mislead or coerce the MVPD into reaching an agreement it would not otherwise have made;

(b) Unreasonably obstruct or delay negotiations or resolutions of disputes;

(c) Refuse to designate a representative with authority to make binding representations if such refusal significantly delays resolution of issues;

(d) Refuse to negotiate in fact;

(e) Refuse to provide the satellite carrier with a high quality, direct feed of the broadcast signal;

(f) Engage in discrimination in the price, terms or conditions of retransmission consent afforded an MVPD relative to any other MVPD, unless such discrimination is related to ''competitive marketplace conditions'' as defined by the Commission * * *;

(g) Offer unreasonable positions, including, but not limited to:

1. a unilateral requirement that retransmission consent for a given broadcast station be conditioned on carriage under retransmission consent of another broadcast station, either in the same or a different geographic market;

2. A unilateral requirement that retransmission consent be conditioned on the exclusion of carriage under retransmission consent of other broadcast channels in a given market;

3. A unilateral requirement that retransmission consent be conditioned on a broadcaster obtaining channel positioning rights on the satellite carrier's system;

4. A unilateral requirement that the satellite carrier (i) commit to purchase advertising on the broadcast station or broadcaster affiliated media, or (ii) that a specified share of advertising dollars spent in a broadcaster's market be spent on that broadcaster;

5. A unilateral requirement that retransmission consent be conditioned on a satellite carrier not retransmitting distant network signals to qualified subscribers in the market, or a satellite carrier ''capping'' the number of qualified subscribers in the market who may receive distant network signals, thus depriving eligible subscribers of their statutory right to subscribe to distant network signals;

6. A unilateral requirement that retransmission consent be conditioned on the satellite carrier's carriage of digital signals.

To this list EchoStar, would add: (i) Insisting on an unreasonably short contract duration; (ii) threatening to run anti-satellite advertising; and (iii) refusal to deal, whether explicit or disguised under requests for

extortionate terms. Several commenters would include the imposition of non-optional tying arrangements requiring an MVPD to carry the affiliated programming of the broadcaster in exchange for retransmission consent. Other commenters suggest a standard requiring parties to provide information necessary to reach agreement.

37. Several commenters propose a standard prohibiting instances in which a broadcaster seeks higher consideration from an MVPD for any affiliated cable network programming in exchange for retransmission consent than it obtains from the incumbent cable operator, unless the broadcaster justifies that such higher consideration is cost-based or does not produce anti-competitive market conditions. In addition, BellSouth urges the Commission to find a violation when a broadcaster ties retransmission consent to minimum subscriber penetration levels. Another commenter would also brand as a good faith violation a demand of a nondisclosure agreement, a demand that the MVPD attest that the agreement complies with all applicable laws, or the refusal to include a provision permitting the agreement to be amended to reflect subsequent changes in the law.

38. Several broadcast commenters assert that the list of violations proposed by DIRECTV, EchoStar and others is so extensive and one-sided as to render any notion of equality at the bargaining table meaningless. Other commenters assert that, since the adoption of the 1992 Cable Act, carriage of additional programming as compensation for retransmission consent is most often the compensation agreed upon by broadcasters and MVPDs in their retransmission consent agreements. Disney argues that the legislative history of the 1992 Cable Act expressly endorsed such compensation and that, had Congress wished to prohibit the practice, it would have done so expressly. Disney further argues that no commenter offers a sustainable legal basis for presuming on a blanket basis that a request for additional programming carriage as consideration for retransmission consent would be illegal under current law or anti-competitive.

39. Consistent with our determination that Congress intended that the Commission should enforce the process of good faith negotiation and that the substance of the agreements generally should be left to the market, we will not adopt the suggestions of certain commenters that we prohibit proposals of certain substantive terms, such as offering retransmission consent in exchange for the carriage of other programming such as a cable channel, another broadcast signal, or a broadcaster's digital signal. Instead, we believe that the good faith negotiation requirement of SHVIA is best implemented through the following standards derived from NLRB precedent, commenter's proposals and the section 251 interconnection requirements. These standards are intended to identify those situations in which a broadcaster did not enter into negotiations with the sincere intent of trying to reach an agreement acceptable to both parties.

40. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Section 325(b)(3)(C) affirmatively requires that broadcasters negotiate retransmission consent in good faith. This requirement goes to the very heart of Congress' purpose in enacting the good faith negotiation requirement. Outright refusal to negotiate clearly violates the requirement of section 325(b)(3)(C). Broadcasters must participate in retransmission consent negotiations with the intent of reaching agreement. Provided that the parties negotiate in good faith in accordance with the Commission's standards, failure to reach agreement does not violate section 325(b)(3)(C). Given the economic incentive for each side to reach agreement, we are hopeful that such impasses will be rare and short-lived.

41. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Failure to appoint a negotiating representative vested with authority to bargain on retransmission consent issues indicates that a broadcaster is not interested in reaching an agreement. This standard is the norm in NLRB precedent as well as our interconnection rules implementing section 251. This requirement does not empower MVPDs to demand that specific officers or directors of a broadcaster attend negotiation sessions. Provided that a negotiating representative is vested with the authority to make offers on behalf of the broadcaster and respond to counteroffers made by MVPDs to the broadcaster, this standard is satisfied.

42. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Refusal to meet at reasonable times and locations belies a good faith intent to negotiate. This requirement does not preclude negotiations conducted via telephone, facsimile, or by letter. Reasonable response times and unreasonable delays will be gauged by the breadth and complexity of the issues contained in an offer. The Commission is aware that, in many cases, time will be of the essence in retransmission consent negotiations, particularly as we approach the end of the six-month period provided for in section 325(b)(2)(E)—May 29, 2000. We advise broadcasters that, in examining violations of this standard, we will consider the proximity of the termination of retransmission consent and the consequent service disruptions to consumers. At the same time, we caution MVPDs that waiting until the eleventh hour to initiate negotiations will also be taken into account in enforcing this standard.

43. Fourth, a broadcaster may not put forth a single, unilateral proposal and refuse to discuss alternate terms or counter-proposals. ''Take it, or leave it'' bargaining is not consistent with an affirmative obligation to negotiate in good faith. For example, a broadcaster might initially propose that, in exchange for carriage of its signal, an MVPD carry a cable channel owned by, or affiliated with, the broadcaster. The MVPD might reject such offer on the reasonable grounds that it has no vacant channel capacity and request to compensate the broadcaster in some other way. Good faith negotiation requires that the broadcaster at least consider some form of consideration other than carriage of affiliated programming. This standard does not, in any way, require a broadcaster to reduce the amount of consideration it desires for carriage of its signal. This standard only requires that broadcasters be open to discussing more than one form of consideration in seeking compensation for retransmission of its signal by MVPDs.

44. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide reasons for rejecting any aspects of the MVPD's offer. Blanket rejection of an offer without explaining the reasons for such rejection does not constitute good faith negotiation. This provision merely ensures that MVPDs are not negotiating in a vacuum and understand why certain terms are unacceptable to the broadcaster so that the MVPD can respond to the broadcaster's concerns. We reiterate that good faith negotiation requires a broadcaster's affirmative participation. However, this standard is not intended as an information sharing or discovery mechanism. Broadcasters are not required to justify their explanations by document or evidence.

45. Sixth, a broadcaster is prohibited from entering into an agreement with any party a condition of which is to deny retransmission consent to any MVPD. For example, Broadcaster A is

prohibited from agreeing with MVPD B that it will not reach retransmission consent with MVPD C. It is impossible for a broadcaster to engage in good faith negotiation with an MVPD regarding retransmission consent when it has a contractual obligation not to reach agreement with that MVPD.

46. Finally, once the parties reach agreement on the terms of retransmission consent, the broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement. Because the Commission may be called upon in certain instances to determine whether the totality of the circumstances involved in the negotiation of a particular retransmission consent agreement complies with section 325(b)(3)(C), it is vital that the parties reduce their entire agreement to writing. In addition, this requirement also minimizes subsequent misunderstandings between the parties related to their respective obligations.

47. We do not believe that we should at this time adopt further objective standards as proposed by the commenters. In appropriate instances, we will consider the conduct at the heart of such proposed standards when we examine a particular retransmission consent negotiation under the totality of the circumstances test.

48. The Notice further observed that section 325(b)(3)(C) provides that: it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Notice sought comment on what constitutes a competitive marketplace consideration. The Notice also observed that the Commission has adopted non-discrimination standards in both the program access and open video system contexts and sought comment on the relevance, if any, of these standards to what constitutes a ''competitive market consideration.'' In addition, the Notice sought comment on any other factors or approaches to determining what constitutes competitive marketplace considerations under section 325(b)(3)(C).

49. A number of commenting parties urge that the competitive marketplace considerations language be interpreted as a requirement that the Commission judge the good faith of all retransmission consent offers based on whether they are based on ''competitive marketplace considerations.'' DIRECTV and EchoStar, for example, claim that competitive marketplace considerations would permit a broadcaster to discriminate between providers only in scenarios where Congress and the Commission have recognized that certain variance in price, terms or conditions correspond to legitimate behavior that may occur in the marketplace for video programming.

50. EchoStar asserts that, generally where a broadcaster has received any consideration for retransmission consent, it has been non-monetary, carriage of cable networks affiliated with the broadcaster, and argues that:

> The general rule, therefore, should be that broadcaster demands deviating from that formula, such as demands for money, demands for carriage of additional cable networks beyond those involved in the retransmission-for-carriage agreements with cable operators, or demands for retransmission of additional broadcast stations (beyond those owned and operated by the same network), should be presumptively viewed as not based on competitive marketplace considerations.

51. NAB argues that satellite carriers are not nascent businesses that need government protection, but instead are well-financed, powerfully-backed competitors in the multichannel marketplace. Commenters argue that satellite companies not only use local stations to increase the attractiveness of their overall product, but also sell the stations to viewers at substantial prices. One commenter notes that the fact that satellite carriers are able to charge a fee for retransmitted local signals demonstrates that these signals have value for which broadcasters must be compensated. EchoStar counters that ''the only reason * * * consumers purchase a satellite carrier's local signal offering is for value that the satellite carrier provides, including increased quality, convenience, and aesthetics (*i.e.*, lack of off-air antenna).''

52. Commenters assert that, in the early 1990s, when the retransmission consent provisions of the 1992 Cable Act first became effective, cable systems were effectively the only distributors from whom broadcasters could seek consideration through retransmission consent. Broadcasters assert that they were at a tremendous disadvantage because only a single buyer was prepared to bid for their product. Broadcast commenters state that, today, the existence of multiple MVPDs in at least some markets creates a more competitive marketplace for the sale of retransmission rights, and one that provides more opportunity for stations seeking to obtain compensation for granting these valuable rights. NAB states that the existence of multiple buyers is obviously a very important competitive marketplace consideration in this market, as in any market. EchoStar counters that multiple competitors in a market only serve to increase a broadcaster's ability to play one MVPD distributor against another in retransmission negotiations, an ability Congress sought to restrain by imposing the good faith and competitive marketplace considerations requirements on retransmission consent.

53. As discussed above, we do not believe, as a general matter, that section 325(b)(3)(C) was intended to subject retransmission consent negotiation to detailed substantive oversight by the Commission or indeed that there exist objective competitive marketplace factors that broadcasters must ascertain and base any negotiations and offers on. Indeed, in the aggregate, retransmission consent negotiations are the market through which the relative benefits and costs to the broadcaster and MVPD are established. Although some parties earnestly suggest, for example, that broadcasters should be entitled to zero compensation in return for retransmission consent or that the forms of compensation for carriage should be otherwise limited, this seems to us precisely the judgment that Congress generally intended the parties to resolve through their own interactions and through the efforts of each to advance its own economic self interest.

54. EchoStar suggests an economic paradigm against which retransmission terms might be compared to determine if they are based on ''competitive marketplace considerations.'' It suggests that in the ideal competitive market setting, revenues will be just sufficient to compensate providers for the costs of program creation, duplication, and distribution so that all participants are earning a fair rate of return. Further, having already noted that the marketplace may be distorted through the exercise of market power by cable operators, EchoStar urges that retransmission consent term outcomes for the cable industry provide a benchmark or threshold that should not be exceeded in the case of satellite carriage of broadcast signals. Further, it asserts that considerations extracted from certain cable operators (for example carriage of digital signals) would be inappropriate and not based on competitive marketplace consideration if they were significantly costlier to accede to for satellite carriers.

55. In our view this type of regulatory analysis and comparison is not what was intended through the enactment of

section 325(b)(3)(C). It is both internally inconsistent and not capable of administration in any reasonably timely fashion. The proposal is internally inconsistent in that it acknowledges that among the market participants, cable operators might be the most likely to have market power. If this were the case, using their negotiations as a proxy for a competitive market setting would not be logical. Under this analysis, broadcasters, already the hypothesized victims of an exercise of market power, would be obligated to continue in that role with other participants in the market. Further, EchoStar finds one of the most common features of these agreements—payment for carriage through the devotion of channel capacity to other affiliated services—presumptively a measure of bad faith. Acceptance of the cash rate but not the other currency of the negotiation could hardly be a replication of a competitive market. Even if these problems could be overcome, however, it seems unlikely that the data needed to measure a transaction against the economic model proposed would be available either to the parties in the course of their negotiations or to the Commission in the course of trying to judge their compliance with the standard of review proposed.

56. We also believe that to arbitrarily limit the range or type of proposals that the parties may raise in the context of retransmission consent will make it more difficult for broadcasters and MVPDs to reach agreement. By allowing the greatest number of avenues to agreement, we give the parties latitude to craft solutions to the problem of reaching retransmission consent. The comments filed in this proceeding have called into question the legitimacy of a number of bargaining proposals as reflecting a failure of good faith or as presumptively not based on competitive marketplace considerations. As discussed, it is important that we provide the parties with as much initial guidance as possible. We believe that the following examples of bargaining proposals presumptively are consistent with competitive marketplace considerations and the good faith negotiation requirement:

1. Proposals for compensation above that agreed to with other MVPDs in the same market;

2. Proposals for compensation that are different from the compensation offered by other broadcasters in the same market;

3. Proposals for carriage conditioned on carriage of any other programming, such as a broadcaster's digital signals, an affiliated cable programming service, or another broadcast station either in the same or a different market;

4. Proposals for carriage conditioned on a broadcaster obtaining channel positioning or tier placement rights;

5. Proposals for compensation in the form of commitments to purchase advertising on the broadcast station or broadcast-affiliated media; and 6. Proposals that allow termination of retransmission consent agreement based on the occurrence of a specific event, such as implementation of SHVIA's satellite must carry requirements.

Each of the proposals reflect presumptively legitimate terms and conditions or forms of consideration that broadcasters may find impart value in exchange for the grant of retransmission consent to an MVPD. We do not find anything to suggest that, for example, requesting an MVPD to carry an affiliated channel, another broadcast signal in the same or another market, or digital broadcast signals is impermissible or other than a competitive marketplace consideration. Prior to passage of the 1992 Cable Act, the compensation paid by MVPDs for broadcast signal programming carriage was established under the copyright laws through a governmental adjudicatory process. After passage of the 1992 Cable Act, Congress left the negotiation of retransmission consent to the give and take of the competitive marketplace. In SHVIA, absent conduct that is violative of national policies favoring competition, we believe Congress intended this same give and take to govern retransmission consent. In addition, we point out that these are bargaining proposals which an MVPD is free to accept, reject or counter with a proposal of its own.

57. We find it more difficult to develop a similar list of proposals that indicate an automatic absence of competitive marketplace considerations. Because the size and relative bargaining power of broadcasters and MVPDs range from satellite master antenna television (''SMATV'') operators and low power television broadcast stations to national cable entities and major-market, network affiliate broadcast television stations, the dynamics of specific retransmission consent negotiations will span a considerable spectrum. In these instances, we will generally rely on the totality of the circumstances test to determine compliance with section 325(b)(3)(C).

58. At the same time, it is implicit in section 325(b)(3)(C) that any effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement. Considerations that are designed to frustrate the functioning of a competitive market are not ''competitive marketplace considerations.'' Conduct that is violative of national policies favoring competition—that is, for example, intended to gain or sustain a monopoly, is an agreement not to compete or to fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard included in the statute. Following this reasoning, we believe that the following examples of bargaining proposals presumptively are not consistent with competitive marketplace considerations and the good faith negotiation requirement:

1. Proposals that specifically foreclose carriage of other programming services by the MVPD that do not substantially duplicate the proposing broadcaster's programming;

2. Proposals involving compensation or carriage terms that result from an exercise of market power by a broadcast station or that result from an exercise of market power by other participants in the market (*e.g.,* other MVPDs) the effect of which is to hinder significantly or foreclose MVPD competition;

3. Proposals that result from agreements not to compete or to fix prices; and

4. Proposals for contract terms that would foreclose the filing of complaints with the Commission.

D. Carriage While a Complaint is Pending

59. Several MVPD commenters argue that where a MVPD shows a willingness to negotiate for continued carriage of a local broadcast station, the station should have an affirmative duty to negotiate terms for such carriage and should not be permitted to withhold retransmission consent while such negotiations are pending. Other commenters assert that the Commission should prohibit a broadcaster from withdrawing existing retransmission consent given to an MVPD until an exclusivity or good faith complaint is denied by the Cable Services Bureau and, if reconsideration is requested, the full Commission. These commenters note that local television stations enjoy similar protection when a cable operator seeks to drop the broadcaster via the Commission's market modification process. NAB and Network Affiliates assert that Congress expressly rejected this approach in SHVIA by requiring that upon the expiration of the six-month grace period outlined in section 325(b)(2)(E), satellite carriers must obtain consent prior to retransmitting

any programming or face stiff penalties, including mandatory civil liability of $25,000 per station, per day.

60. Two equally unambiguous provisions of SHVIA foreclose the approach advanced by MVPD commenters. First, section 325(b)(1) of the Communications Act provides that ''No cable system or other multichannel video programming distributor shall retransmit the signal of the broadcasting station, or any part thereof, except * * * with the express authority of the originating station * * * .'' This language clearly prohibits an MVPD, except during the six-month period allowed under section 325(b)(2)(E), from retransmitting a broadcasters signal if it has not obtained express retransmission consent. Second, section 325(e) of the Communications Act establishes a streamlined complaint procedure through which broadcasters may seek redress for allegedly illegal retransmission of local broadcast signals by satellite carriers. The procedures established by section 325(e) provide only four defenses that a satellite carrier may raise: (1) the satellite carrier did not retransmit the broadcaster's signal to any person in the local market of the broadcaster during the time period specified in the complaint; (2) the broadcaster had in writing expressly allowed the satellite carrier to retransmit the broadcaster's signal to the broadcaster's local market for the entire period specified in the complaint; (3) the retransmission was made after January 1, 2002 and the broadcaster elected to assert the right to must carry against the satellite carrier under section 338 for the entire period specified in the complaint; and (4) the station being retransmitted is a noncommercial television broadcast station. Against the backdrop of the express language of these provisions, we see no latitude for the Commission to adopt regulations permitting retransmission during good faith negotiation or while a good faith or exclusivity complaint is pending before the Commission where the broadcaster has not consented to such retransmission.

61. Having reached this conclusion, we must also express our concern regarding the service disruptions and consumer outrage that will inevitably result should MVPDs that are entitled to retransmit local signals subsequently lose such authorization. Because the market has functioned adequately since the advent of retransmission consent in the early 1990's, we expect such instances to be the exception, rather than the norm. We are encouraged by the retransmission consent agreements that have been reached between broadcasters and satellite carriers prior to the enactment of our rules. In addition, we strongly encourage that broadcasters and MVPDs that are engaged in protracted retransmission consent negotiations agree to short-term retransmission consent extensions so that consumers' access to broadcast stations will not be interrupted while the parties continue their negotiations.

E. Existing and Subsequent Retransmission Consent Agreements

62. In the Notice, the Commission acknowledged the existence of retransmission consent agreements between satellite carriers and television broadcast stations that predate enactment of section 325(b)(3)(C). In addition, the Notice acknowledged that agreements have been executed since the enactment of SHVIA. The Notice sought comment on the impact of these agreements on the duty to negotiate in good faith.

63. Network Affiliates state that the fact that broadcasters and satellite carriers have already reached arms length retransmission consent agreements is an indication that they were negotiated in good faith. Otherwise, in the face of impending legislation and Commission action, they assert the parties would not have finalized such agreements. Another commenter argues that the rules adopted by the Commission should have prospective effect applying only to retransmission consent negotiations that occur after the effective date of the Commission's rules. One commenter urges the Commission to give its rules retroactive application to preexisting retransmission consent agreements.

64. We will not apply the rules adopted herein to retransmission consent agreements that predate the effective date of this Order. Section 325(b)(3)(C) provides that:

> Within 45 days after the date of the enactment of [SHVIA], the Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2) * * * Such regulations shall * * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith * * * .

As the quoted language indicates, section 325 is not a self-effectuating provision. It has substance and structure only after the Commission has concluded its rulemaking to implement the good faith and exclusivity limitations of section 325(b)(3)(C). Moreover, we need not apply SHVIA retroactively to ensure that such preexisting agreements do not contain impermissible exclusivity provisions. 47 CFR 76.64(m) has been in effect since 1993 and expressly prohibits exclusive retransmission consent agreements. If any MVPD believes that a broadcaster and an MVPD entered into a prohibited exclusive retransmission consent agreement prior to adoption of SHVIA, that party may file a petition for special relief alleging that a broadcaster and MVPD have violated 47 CFR 76.64(m). Accordingly, the rules applicable to good faith and exclusivity adopted herein will apply only to retransmission consent agreements adopted after the effective date of this Order.

V. Exclusive Retransmission Consent Agreements

65. SHVIA amends section 325(b) of the Communications Act by directing the Commission to promulgate rules that would

> until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts * * * .

The accompanying Joint Explanatory Statement of the Committee of Conference contains no language to clarify or explain the prohibition, stating only that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor * * *

The Commission, by rule, established a similar prohibition following passage of the 1992 Cable Act. There, the Commission was directed by Congress to establish regulations governing the right of television broadcast stations to grant retransmission consent. The Commission found that exclusive retransmission consent arrangements between a television broadcast station and any multichannel video programming distributor were contrary to the intent of the 1992 Cable Act.

66. In the Notice, we sought to determine what activities would constitute ''engaging in exclusive contracts.'' We also sought to determine whether there was significance to the difference between the language in the statute (prohibiting ''engaging in'') and the language in the Conference Report (prohibiting ''entering into''). We sought to determine whether parties were prohibited from negotiating exclusive contracts that would take effect after the date of January 1, 2006. We also sought

comment on whether any such contracts already existed, and if so, what effect the statute would have on such contracts. Finally, we sought comment on how to effectively enforce such a prohibition, and how to determine whether such agreements existed.

67. SHVIA prohibits a television broadcast station that provides retransmission consent from ''engaging in'' exclusive contracts until January 1, 2006. The Conference Report refers to a prohibition on ''entering into'' exclusive retransmission consent agreements. Several commentators argue that the phrases ''entering into'' and ''engaging in'' are synonymous. Representatives of the satellite industry argue that the Commission should rely on the broader language of the statute (''engaging in'') rather than the arguably narrower Conference Report language. Commenters supporting this interpretation posit that the use of the language ''engaging in'' demonstrates an intent to prohibit a broad range of practices. SBCA believes that the use of the phrase ''engaging in'' prohibits ''both express and implied, *de jure* and *de facto,* exclusionary conduct, including literal or effective refusals to deal with a particular MVPD distributor.'' Two other commenters argue that broadcasters can impose unaffordable demands on smaller MVPDs, and that these demands can result in prohibited *de facto* exclusivity. Thus, according to this argument, the Commission should expand its prohibition to explicitly forbid these types of arrangements. LTVS supports an expansive definition of exclusive practices and argues that a broad range of actions should be prohibited.

68. While the satellite industry supports a broad reading of the statute, broadcast commenters argue that Congress intended to prohibit exclusive contracts, not ''undefined exclusive 'exercise practices' nor . . . of any *de facto* exclusivity.'' Network Affiliates assert that the use of the phrase ''engaging in'' does not demonstrate Congressional intent to ''increase the number of prohibited activities.'' Indeed, these commenters argue that by using the phrase ''engaging in'' as opposed to the phrase ''entering in,'' Congress ''intended to allow parties to negotiate and enter into exclusive retransmission consent agreements as long as those agreements are not effective until after the sunset of this prohibition on January 1, 2006.'' Under this theory, the statute only prohibits ''engaging in exclusive contracts.'' Thus, according to broadcasting representatives, SHVIA does not prohibit undefined exclusive practices or the exercise of *de facto* exclusivity.

69. In determining the intended scope of the prohibition on exclusive retransmission consent agreements, we believe that Congress intended that all activity associated with exclusive retransmission consent agreements be prohibited until January 1, 2006. Absent such a comprehensive prohibition, marketplace distortions could occur that would adversely influence the continuing development of a competitive marketplace for multichannel video programming services. For example, if an MVPD negotiates an exclusive retransmission consent agreement with a television broadcaster that will take effect after January 1, 2006, such MVPD undoubtedly would use that agreement in advertising or marketing strategies during the prohibition on exclusive retransmission consent agreements. The MVPD could market its services by stating that it will be the only MVPD providing a particular television broadcast station or stations after January 1, 2006. Given the overall pro-competitive mandate of SHVIA, we believe that Congress did not intend that we permit this type of market distortion while the section 325(b)(3)(C) prohibitions are in effect. As such, we interpret the phrase ''engaging in'' to proscribe not only entering into exclusive agreements, but also negotiation and execution of agreements granting exclusive retransmission consent after the prohibition expires.

70. As for the exercise of *de facto* exclusivity, we believe that the statute's good faith requirement sufficiently addresses concerns voiced by commenters. The good faith requirements of the statute and the Commission's rules adopted in this Order should adequately address behavior that would lead to *de facto* exclusivity.

71. On its face, the prohibition on exclusive retransmission consent agreements appears to have immediate effect. The Commission sought comment on the existence of exclusive satellite carrier retransmission consent agreements that either predate the enactment of SHVIA or under the Commission's rules implementing section 325(b)(3)(C)(ii). One commenter argues that the Commission should nullify any exclusive retransmission consent agreements that existed prior to SHVIA. The commenter suggests that the Commission's authority to nullify any such agreements stems from the requirements of the Commission's rules. Another commenter argues that the Commission should apply rules implementing the SHVIA prohibition on exclusive retransmission consent agreements retroactively. Some commenters from the broadcasting industry argue that any such agreements that were in existence prior to the enactment of SHVIA should be grandfathered.

72. Prior to the enactment of SHVIA, 47 CFR 76.64(m) prohibited all exclusive retransmission consent agreements. After its enactment, SHVIA prohibits all exclusive retransmission consent agreements prior to January 1, 2006. Thus, to the extent that any prohibited exclusive retransmission consent agreements exist between television broadcast stations and MVPDs, such agreements are prohibited either by Commission rule prior to SHVIA, or by SHVIA's express terms thereafter.

VI. Retransmission Consent and Exclusivity Complaint Procedures

A. Voluntary Mediation

73. The Notice sought comment on whether there are circumstances in which the use of alternative dispute resolution (''ADR'') services would assist in determining whether a television broadcast station negotiated in good faith as defined by section 325(b)(3)(C) and the Commission's rules adopted thereunder. Several commenters argue that a dispute resolution mechanism is not necessary and contrary to the goal of swift resolution of such complaints. By contrast, Time Warner supports a mediation requirement that must be satisfied prior to the filing of a complaint with the Commission. Under Time Warner's proposal, the parties would have 60 days to negotiate in good faith. If an agreement has not been reached 30 days or less prior to the termination of retransmission consent, either party can require that the matter be submitted to mediation.

74. We will not, at this time, adopt Time Warner's mandatory mediation proposal. There has not been a sufficient demonstration that such a measure is necessary to implement the good faith provision of section 325(b)(3)(C). We believe, however, that voluntary mediation can play an important part in the facilitation of retransmission consent and encourage parties involved in protracted retransmission consent negotiations to pursue mediation on a voluntary basis. The Commission would favorably consider a broadcaster's willingness to participate in a mediation procedure in determining whether such broadcaster complied with its good faith negotiation obligations. We emphasize,

however, that refusal to engage in voluntary mediation will not be considered probative of a failure to negotiate in good faith. We will revisit the issue of mandatory retransmission consent mediation if our experience in enforcing the good faith provision indicates that such a measure is necessary.

B. Commission Procedures

75. The Notice sought comment on what procedures the Commission should employ to enforce the provisions adopted pursuant to section 325(b)(3)(C). We asked commenters to state whether the same set of enforcement procedures should apply to both the exclusivity prohibition and the good faith negotiation requirement, or whether the Commission should adopt different procedures tailored to each prohibition. Specifically, we sought comment regarding whether special relief procedures of the type found in 47 CFR 76.7 provide an appropriate framework for addressing issues arising under section 325(b)(3)(C).

76. There is general consensus among the commenters that the general pleading provisions of 47 CFR 76.7 provide appropriate procedural rules for good faith and exclusivity complaints. No commenters justified a departure from the Commission's general pleading rules for matters filed with the Cable Services Bureau. We agree with these commenters urging the use of the 47 CFR 76.7 provisions and direct complainants to follow these provisions in filing retransmission consent complaints. Consistent with the requirements of 47 CFR 76.7, complaints alleging violations of the prohibition on exclusive retransmission consent agreements should: (1) identify the broadcaster and MVPD alleged to be parties to the prohibited exclusive agreement; (2) provide evidence that the complainant can or does serve the area of availability, or portions thereof, of the signal of the broadcaster named in the complaint; and (3) provide evidence that the complainant has requested retransmission consent to which the broadcaster has refused or failed to respond. Following the filing of a complaint, the defendant broadcaster must file an answer that specifically admits or denies the complainants allegation of the existence of an exclusive retransmission consent agreement.

77. We agree with those commenters who argue that some aspects of the program access procedural rules would assist the Commission in effectively processing and resolving retransmission consent complaints. We believe that it is necessary to impose a limitations period on the filing of retransmission consent complaints. In the program access, program carriage and open video system contexts, the Commission has established a one-year limitations period within which an aggrieved party must file a complaint with the Commission. Given that retransmission consent complaints are likely to be highly fact-specific and dependent on individual recollection, a similar limitations period is fair and appropriate with regard to retransmission consent complaints. Moreover, a limitations period lends finality and certainty to retransmission consent agreements after affording MVPDs an appropriate interval to challenge alleged violations of section 325(b)(3)(C). Accordingly, a complaint filed pursuant to section 325(b)(3)(C) must be filed within one year of the date any of the following occur: (a) a complainant MVPD enters into a retransmission consent agreement with a broadcaster that the complainant MVPD alleges violate one or more of the rules adopted herein; or (b) a broadcaster engages in retransmission consent negotiations with a complainant MVPD that the complainant MVPD alleges violate one or more of the rules adopted herein, and such negotiation is unrelated to any existing contract between the complainant MVPD and the broadcaster; or (c) the complainant MVPD has notified the broadcaster that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules adopted herein.

C. Discovery

78. Several commenters urge the Commission to provide discovery as-of-right in retransmission consent complaint proceedings. Disney observes that since there is no automatic right to discovery in the more procedurally complex program access regime—a fortiori there should be no discovery in the context of retransmission consent proceedings. One commenter asserts that retransmission consent agreements and the negotiations surrounding them constitute confidential business information that must be protected by strong nondisclosure agreements if subject to Commission-directed discovery procedures. This commenter offers three limitations on Commission-directed discovery: (1) the complainant must have made a *prima facie* showing of evidence supporting its claim that a violation has taken place; (2) the Commission's discovery order must be narrowly-tailored to avoid fishing expeditions; and (3) the Commission must permit mutual discovery.

79. We decline the invitation of several commenters to apply discovery as-of-right to the retransmission complaint procedures. Interested parties should not interpret our decision as meaning that discovery will play no part in the section 325 complaint process. Because MVPDs will be present at negotiations, we generally anticipate that evidence of a violation of the good faith standard will be accessible by the MVPD complainant. Where complainants can demonstrate that such information is not available (*e.g.,* agreements entered into with other MVPDs) and that discovery is necessary to the proper conduct and resolution of a proceeding, the Commission will consider, where necessary, the imposition of discovery to develop a more complete record and resolve complaints. In this regard, parties are free to raise appropriate discovery requests in their pleadings. We will protect proprietary information, where necessary, pursuant to 47 CFR 76.9. Accordingly, we will employ Commission-controlled discovery as contemplated in the 47 CFR 76.7 procedures.

D. Remedies

80. With regard to the appropriate measures for the Commission to take after a finding that a broadcaster has violated the good faith negotiation requirement, several commenters argue that the sole remedy is a Commission directive to engage in further negotiation consistent with the Commission's decision. In this regard, other commenters note that, in the labor law context, the Supreme Court has determined that the NLRB has no power to order parties to enter into a particular agreement, or even agree to individual terms. EchoStar argues that this is not the limit of the Commission's remedial authority and that the Commission should order a broadcaster that has been found to violate the Commission's prohibitions to conclude a retransmission consent agreement that ''does not include any discriminatory terms not based on competitive marketplace considerations.'' Other commenters argue that the Commission should adopt a liberal policy of allowing damages, both as a deterrent to unlawful conduct and as compensation to injured parties. Commenters opposing the imposition of damages note that, while Congress granted the Commission express authority to order appropriate remedies in the program access context, Congress did not grant such express

authority in the context of the good faith negotiation requirement.

81. Congress did not empower the Commission to sit in judgement of the substantive terms and conditions of retransmission consent agreements. Therefore, in situations in which a broadcaster is determined to have failed to negotiate in good faith, the Commission will instruct the parties to renegotiate the agreement in accordance with the Commission's rules and section 325(b)(3)(C). We reiterate, however, that the Commission will not require any party to a retransmission consent agreement to offer or accept a specific term or condition or even to reach agreement as part of such renegotiation.

82. Although several commenters strongly favor the imposition of damages for adjudicated violations of section 325(b)(3)(C), we can divine no statutory grant of authority to take such action. Congress instructed the Commission to revise its regulations governing retransmission consent to prohibit exclusive agreements and require good faith negotiation. We can divine no intent in section 325(b)(3)(C) to impose damages for violations thereof. This is especially true where later in the same statutory provision, Congress expressly granted the District Courts of the United States the authority to impose statutory damages of up to $25,000 per violation, per day following a Commission determination of a retransmission consent violation by a satellite carrier. Commenters' reliance on the program access provisions as support for a damages remedy in this context is misplaced. The Commission's authority to impose damages for program access violations is based upon a statutory grant of authority. We note, however, that, as with all violations of the Communications Act or the Commission's rules, the Commission has the authority to impose forfeitures for violations of section 325(b)(3)(C).

E. Expedited Resolution

83. The Notice requested comment on whether expedited procedures are necessary to the appropriate resolution of either exclusivity or good faith proceedings. Several commenters argue that, in section 325(e) of the Communications Act, Congress expressly required expedited processing of broadcasters' complaints that satellite carriers have illegally retransmitted local broadcaster signals without consent. Given this express directive by Congress, these commenters argue that the lack of an express directive to expedite good faith negotiation complaints indicates Congress' decision that such complaints should not receive expedited treatment. U S West, however, notes that the Commission has wide discretion to manage its procedures ''as will best conduce to the proper dispatch of business and to the ends of justice.'' Disney asserts that the Commission must ensure that good faith negotiation complaints are resolved expeditiously. In this regard, several commenters suggest various time limits within which the Commission should resolve complaints related to the good faith negotiation requirement and the exclusivity prohibition.

84. Commenters generally favor expedited action by the Commission regarding complaints filed pursuant to section 325(b)(3)(C). Because we conclude that, upon expiration of an MVPD's carriage rights under the section 325(b)(2)(E) six-month compulsory license period or an existing retransmission consent agreement, an MVPD may not continue carriage of a broadcaster's signal while a retransmission consent complaint is pending at the Commission, it is incumbent upon the Commission to expedite the resolution of these claims. We are mindful that Congress has imposed no express time limits for Commission resolution of retransmission consent complaints, whereas it has done so in other provisions of SHVIA and the Communications Act. We believe, however, that expeditious resolution of section 325(b)(3)(C) complaints is entirely consistent with Congress' statutory scheme. We believe that, to ensure efficient functioning of the retransmission consent process, and to avoid protracted loss of service to subscribers, expedited action on these claims is necessary.

85. While commenters propose various time periods within which the Commission should resolve retransmission consent complaints, we believe the spectrum of issues that may be involved in these proceedings does not lend itself to selecting one time period by which the Commission should resolve all complaints brought under section 325(b)(3)(C). For example, it would be inefficient and arbitrary to apply the same time period to a clear violation, such as outright refusal to negotiate, and a violation of the test involving analysis of the totality of the circumstances. Bearing in mind that the Commission must give maximum priority to matters involving statutory time limits, we instruct Commission staff to give priority to section 325(b)(3)(C) complaints and resolve them in an expeditious manner, considering the complexity of the issues raised. We will monitor the resolution times of individual retransmission consent complaints and, if necessary, we will revisit this issue in the future.

F. Burden of Proof

86. The Notice sought comment on how the burden of proof should be allocated. In this regard, we asked for comment on whether the burden should rest with the complaining party until it has made a *prima facie* showing and then shift to the defending party and what would constitute a *prima facie* showing sufficient to shift the burden to the defending party.

87. Arguing that, consistent with NLRB cases in which the party claiming bad faith bears the burden of proof, several commenters counsel the Commission to provide that the burden of proof should always be on the MVPD complainant. Indeed, several commenters assert that the Commission should adopt procedural rules that permit it to dismiss retransmission consent complaints summarily if the MVPD fails to satisfy a specified threshold standard.

88. Other commenters support a shifting of the burden of proof after a *prima facie* demonstration. Commenters assert that such a shifting is appropriate because of the difficulty of conclusively establishing the existence of an exclusive agreement or lack of good faith. For exclusivity complaints, DIRECTV and EchoStar suggest that a complaining party only provide affidavits or other documentary evidence to support its belief that a prohibited exclusive contract exists, and the burden of proof then shifts to the defendant to refute the existence of such agreement. For good faith complaints, DIRECTV and EchoStar suggest that the complaining party should provide a description of the conduct complained of, including conduct alleged to violate any of the good faith negotiation standards supported by any documentary evidence or an affidavit signed by an officer of the complaining MVPD setting forth the basis for the complainant's allegations. After the burden has shifted to the broadcaster, commenters urge the Commission to require the broadcaster to include with its answer a copy of any retransmission consent agreement the complainant alleges to contain unlawfully different terms and conditions, subject to Commission confidentiality protections. Several commenters maintain that the Commission should impose sanctions against filers of frivolous complaints. Network Affiliates argue that the adoption of a shifting burden mechanism will encourage the filing of frivolous complaints during the

negotiation period in order to intimidate broadcasters.

89. Commenters advance cogent arguments both for and against shifting the burden to the broadcaster after a *prima facie* showing by a complaining MVPD. However, as in labor law context, we believe the burden should rest with the MVPD complainant to establish a violation of section 325(b)(3)(C). This conclusion is also consistent with our belief that generally the evidence of a violation of the good faith standard will be accessible by the complainant. This should not be interpreted as permitting a broadcaster to remain mute in the face of allegations of a section 325(b)(3)(C) violation. After service of a complaint, a broadcaster must file an answer as required by 47 CFR 76.7, which advises the parties and the Commission fully and completely of any and all defenses, responds specifically to all material allegations of the complaint, and admits or denies the averments on which the party relies. In addition, where necessary, the Commission has discretion to impose discovery requests on a defendant to a section 325(b)(3)(C) complaint. However, in the end, the complainant must bear the burden of proving that a violation occurred.

G. Sunset of Rules

90. Section 325(b)(3)(C) directs that the regulations adopted by the Commission prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements ''until January 1, 2006.'' The Commission sought comment on whether the Commission's rules regarding exclusive carriage agreements and good faith negotiation should automatically sunset on this date. On its face, this provision would seem to sunset the prohibition on exclusive retransmission consent agreements and good faith negotiation for all MVPDs. Under this reading of the statute, the Commission's rule prohibiting exclusive retransmission consent agreements for cable operators would be deemed abrogated as of January 1, 2006.

91. The broadcast industry argues that this is the correct interpretation of SHVIA. One commenter states that ''[b]ecause the statutory language is plain on its face, and because Congress acted with knowledge of the existing regulatory prohibition, it is clear that Congress intended to abrogate the Commission's existing rule prohibiting exclusive retransmission consent agreements with cable operators.'' This commenter additionally argues that the prohibition on exclusive retransmission consent agreements was meant to correct imbalances in the marketplace, and thus was established as a temporary solution.

92. The satellite industry and other MVPD representatives disagree with this interpretation of the statute. Two commenters argue that the date set out in the statute establishes a minimum time frame on the prohibition of exclusive retransmission consent agreements and the good faith negotiation requirement. Others state that interpreting the statute as sunsetting the Commission's prohibitions on exclusive retransmission consent agreements runs contrary to the intent of Congress. Specifically, they argue that nothing in the legislative history demonstrates an intent to sunset section 325(b)(3)(C), and without an affirmative statement of intent, no such intent may be inferred. Commenters argue that to sunset the prohibition would result in anti-competitive behavior, and would thus undermine the goals of SHVIA. Finally, many commenters from the satellite industry and the MVPD industry argue that the Commission has authority to extend the prohibition on exclusive retransmission consent agreements beyond January 1, 2006, if the Commission determines that such an extension would be in the public interest.

93. A third approach to this issue is advanced by some representatives of the satellite industry and the cable industry. Time Warner argues that the Commission should make no determination at this point over whether to sunset the prohibition, but rather should make a decision closer to the expiration date set out in the statute.

94. We believe that the statute is clear on its face, and that the correct interpretation of the language ''until January 1, 2006'' is that the prohibitions on exclusive retransmission consent agreements and the good faith negotiation requirement terminate on that date. We agree with commentators who argue that the provisions of section 325(b)(3)(C) are meant to foster competition. However, in the absence of guidance from Congress as to the Commission's authority after this date, we can not assume that Congress was establishing a minimum time frame and that the Commission has authority to promulgate rules prohibiting exclusive retransmission consent agreements and requiring good faith negotiation beyond January 1, 2006. Congress has demonstrated its ability to craft legislation that established a sunset date which the Commission has express authority to extend. Such language is not contained in SHVIA. The statute clearly states that the provisions would last ''until January 1, 2006.'' The legislative history does not express any intent to extend such provisions. Thus, we must interpret section 325(b)(3)(C) as written and that January 1, 2006 is meant to be the sunset date for the prohibition of exclusive retransmission consent agreements and the rules on good faith retransmission consent negotiations.

VII. Administrative Matters

95. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (''RFA''), see 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. Pursuant to the RFA, see 5 U.S.C. 604, a Final Regulatory Flexibility Analysis is contained in this document.

96. *Paperwork Reduction Act of 1995 Analysis.* The actions herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

97. *Effective Date.* As discussed, section 325(b)(2)(E) of the Communications Act grants satellite carriers a six-month period during which they may retransmit the signals of local broadcasters without a broadcaster's express retransmission consent. We have adopted these rules before the end of the six-month period provided by section 325(b)(2)(E) so that MVPDs, particularly satellite carriers, and broadcasters understand their rights and obligations under section 325(b)(3)(C) before that period expires. To afford parties the maximum amount of time to negotiate retransmission consent in good faith and to file complaints pursuant to section 325(b)(3)(C) before the expiration of the six-month period, this First Report and Order will be effective upon publication in the **Federal Register**. We find good cause exists under the Administrative Procedure Act (''APA'') to have the rules adopted in this First Report and Order be effective March 23, 2000 pursuant to section 553(d)(3) of the APA. Prompt effectiveness of these rules will provide a framework under which broadcasters and satellite carriers can achieve retransmission consent before the expiration of the six-month period set forth in section 325(b)(2)(E).

Final Regulatory Flexibility Analysis

a. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rulemaking (''Notice'') in CS Docket No. 99–363, FCC 99–406. The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

b. *Need for, and Objectives of, this Report and Order.* Section 1009 of the Satellite Home Viewer Improvement Act (''SHVIA''), codified as section 325 of the Communications Act of 1934, as amended (''Act''), 47 U.S.C. 325, instructs the Commission to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent. Congress directed the Commission to devise regulations, procedures, and standards implementing a good faith requirement in the negotiation of agreements in connection with the transmission of television broadcast station signals by multichannel video programming distributors (''MVPDs''). This Report and Order adopts rules governing negotiation of retransmission consent between broadcasters and all MVPDs which will help to ensure that negotiations are conducted in an atmosphere of honesty, clarity of process and good faith. In particular, this proceeding provides a clear framework under which broadcasters and satellite carriers can achieve retransmission consent before expiration and interruption of local broadcast signals that satellite carriers have begun to provide their subscribers in many cities across the nation since the enactment of the SHVIA. Further, pursuant to the SHVIA, this proceeding also addresses implementing rules prohibiting exclusive retransmission consent agreements. Finally, the Report and Order adopts a complaint process to assist the Commission in enforcing the statutory obligations related to section 325(b)(3)(C).

c. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* We received one comment in direct response to the IRFA. The American Cable Association (''ACA'') argues that smaller cable systems play an important role in the distribution of local signals in rural America and smaller communities and that competitive imbalances from broadcaster abuses relating to retransmission consent threatens this role. In particular, ACA states that the ''IFRA remains devoid of any meaningful analysis of how any retransmission consent rules that may result would impact smaller cable businesses and their systems, nor does it propose alternative relief to accommodate the unique needs of those businesses. Instead, the Commission generally believes that entity size has no bearing on the issues raised in the Notice.'' We note, however, that in the IFRA we discussed the retransmission consent election process and the possibility that differences among MVPDs might justify different election schemes. We stated that we had not proposed to treat small entities differently in this regard, but sought comment on the possibility. We also sought comment on four specific alternatives that might lessen the compliance burden on small entities: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards: and (4) an exemption from coverage of the rule, or any part thereof, for small entities. None of the other parties in this proceeding filed comments on how issues raised in the Notice would impact small entities. Below, in the section of the FRFA titled, ''Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered,'' we discuss further ACA's comment concerning the possible impact on small entities.

d. *Description and Estimate of the Number of Small Entities To Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we adopt as a result of the Report and Order will affect television station licensees, cable operators, and other MVPDs.

e. *Television Stations.* The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998.

f. Thus, the rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

g. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

h. *Small MVPDs:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below services individually to provide a more precise estimate of small entities.

i. *Cable Systems:* The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less. This definition includes cable systems operators, closed circuit

television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

j. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules also define a ''small system,'' for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

k. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

l. *Open Video System* (''OVS''): The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

m. *Multichannel Multipoint Distribution Service* (''MMDS''): The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.

n. The Commission completed its MMDS auction in March, 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We conclude that there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

o. *DBS:* There are four licenses of DBS services under part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

p. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

q. According to the most recently available information, there are approximately 30 program packages nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packages may be substantially smaller.

r. *SMATVs:* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September, 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial

information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

s. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* This Report and Order establishes a series of rules implementing good faith guidelines in connection with retransmission consent agreements between television broadcast stations and all MVPDs. The good faith negotiation requirement applies only to broadcasters, however the conduct of MVPDs that seek retransmission consent is not irrelevant to the Commission in determining whether a broadcaster has complied with its obligation to negotiate retransmission consent in good faith. During the process of developing and negotiating retransmission consent, parties will be guided by the principles and provisions established in this Report and Order. While the substance of the agreements should be left to the market, the Commission is responsible for enforcing the process of good faith negotiation. We have established standards, practices, and conduct, derived principally from NLRB precedent, that will be applicable to all retransmission consent negotiations. First among the negotiation standards is that a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Additional standards outline broadcaster conduct required to meet the good faith standard in retransmission consent negotiation.

t. Pursuant to the directive by Congress, this proceeding also describes and explains the limits relating to exclusivity agreements and implements rules in that regard. Specifically, the SHVIA prohibits all exclusive retransmission agreements for television broadcast stations and MVPDs prior to January 1, 2006. We interpret the phrase ''engaging in'' to proscribe not only entering into exclusive agreements, but also negotiation and execution of agreements granting exclusive retransmission consent. The Commission also establishes complaint procedures and sets forth the requirements of complainants to address situations where there is evidence of exclusive retransmission consent agreements.

u. In the event that the good faith negotiation obligation provisions are not adhered to, enforcement procedures also have been established to report concerns and complaints and address disputes between parties. An MVPD believing itself aggrieved, may file a complaint with the Commission. Based upon pleadings filed, a determination will be made by the Commission on the issue of good faith.

v. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* In this Report and Order, of major importance is the principle of sustaining an environment where there will be fairness, fair dealings, and true competition between parties in the process of developing agreements on retransmission consent. This proceeding develops a definite framework for retransmission consent agreements so that television broadcast stations and MVPDs are aware of their rights and obligations under section 325(b)(3)(C).

w. As noted, American Cable Association (''ACA'') asserts that because retransmission consent agreements have been largely unrestricted, broadcasters have tried to extract unreasonable concessions in return for retransmission consent from smaller cable systems and will continue to do so. It states that the Commission must establish sufficient safeguards to protect individual smaller cable businesses. ACA suggests that the Commission should articulate its expectations regarding good faith negotiations and extend those obligations to all retransmission consent negotiations, including cable. We do not believe it necessary to develop specific rules for particular subsets of the MVPD market. The good faith negotiation requirement applies to a broadcaster's negotiations with all MVPDs, including small cable operators. The Report and Order adopts rules to implement this obligation with regard to all broadcaster negotiations with all MVPDs. For example, we set forth good faith negotiations standards, which proscribe the actions or practices that would violate a broadcast television station's duty to negotiate retransmission consent agreements in good faith. Further, procedures to address exclusivity complaints are also established. Small businesses are subject to these provisions and will benefit from the protection provided. We believe this sufficiently ameliorates ACA's concerns.

x. *Report to Congress:* The Commission will send a copy of this Report and Order, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Report and Order and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Ordering Clauses

98. Pursuant to authority found in sections 4(i) 4(j), 303(r) and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 325, the Commission's rules are hereby amended as set forth.

99. The rule amendments set forth will become effective March 23, 2000.

100. The Consumer Information Bureau, Reference Information Center shall send this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76 Cable Television Service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. In § 76.64 paragraph (m) is revised to read as follows:

§ 76.64 Retransmission Consent.

* * * * *

(m) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate and agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2005.

* * * * *

3. Section 76.65 is added to Subpart D to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations that provide retransmission consent shall negotiate in good faith the terms and conditions of such agreements to fulfill the duties established by section

325(b)(3)(C) of the Communciations Act 47 U.S.C. 325; provided, however, that it shall not be a failure to negotiate in good faith if the television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station negotiates with multichannel video programming distributors in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation.*—(1) *Standards.* The following actions or practices violate a broadcast television station's duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a television broadcast station to negotiate retransmission consent with any multichannel video programming distributor;

(ii) Refusal by a television broadcast station to designate a representative with authority make binding representations on retransmission consent;

(iii) Refusal by a television broadcast station to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a television broadcast station to put forth more than a single, unilateral proposal.

(v) Failure of a television broadcast station to respond to a retransmission consent proposal of a multichannel video programming distributor, including the reasons for the rejection of any such proposal;

(vi) Execution by a television broadcast station of an agreement with any party, a term or condition of which, requires that such television broadcast station not enter into a retransmission consent agreement with any multichannel video programming distributor; and

(vii) Refusal by a television broadcast station to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.

(2) *Totality of the circumstances.* In addition to the standards set forth in section 76.65(b)(1), a multichannel video programming distributor may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station breached its duty to negotiate in good faith as set forth in section 76.65(a).

(c) *Good faith negotiation and exclusivity complaints.* Any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this § 76.64(m) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) A complainant multichannel video programming provider enters into a retransmission consent agreement with a television broadcast station that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station; or

(3) The complainant has notified the television broadcast station that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2005.

[FR Doc. 00–7163 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 022800D]

Fisheries of the Northeastern United States; Magnuson-Stevens Act Provisions; Northeast Skates; Overfished Fisheries

ACTION: Designation of Council responsibilities for the Northeast skate fisheries; determination of overfished fisheries.

SUMMARY: NMFS announces that the Assistant Administrator for Fisheries, on behalf of the Secretary of Commerce (Secretary), has designated the New England Fishery Management Council (NEFMC) as the Regional Fishery Management Council (Council) responsible for developing a fishery management plan (FMP) for seven species of skate (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) found in Federal waters off the coast of the New England and Mid-Atlantic states. NMFS also informs the public of its determination that four of the species comprising the Northeast skate fisheries (barndoor, smooth, thorny, and winter skate) are overfished.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Soon after the passage of the Fishery Conservation and Management Act in 1976, the Secretary designated species-specific management responsibilities to the Councils. The skate species were not among those designated for management. In April 1999, the NEFMC requested the Secretary to grant the NEFMC sole authority to manage seven species of skate found in the Northeast—namely the barndoor, clearnose, little, rosette, smooth, thorny, and winter skate. In August 1999, the Mid-Atlantic Fishery Management Council agreed that it would be appropriate for the NEFMC to manage the Northeast skate fisheries. On March 14, 2000, NMFS informed the NEFMC that the Assistant Administrator for Fisheries, NMFS, on behalf of the Secretary, designated the NEFMC as the Council responsible for developing an FMP for seven species of skate found in Federal waters off the coast of the New England and Mid-Atlantic states.

Determination of Overfished Fisheries

The determination of the status of a stock relative to overfishing and overfished condition is based on both the rate of removal of fish from the population through fishing (the exploitation rate) and the current stock size. When the exploitation rate jeopardizes the capacity of a stock to produce its maximum sustainable yield (MSY) on a continuing basis, overfishing is occurring. Exploitation rates are usually expressed in terms of an instantaneous fishing mortality rate (F).

Another important factor for classifying the status of a resource is the current stock level. If a stock's biomass falls below its minimum biomass threshold, the capacity of the stock to produce MSY on a continuing basis is jeopardized and the stock is said to be in an overfished condition.

NMFS' Northeast Fisheries Science Center assessed the Northeast skate stocks at the 30th Northeast Regional Stock Assessment Workshop (SAW 30), in January 2000. Results of SAW 30 indicate that barndoor, smooth, thorny, and winter skate are overfished as discussed below.

Barndoor skate (Raja laevis)

The abundance of barndoor skate declined continuously through the 1960s to historic lows during the early 1980s. Since 1990, the abundance of barndoor skate has increased slightly on Georges Bank, the western Scotian Shelf, and in southern New England. However, the 1999 NEFMC autumn survey biomass index was less than 5 percent of the peak observed in 1963. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–98 NEFMC autumn survey biomass index of 0.08 kg/tow was below the proposed biomass threshold of 0.81 kg/tow. Therefore, barndoor skate is overfished.

Smooth skate (Raja senta)

The abundance of smooth skate was highest during the early 1960s and late 1970s. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–1998 NEFMC autumn survey biomass index of 0.15 kg/tow was below the proposed biomass threshold of 0.16 kg/tow. Therefore, smooth skate is overfished.

Thorny skate (Raja radiata)

The abundance of thorny skate has declined to historic lows. Current abundance is about 10–15 percent of the peak observed in the late 1960s and early 1970s. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–1998 NEFSC autumn surgery biomass index of 0.77 kg/tow was below the proposed biomass threshold of 2.20 kg/tow. Therefore, thorny skate is overfished.

Winter skate (Raja ocellata)

Winter skate abundance is currently about the same as in the early 1970s, at about 25 percent of the peak observed during the mid-1980s. Comparison of the current F(0.39), based on the NEFSC spring survey, to the proposed threshold F(0.1) indicates that overfishing is occurring. The 1996–1998 NEFSC autumn survey biomass index average of 2.83 kg/tow was below the proposed biomass threshold of 3.23 kg/tow. Therefore, winter skate is also overfished.

Section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act requires that within 1 year of being notified of the identification of a stock as being overfished, the affected Council must develop measures to end overfishing and rebuild the stock. On March 14, 2000, the NEFMC was informed that it had been designated as the Council having responsibility for the management of the Northeast skate fisheries and was notified of the overfished status of the barndoor, winter, thorny, and smooth skate stocks. The letter to the NEFMC reads as follows:

March 14, 2000
Mr. Thomas Hill
Chairman
New England Fishery Management Council
50 Water Street - Mill 2
Newburyport, Massachusetts 01950–2866
Dear Chairman Hill:

I am pleased to inform you that, on behalf of Secretary Daley, I have approved your request to designate the New England Fishery Management Council (NEFMC) as the responsible body for the development and management of the Northeast skate fisheries. Your responsibilities will include the management of seven species of skate found in the Northeast—barndoor, clearnose, little, rosette, smooth, thorny, and winter skate.

The Mid-Atlantic Fishery Management Council (MAFMC), at its August 1999 meeting, passed a motion to support the NEFMC's request to initiate skate management. The MAFMC made clear its desire to be an active participant with the NEFMC in the development of a fishery management plan for Northeast skates. The MAFMC also expressed the desire to place at least three voting members on the NEFMC's skate committee and to appoint at least three industry advisors to the NEFMC's skate advisory panel or its equivalent.

The National Marine Fisheries Service Northeast Fisheries Science Center undertook an assessment of the Northeast skate fisheries at the 30th Northeast Regional Stock Assessment Workshop (SAW 30), which was completed in January 2000. Results of SAW 30 indicate that barndoor, smooth, thorny, and winter skate are overfished. The date of this letter will begin the 1-year period specified in the Magnuson-Stevens Fishery Conservation and Management Act for development of measures to address overfishing. A notice announcing the addition of these species to the list of overfished stocks will be published in the **Federal Register**.

I am pleased that you will begin work on management measures for these fisheries. If you have any questions, please do not hesitate to contact me.

Sincerely,
Andrew A. Rosenberg
Acting Assistant Administrator
for Fisheries

Dated: March 15, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7218 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 011100D]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule To Implement Major Provisions of the American Fisheries Act; Correction

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

ACTION: Emergency interim rule; revisions to 2000 harvest specifications; sideboard directed fishing closures; correction.

SUMMARY: This document corrects the emergency interim rule, which implements major provisions of the American Fisheries Act (AFA) and revises interim 2000 harvest specifications and sideboard directed fishing closures. This correction is being made to clarify that AFA crab processing sideboard limits do not apply to the processing of Community Development Quota (CDQ) crab.

DATES: Effective January 21, 2000 through July 20, 2000.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

The emergency interim rule that implemented major provisions of the American Fisheries Act (65 FR 4520, January 28, 2000) established AFA inshore processor and AFA mothership crab processing sideboard limits at § 679.64. NMFS did not intend for these crab processing sideboard limits to be applicable to the processing of CDQ crab. The AFA contains language that would cap crab processing in the directed crab fisheries, under the authority of the North Pacific Fishery Management Council, but does not contain language as to whether CDQ crab is part of the directed crab fisheries. To include the CDQ crab counts toward the cap would be highly disruptive to this entity because the CDQ crab fishery is not a directed fishery and comes after the open access crab fisheries. Therefore, NMFS has made a policy judgement to exclude CDQ crab from the processing caps and is correcting the AFA emergency rule by incorporating its interpretation of this policy in the emergency rule.

Correction

In the emergency interim rule To Implement Major Provisions of the American Fisheries Act, published in the **Federal Register** on January 28, 2000 (65 FR 4520), the following corrections are made in the regulatory text.

1. On page 4544, in § 679.64, paragraphs (a) and (b), the first sentence of paragraph (d), and paragraph (e) are corrected to read as follows:

§ 679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

(a) *Applicability*. The crab processing limits in this section apply to non-CDQ crab processed by any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.60 or § 679.61.

(b) *Calculation of crab processing sideboard limits*. Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the non-CDQ total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, and 1997.

* * * * *

(d) *Conversion of crab processing sideboard percentages and notification of crab processing sideboard poundage caps*. Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the non-CDQ (open access) pre-season guideline harvest level (GHL) established for that crab fishery by ADF&G. * * *

(e) *Overages*. In the event that the actual harvest of a BSAI crab species during a non-CDQ crab fishery exceeds the non-CDQ pre-season GHL announced for that species, an AFA inshore or mothership entity may exceed its crab processing cap without penalty up to an amount equal to the AFA inshore or mothership entity's crab processing percentage multiplied by the final official harvest amount of that crab species as determined by the ADF&G and announced by NMFS on the NMFS-Alaska Region world wide web home page (http://www.fakr.noaa.gov).

Dated: March 16, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7219 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 57
Thursday, March 23, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number: TM–00–03]

National Organic Programs; Organic Production and Handling of Aquatic Animals To Be Labeled as Organic

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The USDA Agricultural Marketing Service (AMS) plans to hold three public meetings to discuss issues related to the organic production and handling of aquatic animals to be labeled as organic.

DATES: The meetings are scheduled as follows:

1. April 10, 2000, from 6 p.m. to 9 p.m., Mobile, Alabama.
2. April 12, 2000, from 9 a.m. to 1 p.m., Anchorage, Alaska.
3. May 3, 2000, from 6 p.m. to 9 p.m., Providence, Rhode Island.

Comment Date: Written and electronic comments must be submitted on or before May 17, 2000.

ADDRESSES: The meetings will be held at the following locations:

1. Alabama—Mobile Convention Center, 1 South Water Street, Room 201, Mobile, AL.
2. Alaska—Anchorage Hilton, 500 West Third Avenue, Anchorage, AK.
3. Rhode Island—Providence Biltmore, 11 Dorrance Street, Providence, RI.

Comment Address: Send written and electronic comments to: Mark Keating, National Organic Program, USDA–AMS–TMP–NOP, Room 2510–South, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Mark Keating: Telephone: (202) 720–7804; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act (OFPA) as amended (7 U.S.C. 6501 *et seq.*) requires that livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with the OFPA. Section 2103 (7 U.S.C. 6502) of the OFPA defines livestock as any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life. Therefore, any fish used for food that is to be sold or labeled as organic must be raised in accordance with the requirements of the OFPA. The term ''fish'' encompasses all aquatic animals used for food including shell fish and fin fish. AMS believes that the term ''fish'' may be interpreted not only to encompass aquatic animals propagated and raised in a controlled or selected environment (''aquaculture''), but also fish harvested from Federally regulated but free roaming marine and fresh water populations (''wild harvest''). AMS is conducting three public meetings to solicit information regarding organic production and handling standards for operations producing aquatic animals.

What Is the Purpose of the National Organic Program?

As set forth in Section 2102 (7 U.S.C. 6501), the OFPA is intended to: (1) Establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate commerce in fresh and processed food that is organically produced. The National Organic Program (NOP) is the entity within AMS responsible for implementing the OFPA. Pursuant to section 2119 of the OFPA (7 U.S.C. 6518), the Secretary has established the National Organic Standards Board (NOSB) to provide assistance in the development of organic standards. The members of the NOSB represent distinct disciplines from within the organic community and are authorized to propose recommendations to the Secretary on the creation and revision of production and handling standards for organically managed operations.

The NOSB received public testimony and engaged in discussion of certification standards for aquaculture and wild-harvest aquatic animal operations at meetings in July 1998, October 1998, February 1999, July 1999 and October 1999. The NOP staff will evaluate the testimony and discussion from those meetings, consider any subsequent recommendations proposed by the NOSB, evaluate any information developed at the public national meetings announced in this document, and publish for comment in the **Federal Register** proposed organic standards for operations that produce aquatic animals.

What Are the Current Regulations for the Production and Harvesting of Aquatic Animals?

Multiple Federal entities share regulatory authority for the production and marketing of aquatic animals. The National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce provides services and products to support domestic and international fisheries management operations, fisheries development, trade and industry assistance activities, enforcement, protected species and habitat conservation operations, and the scientific and technical aspects of NOAA's marine fisheries program. The Fish and Wildlife Service of the U.S. Department of the Interior fulfills multiple functions including managing interjurisdictional fisheries, restoration of aquatic ecosystems, and recovery of listed and candidate aquatic species. The Animal and Plant Health Inspection Service (APHIS) of USDA has a role in both plant and animal aquaculture, especially involving disease and pest prevention and wildlife damage management. The Food and Drug Administration of the U.S. Department of Health and Human Services operates an oversight compliance program for the safety, wholesomeness, identity, and economic integrity of marketed seafood products. In considering the development of organic production and handling standards for operations producing aquatic animals, AMS will consult with all Federal entities that share regulatory responsibility for such operations.

How Will the Meetings Be Conducted?

A representative of AMS will preside at each of the three public meetings. Any interested person may appear and be heard in person or through a

representative. All public comment will be recorded and will be made part of the meeting record. We request that anyone who makes an oral comment also submit a written statement to the AMS representative at the meeting.

How Can Interested Persons Participate?

1. *In person.* Anyone may attend and comment at a meeting. If you wish to make a comment, you should register with AMS as soon as possible but prior to the meeting date. You may register by calling the NOP at (202) 720–3252, at which time you will be requested to submit your name, the topic of the comment, and the meeting location where you will make the comment. Registration will help ensure that you will be able to present your comment during the meeting. You also may register to make a comment by sending an e-mail message to NOP.Register@usda.gov. If you are unable to register prior to the meetings, you will be able to sign up at each location on the day of the meeting. Late registrants may submit comments on a first-come, first-served basis following the completion of comments from pre-registered individuals. Oral comments will be limited to 5 minutes to enable the greatest number of presenters an opportunity to speak.

2. *Written comments.* Written comments may be mailed to Mark Keating, National Organic Program USDA–AMS–TMP–NOP, P.O. Box 96456, Room 2510—South, Washington, DC 20090–6456; Telephone: (202) 720–3252; Fax: (202) 205–7808.

3. *Electronically.* Comments also may be submitted electronically via the Internet through Aquatic.Comment@usda.gov.

What Topics Should Comments Address?

General

1. How would the introduction of organic production and handling standards for aquatic animal operations affect consumer perception and acceptance of the organic certification process for other types of operations?

2. How would an organic label impact the marketing of aquatic animals?

3. What types of certification programs other than organic could provide consumers with useful information on the harvesting and processing of aquatic animals?

4. How would AMS organic standards for the production and handling of aquatic animals relate to international regulation?

Aquatic Animal Operations

1. Which components of organic certification for crops and livestock are compatible with or similar to operations that produce aquatic animals?

2. How can aquatic animal operations comply with the requirements of the OFPA which include:

— an organic system plan,
— wildcrop harvesting,
— origin of slaughter stock,
— health care practices,
— living conditions,
— allowed and prohibited substances,
— feed requirements,
— post-harvest processing,
— identification and record keeping systems.

Wild Harvested Operations

1. What should be the criteria for determining the suitability of a wild harvest site for the production of organic aquatic animals? How should prevailing environmental factors such as water quality, the presence of prohibited substances, and human activity be incorporated into the site inspection and approval? How should the potential impact of the operation on the target species, non-target species, and the environment be addressed in the certification process?

2. How can the population dynamics of the targeted species, including age distribution, reproductive capacity, and sustainable catch limits, be cumulatively addressed by the organic system plans of multiple operations?

3. How can producers anticipate and certifying agents verify site conditions over time and across the production site in which wild harvest operations function?

4. How can the management practices of a fish hatchery that contributes to a wild harvest population of aquatic animals be incorporated into the organic system plan?

Aquaculture Operations

1. What should the criteria be for evaluating the suitability of a production site for an organic aquaculture operation? Specifically, how can standards be developed for the site of production to address nutrient concentration, the emergence and transfer of disease, the escape of captive species to the wild, and detrimental impacts on indigenous species?

2. What characteristics of fish meal are pertinent to the requirement in the OFPA that producers supply livestock with organically produced feed that meets the requirements of the OFPA?

3. What guidelines are needed to ensure that the predator control practices used in aquaculture operations are consistent with organic principles?

4. Should the induction of triploidy in fish species be classified as an allowed or prohibited practice?

5. How should standards address the origin of livestock requirement for aquaculture operations that obtain stock or fry from wild populations?

Dated: March 17, 2000.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–7144 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 930, hereinafter referred to as the ''order.'' The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The purpose of the hearing is to receive evidence on a number of amendments proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. Major proposals include making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products.

DATES: The hearing dates are:

1. March 27, 2000, 12:00 p.m. to 5:00 p.m., and continuing on March 28, 2000, at 9:00 a.m., if necessary, Rochester, New York.

2. March 29, 2000, 10:00 a.m. to 5:00 p.m.; March 30, 2000, 9:00 a.m. to 5:00

p.m.; and continuing on March 31, 2000 at 9:00 a.m., if necessary; Grand Rapids, Michigan.

3. April 4, 2000, 9:00 a.m. to 5:00 p.m. and continuing on April 5, 2000 at 9:00 a.m., if necessary, Kennewick, Washington.

4. April 6, 2000, 10:00 a.m. to 5:00 p.m., and continuing on April 7, 2000, if necessary, Salt Lake City, Utah.

ADDRESSES: The hearing locations are:

1. Rochester—Radisson Hotel Rochester Airport, 175 Jeffferson Road, Rochester, New York 14623.

2. Grand Rapids—Courtyard by Marriott Downtown, 11 Monroe Avenue, Grand Rapids, Michigan 49503.

3. Kennewick—Cavannaugh's at Columbia Center, 1101 W. Columbia Center Boulevard, Kennewick, Washington 99336.

4. Salt Lake City—Utah Department of Agriculture and Food (Conference Room), 350 North Redwood Road, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, 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) 205–6632. Small businesses may request information on this proceeding by contacting Jay Guerber, 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) 205–6632.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

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. A handler is afforded the opportunity for a hearing 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Board proposes to revise seven areas of program operations. The proposed amendments are summarized below.

1. Make all districts in the production area subject to volume regulations rather than applying such regulations only to districts with annual production of 15 million pounds or more.

2. Allocate Board membership among districts based on each district's level of production. This would provide more flexibility than the order's current provisions which set a definite number of member seats for each district.

A related change is proposed in quorum requirements. Since the number of Board members could vary over time, at least two-thirds of the Board members must be present at any Board meeting. The order currently provides that 12 of 18 members constitutes a quorum.

3. If both a Board member and alternate are unable to attend a meeting, allow the Board to designate another alternate to act in his or her stead. Currently, only a member's designated alternate may serve in that member's stead.

4. Revise order diversion and exemption provisions in six ways:

Provide for diversion credit for shipments of cherry juice and juice concentrate to established diversion markets. The order currently prohibits juice and juice concentrate from receiving diversion credit.

Add specific authority to exempt or provide diversion credit for cherries exported to designated markets.

Add specific authority for the transfer of diversion credits among handlers.

Provide that grower diversions that take place in districts that are subsequently exempt from volume regulation still qualify for diversion credit.

Clarify diversion and exemption provisions of the order by eliminating cross references among those provisions, and specify that exemptions would not be entitled to receive diversion credit.

Further clarify § 930.59 by adding a paragraph indicating that the Secretary's rulemaking authority extends to all the provisions of that section.

5. Revise § 930.54 to make it clear that cherries in the inventory reserve may be released either for use in any market, or for use in only certain designated markets, depending on prevailing conditions.

6. Make two changes in § 930.41 pertaining to assessments:

Provide that assessments must be paid on all cherries handled, except for those that are diverted by destruction at a handler's facilities or are covered by grower diversion certificates. Currently, all cherries used in outlets eligible for diversion credit or exemption are exempt from assessments.

Provide that a uniform assessment rate apply to all cherries handled, unless the Board recommends differential rates to compensate for differences in the number of pounds used for various products or for the relative market values of such products. The order currently requires differential rates to be established, unless there is a compelling reason to do otherwise.

7. Make two changes to § 930.50, Marketing policy:

In recommending volume regulations, allow the Board to use a crop estimate other than the official USDA crop estimate. Currently, the Board is required to use the USDA estimate.

Provide that the 10 percent reserve release provided for market expansion only apply during years when restricted percentages are in effect. Currently, the release is being made whether or not volume regulations are in place.

The Board works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Board believes that the proposed changes would improve the administration, operation, and functioning of the order.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which

may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cherry Industry Administrative Board:

Proposal No. 1

Amend § 930.52 by revising paragraph (a); removing paragraph (c); redesignating current paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and revising paragraph (c) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) All districts within the production area, as defined in § 930.14, shall be subject to any volume regulations implemented in accordance with this part. The production of any cherries within a district shall cause that district to continue to be subject to any volume regulations implemented in accordance with this part unless the district is otherwise exempted from regulations under § 930.52(c).

(b) * * *

(c) Any district producing a crop which falls below 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

* * * * *

Proposal No. 2

Amend § 930.20 by revising paragraphs (a), (b), (d) and (e); adding a new paragraph (f); and redesignating current paragraphs (f) and (g) as (g) and (h), respectively, to read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the members of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous three year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members; and

(4) Greater than 80 million pounds shall have 4 members.

Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members		Handler members
Up to and including 10 million pounds	1	Or	1
More than 10 and up to 40 million pounds	1		1
More than 40 and up to 80 million pounds	1		2
More than 80 million pounds	2		2

(c) * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handlers members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to a district, then the Board shall be reestablished by the Secretary, and such seats shall be filled according to the applicable provisions of this part.

* * * * *

Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to

pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

Proposal No. 3

Revise § 930.28 to read as follow:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member or alternate, in that order, may designate, in writing and prior to the meeting, an alternate from another district to act in his or her place. If neither a member nor his or her alternate has designated an alternate as his or her replacement, or if such designated alternate is unable to serve as the replacement, the chairperson may, with the concurrence of a majority of the members including alternates acting as members, designate an alternate, who is present at the meeting and is not acting as a member, to act in the place and stead of the absent member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

Proposal No. 4

Amend § 930.59 by revising paragraphs (a), (b) and (c), removing paragraph (d), revising paragraph (e) and redesignating it as paragraph (d), and adding new paragraphs (e) and (f) to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, and § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) Experimental purposes; or

(4) For any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes.

Proposal No. 5

Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraph (a) or (b) of this section. (a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets.

Proposal No. 6

Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

(a) * * *

(b) * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board

during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided,* a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

(d) * * *

(e) * * *

(f) Assessments shall be uniform and calculated on the basis of pounds of cherries handled, unless the Board adopts a formula, approved by the Secretary, for determining the rate(s) of assessment which may compensate:

(1) for differences in the number of pounds of cherries utilized for various cherry products; or

(2) for the relative market values of such cherry products; or

(3) for both of these factors.

* * * * *

Proposal No. 7

Amend § 930.50 by revising paragraphs (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) * * *

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated over-production which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in paragraph (a) of this section, for market expansion.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 8

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 17, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–7160 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–535 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB211–535 series turbofan engines. This proposal would remove from service suspect radial drive steady bearings with certain serial number prefixes, and replace them with serviceable parts. Reports of a number of radial drive steady bearing failures from distinct batches of parts prompted this proposal. The actions specified by the proposed AD are intended to prevent radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin.

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

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ane-adcomment@faa.gov''. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7747, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–04–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (R–R) RB211–535 series turbofan engines. The CAA advises that it has received reports of radial drive steady bearing failures. The investigation revealed several failure modes, e.g., grinding abuse, ball and raceway fatigue, cage pocket spalling, loose rivets, and cage lapping. There has been an increase in the rate of radial drive steady bearing failures at low life since December 1998. These failures have been confined to five distinct batches of bearings manufactured between July 1998 and December 1998. The five affected batches are identified by the outer race serial number prefixes: DLJO, DLJP, DLOQ, DLSK, and DMBA. The manufacturer subsequently introduced additional quality checks and improved assembly procedures in June 1999, and there have been no reported bearing failures on parts manufactured since then. Affected engines are those that have had a new bearing fitted at overhaul, were new production engines, or had a bearing changed in service between July 26, 1998, and September 30, 1999. This condition, if not corrected, could result in radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin.

Service Information

R–R has issued Service Bulletin (SB) No. RB.211–72–C930, dated December 22, 1999, that identifies the suspect bearings by manufacturing time frame, and specifies references for removing and installing the bearings. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 004–12–1999 in order to ensure the airworthiness of these R–R engines in the UK.

Bilateral Airworthiness Agreement

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

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would remove from service defective radial drive steady bearings manufactured during certain dates and replace them with serviceable parts.

Economic Analysis

There are approximately 1,000 engines of the affected design in the worldwide fleet. The FAA estimates that 400 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $160 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $160,000 .

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2000–NE–04–AD.

Applicability: Rolls-Royce plc RB211–535 series turbofan engines, with radial drive steady bearings with outer race serial number (S/N) prefixes: DLJO, DLJP, DLOQ, DLSK, and DMBA, installed. Affected engines are those that have had a new bearing fitted at overhaul, were new production engines, or had a bearing changed in service between July 26, 1998, and September 30, 1999. These engines are installed on but not limited to Boeing 757 series aircraft and Tupolev Tu204 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin, accomplish the following:

Remove Suspect Bearings

(a) Remove from service radial drive steady bearings identified in the applicability paragraph of this AD and replace with serviceable parts as follows:

(1) For engines that had the suspect radial drive steady bearings installed during a shop visit or on-wing, remove from service before accumulating 1,500 hours time-in-service-since-new (TSN), but no later than September 30, 2000.

(2) For engines that had the suspect radial drive steady bearings installed in factory production, remove from service before accumulating 2,400 hours TSN, but no later than December 31, 2000.

Do Not Install Suspect Bearings

(b) As of the effective date of this AD, accomplish the following:

(1) Do not install radial drive steady bearings from the five affected batches listed in the applicability paragraph of this AD at overhaul, in service, or at new production.

(2) If performing an engine change, do not allow two engines that have bearings from any of the five affected batches listed in the applicability paragraph of this AD to be installed on the same airplane.

Serviceable Parts

(3) For the purpose of this AD, serviceable bearings are those which are not listed in the applicability paragraph of this AD. Current outer race S/N prefix DPSF or alphabetically subsequent prefix is considered serviceable.

Alternative Methods of Compliance

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

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

Ferry Flights

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

Issued in Burlington, Massachusetts, on March 15, 2000.

Mark C. Fulmer,

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

[FR Doc. 00–7226 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–12]

Proposed Realignment of Jet Route J–151

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to realign a segment of Jet Route 151 (J–151) between the Farmington, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Vulcan, AL, VORTAC. Specifically, the FAA is proposing to realign J–151 as a direct route between the Vulcan and Farmington VORTACs The FAA is proposing this realignment because the current route segment between the Farmington VORTAC and the Candu navigational fix is unusable for navigation due to frequency interference.

DATES: Comments must be received on or before May 10, 2000.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 99–ASO–12, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, P.O. Box 30636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Documents' webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Currently, J–151 is unusable between the Farmington, MO, VORTAC and the Candu navigational fix. Flight inspection revealed that this segment experiences co-channel radio frequency interference from another navigational aid that uses the same frequency. The proposed amendment would change the alignment of J–151 between the Farmington and Vulcan VORTACs from the current intersection of the Vulcan 335° and the Farmington 139° radials, to a direct route between the Vulcan and Farmington VORTACs. This amendment would restore the use of J–151 for flights serving destinations between Florida and the mid-west.

The Proposal

The FAA is proposing to amend 14 CFR part 71 to realign a segment of J–151. Currently, the segment of J–151 between the Farmington VORTAC and the Candu navigational fix has been found to be unusable for navigation due to frequency interference. The FAA has issued Flight Data Center Notices to Airmen advising users of this problem. To correct this problem, it is necessary to realign J–151 between the Farmington VORTAC and the Vulcan VORTAC as a direct route.

Jet routes are published in paragraph 2004 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 jet route listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 2004—Jet Routes

* * * * *

J–151 [Revised]

From Cross City, FL; Vulcan, AL; Farmington, MO; St Louis, MO; Des Moines, IA; O'Neill, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Whitehall.

* * * * *

Issued in Washington, DC, on March 15, 2000.

Steve Rohring,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–7191 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117162–99]

RIN 1545–AX59

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; amendment to notice of proposed rulemaking; and notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** on March 7, 1989 and amends proposed regulations under section 125. These proposed regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The proposed regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage, group-term life insurance coverage, dependent care assistance, and adoption assistance.

DATES: Written and electronic comments and requests for a public hearing must be received by June 21, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117162–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 am and 5 pm to: CC:DOM:CORP:R (REG–117162–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Janet A. Laufer or Christine L. Keller at (202) 622–6080; concerning submissions or to request a public hearing, LaNita Van Dyke at (202) 622–7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 125 [1] permits an employer to offer employees the choice between taxable income and certain nontaxable or ''qualified benefits'' [2] through a cafeteria plan, without the employees having to recognize the taxable income. In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[3] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[4] Specifically, §§ 1.125–1, Q&A–8 and 1.125–2, Q&A–

[1] Revenue Act of 1978, Public Law 95–600 (November 6, 1978): Sen. Rep. 95–1263, 95th Cong., 2d Sess., 74–78, 186–187 (October 1, 1978); H.R. Rep. No. 95–1445, 95th Cong. 2d Sess., 63–66 (August 4, 1978); H.R. Rep. No. 95–250, 96th Cong., 2d Sess., 206–207, 253–254 (October 15, 1978).

[2] ''Qualified benefits'' are generally any benefits excluded from income, including coverage under an employer-provided accident or health plan under sections 105 and 106; group-term life insurance under section 79; elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k); dependent care assistance under section 129; and adoption assistance under section 137. The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132. Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

[3] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[4] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), and FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

6(b), (c) and (d) permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations. [5] The 1997 regulations are being published as final regulations elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

A. Summary

The proposed regulations being published in this notice of proposed rulemaking were developed as part of an integrated package with the final regulations that are being published at the same time. These proposed regulations supplement the final regulations by permitting a mid-year cafeteria plan election change in connection with dependent care assistance and adoption assistance under change in status standards that are the same as the standards in the final regulations for accident or health plans and for group-term life insurance, and by adding change in status standards that are specific to dependent care and adoption assistance. These proposed regulations also refine and expand upon the approach adopted in the 1989 proposed regulations (at § 1.125–2, Q&A–6(b)) by providing that a cafeteria plan may permit employees to make mid-year election changes with respect to group-term life insurance, dependent care assistance, and adoption assistance as well as accident or health coverage, on account of changes in cost or coverage. This expansion of the cost or coverage rules would also allow employees to make election changes if, during a period of coverage, (1) a new benefit package option is offered, or a benefit package option is eliminated, under the plan or (2) a coverage change is made under a plan of the employer of an employee's spouse or dependent. These proposed regulations include a variety of examples illustrating how the rules apply in specific situations.

B. Change in Status

The proposed regulations published in this notice of proposed rulemaking complement the final regulations being published elsewhere in this issue of the **Federal Register** with respect to special enrollment rights and changes in status for accident or health coverage and group-term life insurance coverage. These proposed regulations take into account comments received on the 1997 temporary and proposed regulations, including comments suggesting the desirability of uniformity in the rules for different types of qualified benefits to the extent appropriate given the nature of the benefits.

In response to comments, the new proposed regulations address circumstances under which a cafeteria plan may permit an employee to change an election for dependent care assistance under section 129 and adoption assistance under section 137 during a plan year. The proposed change in status rules for dependent care assistance and adoption assistance parallel the change in status rules for accident or health coverage and group-term life insurance coverage contained in the final regulations, with some additional rules specific to dependent care and adoption assistance. For example, while a change in the number of dependents is a status change for other types of qualified benefits, a change in the number of qualifying individuals, as defined in section 21(b)(1), is a change in status for purposes of dependent care assistance. Likewise, these proposed regulations allow an additional change in status event for adoption assistance (the commencement or termination of an adoption proceeding). The consistency rule in the proposed regulations is the same as the consistency rule in the final regulations, with certain provisions that are specific to dependent care and adoption assistance changes.[6]

C. Change in Cost or Coverage

The new proposed regulations also address election changes to reflect significant cost and coverage changes for all types of qualified benefits provided under a cafeteria plan. The new proposed regulations refine and expand upon the approach taken in the 1989 proposed regulations at § 1.125–2, Q&A–6 with respect to changes in cost or coverage under the plan. For example, in response to comments, the new proposed regulations provide that if a plan adds a new benefit package option (such as a new HMO option), the cafeteria plan may permit affected participants to elect that option and make a corresponding election change with respect to other benefit package options during a period of coverage.

The new proposed regulations also generally extend the cost or coverage rules under § 1.125–2, Q&A–6(b) to permit election changes for self-insured accident or health plans, group-term life insurance, dependent care assistance and adoption assistance coverage under a cafeteria plan. Thus, for example, if the cost of a self-insured accident or health plan increases, a plan may automatically make a corresponding change in the salary reduction charge. In addition, the new proposed regulations treat a change of dependent care provider as similar to the addition of a new HMO option under an accident or health plan, with the result that a corresponding election change can be made when one dependent care provider is replaced by another. While the coverage change rules apply to dependent care regardless of whether the dependent care provider is related to the employee, the cost change rules do not apply to dependent care if the dependent care provider is a relative of the employee making the election.

Commentators on the 1997 temporary and proposed regulations also raised a concern that when the plan of the employer of a spouse conducts annual open enrollment for group health benefits beginning at a different time of the year than the annual open enrollment for group health benefits offered by the employee's employer, the employee is unnecessarily restricted from making election changes that correspond with elections made by the employee's spouse. These commentators suggested that if one spouse makes an election change during an open enrollment period, a corresponding change should be permitted for the other spouse. In response to these comments, the new proposed regulations provide that a cafeteria plan may permit an employee to make an election change, during a period of coverage, corresponding with an open enrollment period change made by a spouse or dependent when the plan of that individual's employer has a different period of coverage.

In addition, the new proposed regulations provide that a cafeteria plan may permit an employee to make an

[5] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of these temporary regulations (§ 1.125–4T) and proposed regulations (§ 1.125–4) so that they will not be effective before plan years beginning at least 120 days after further guidance is issued.

[6] Conforming changes have also been made to Q&A–8 of the 1984 proposed regulations under § 1.125–1.

election change in the event that a spouse or dependent makes an election change under a cafeteria plan (or qualified benefits plan) maintained by that individual's employer, provided that the spouse or dependent's election change satisfies the election change rules under the proposed regulation. For example, under this provision, if the plan of a spouse's employer adds a new HMO option to its group health plan, and the spouse elects to enroll the family in that new option, a cafeteria plan may permit the employee to drop family coverage. These new rules apply only if the change made by the employee is on account of and corresponds with the change made under the other employer's plan. This expansion of the existing cost or coverage change rules permits employees to make election changes to ensure consistent coverage of family members and eliminate duplicate coverage.

The cost or coverage rules in the new proposed regulations have not been extended to health flexible spending arrangements. This ensures that those arrangements will not permit election changes in a manner that is inconsistent with the requirement, under §§ 1.125–1, Q&A–17 and 1.125–2, Q&A–7 of the existing proposed regulations, that such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance.

Although the final regulations being published elsewhere in this issue of the **Federal Register** permit election changes in the event an individual becomes eligible (or loses eligibility) for Medicare or Medicaid, these proposed regulations do not address election changes to reflect an individual's eligibility for other government programs that pay for or subsidize health coverage.[7] For example, the new rules do not address the possibility that an employee's child may cease to be eligible for coverage under a state's children's health insurance program (CHIP) designed in accordance with Title XXI of the Social Security Act.[8] Comments are requested on whether eligibility or ineligibility for such a government program should be added to the types of events that allow a cafeteria plan election change (including any special administrative difficulties that employers might have in identifying this type of event) and, if so, the types of government programs that should be permitted to be taken into account.

D. Effective Date and Reliance

The new proposed regulations do not specify a proposed effective date. Any effective date will be prospective, and comments are requested on the extent of lead time necessary for employers to be able to implement the new proposed regulations after they are adopted as final regulations.

Until the effective date of further guidance, taxpayers may rely on the new proposed regulations. In addition, until the effective date of further guidance, taxpayers may continue to rely on the change in family status rules in the existing proposed regulations (at § 1.125–2, Q&A–6(c)) with respect to benefits other than accident and health coverage and group-term life insurance coverage, and on the cost or coverage change rules in the existing proposed regulations (at § 1.125–2, Q&A–6(b)) with respect to all types of qualified benefits.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal authors of these proposed regulations are Janet A. Laufer and Christine L. Keller, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, § 1.125 Q&A–6(c) and (d) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

Amendments to Previously Proposed Rules

The proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460), and amended on November 7, 1997 (62 FR 60196), are amended as set forth below.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.125–1, as proposed to be added on May 7, 1984 (49 FR 19322), in Q&A–8, Q–8 is republished and A–8 is amended by adding two sentences at the end of the answer to read as follows:

§ 1.125–1 Questions and answers relating to cafeteria plans.

* * * * *

Q–8: What requirements apply to participants' elections under a cafeteria plan?

A–8: * * * For benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage under the rules set forth in § 1.125–4 pertaining to permitted election changes. For additional rules governing benefit elections, see § 1.125–4.

* * * * *

Par. 3. In § 1.125–2, as proposed to be added on March 7, 1989 (54 FR 9500) and amended November 7, 1997 (62 FR

[7] The loss of coverage under a government program may give rise to a special enrollment right under section 9801(f) and, thus, the issue addressed here is relevant only in cases in which the special enrollment rules do not apply.

[8] Added to the Social Security Act by section 4901 of the Balanced Budget Act of 1997, Public Law 105–33 (August 5, 1997).

60197), in Q&A–6, Q–6 is republished and A–6 is amended by:

1. Adding a sentence at the end of paragraph (b)(2).

2. Revising the last sentence of paragraph (c).

3. Revising the last sentence of paragraph (d).

The additions and revisions read as follows:

§ 1.125–2 Miscellaneous cafeteria plan questions and answers.

* * * * *

Q–6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: * * *

(b) * * *

(2) * * * For additional rules governing cafeteria plan election changes in connection with a significant cost or coverage change, see § 1.125–4.

(c) *Certain changes in family status.* * * * For additional rules governing cafeteria plan election changes in connection with certain changes in status, see § 1.125–4.

(d) *Separation from service.* * * * For additional rules governing cafeteria plan election changes in connection with an employee's separation from service, see § 1.125–4.

* * * * *

Par. 4. § 1.125–4 is amended as follows:

1. Paragraph (c) is amended as follows:

a. Revising paragraph (c)(1)(iii).

b. Adding paragraph (c)(2)(vi).

c. Revising paragraph (c)(3)(ii).

d. Adding paragraphs (c)(4)*Example 3*(iii) and (c)(4)*Example 9.*

2. Revising paragraph (f).

3. Revising paragraph (g).

4. Revising paragraph (i)(3).

The additions and revisions read as follows:

§ 1.125–4 Permitted election changes.

* * * * *

(c) * * * (1) * * *

(iii) *Application to other qualified benefits.* This paragraph (c) applies to plans providing qualified benefits other than those listed in paragraph (c)(1)(ii) of this section.

(2) * * *

(vi) *Adoption assistance.* For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

(3) * * *

(ii) *Application to other qualified benefits.* An election change satisfies the requirements of this paragraph (c)(3) with respect to other qualified benefits if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan. An election change also satisfies the requirements of this paragraph (c)(3) if the election change is on account of and corresponds with a change in status that affects expenses described in section 129 (including employment-related expenses as defined in section 21(b)(2)) with respect to dependent care assistance, or expenses described in section 137 (including qualified adoption expenses as defined in section 137(d)) with respect to adoption assistance.

* * * * *

(4) * * *

Example 3. * * *

(iii) In addition, under paragraph (f)(4) of this section, if *F* makes an election change to cover *G* under *F's* employer's plan, then *E* may make a corresponding change to elect employee-only coverage under *P*'s cafeteria plan.

* * * * *

Example 9. (i) Employee *A* has one child, *B.* Employee *A*'s employer, *X,* maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Prior to the beginning of the calendar year, *A* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *B* reaches the age of 13, and *A* wants to cancel coverage under the dependent care FSA.

(ii) When *B* turns 13, *B* ceases to satisfy the definition of ''qualifying individual'' under section 21(b)(1) of the Internal Revenue Code. Accordingly, *B*'s attainment of age 13 is a change in status under paragraph (c)(2)(iv) of this section that affects A's employment-related expenses as defined in section 21(b)(2). Therefore, A may make a corresponding change under *X*'s cafeteria plan to cancel coverage under the dependent care FSA.

* * * * *

(f) *Significant cost or coverage changes*—(1) *In general.* Paragraphs (f)(2) through (5) of this section set forth rules for election changes as a result of changes in cost or coverage. This paragraph (f) does not apply to an election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).

(2) *Cost changes*—(i) *Automatic changes.* If the cost of a qualified benefits plan increases (or decreases) during a period of coverage and, under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase (or decrease) in affected employees' elective contributions for the plan.

(ii) *Significant cost increases.* If the cost of a benefit package option (as defined in paragraph (i)(2) of this section) significantly increases during a period of coverage, the cafeteria plan may permit employees either to make a corresponding prospective increase in their payments, or to revoke their elections and, in lieu thereof, to receive on a prospective basis coverage under another benefit package option providing similar coverage. For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may instead elect to revoke their election for the indemnity option and, in lieu thereof, elect coverage under an HMO option.

(iii) *Application to dependent care.* This paragraph (f)(2) applies in the case of a dependent care assistance plan only if the cost change is imposed by a dependent care provider who is not a relative of the employee. For this purpose, a relative is an individual who is related as described in section 152(a)(1) through (8), incorporating the rules of section 152(b)(1) and (2).

(3) *Coverage changes*—(i) *Significant curtailment.* If the coverage under a plan is significantly curtailed or ceases during a period of coverage, the cafeteria plan may permit affected employees to revoke their elections under the plan. In that case, each affected employee may make a new election on a prospective basis for coverage under another benefit package option providing similar coverage. Coverage under an accident or health plan is significantly curtailed only if there is an overall reduction in coverage provided to participants under the plan so as to constitute reduced coverage to participants generally.

(ii) *Addition (or elimination) of benefit package option providing similar coverage.* If during a period of coverage a plan adds a new benefit package option or other coverage option (or eliminates an existing benefit package option or other coverage option) the cafeteria plan may permit affected employees to elect the newly-added option (or elect another option if an option has been eliminated) prospectively on a pre-tax basis and make corresponding election changes with respect to other benefit package options providing similar coverage.

(4) *Change in coverage of spouse or dependent under other employer's plan.* A cafeteria plan may permit an employee to make a prospective election change that is on account of and

corresponds with a change made under the plan of the spouse's, former spouse's or dependent's employer if—

(i) A cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer permits participants to make an election change that would be permitted under paragraphs (b) through (g) of this section (disregarding this paragraph (f)(4)); or

(ii) The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer.

(5) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. (i) A calendar year cafeteria plan is maintained pursuant to a collective bargaining agreement for the benefit of Employer *M*'s employees. The cafeteria plan offers various benefits, including indemnity health insurance and a health FSA. As a result of mid-year negotiations, premiums for the indemnity health insurance are reduced in the middle of the year, insurance co-payments for office visits are reduced under the indemnity plan, and an HMO option is added.

(ii) Under these facts, the reduction in health insurance premiums is a reduction in cost. Accordingly, under paragraph (f)(2)(i) of this section, the cafeteria plan may automatically decrease the amount of salary reduction contributions of affected participants by an amount that corresponds to the premium change. However, the plan may not permit employees to change their health FSA elections to reflect the mid-year change in copayments under the indemnity plan.

(iii) Also, the addition of the HMO option is an addition of a benefit package option. Accordingly, under paragraph (f)(3)(ii) of this section, the cafeteria plan may permit affected participants to make an election change to elect the new HMO option. However, the plan may not permit employees to change their health FSA elections to reflect differences in copayments under the HMO option.

Example 2. (i) Employer *N* sponsors a group health plan under which employees may elect either employee-only coverage or family health coverage. The 12-month period of coverage under *N*'s cafeteria plan begins January 1, 2001. *N*'s employee, *A*, is married to *B*. Employee *A* elects employee-only coverage under *N*'s plan. *B*'s employer, *O*, offers health coverage to *O*'s employees under its group health plan under which employees may elect either employee-only coverage or family coverage. *O*'s plan has a 12-month period of coverage beginning September 1, 2001. *B* maintains individual coverage under *O*'s plan at the time *A* elects coverage under *N*'s plan, and wants to elect no coverage for the plan year beginning on September 1, 2001, which is the next period of coverage under *O*'s group health plan.

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to change *A*'s election prospectively to family coverage under that plan effective September 1, 2001 if *B* actually elects no coverage under *O*'s group health plan for the plan year beginning on September 1, 2001.

Example 3. (i) Employer *P* sponsors a calendar year cafeteria plan under which employees may elect either employee-only or family health coverage. Before the beginning of the year, *P*'s employee, *C*, elects family coverage under *P*'s cafeteria plan. *C* also elects coverage under the health FSA for up to $200 of reimbursements for the year to be funded by salary reduction contributions of $200 during the year. *C* is married to *D*, who is employed by Employer *Q*. *Q* does not maintain a cafeteria plan, but does maintain a group health plan providing its employees with employee-only coverage. During the calendar year, *Q* adds family coverage as an option under its health plan. *D* elects family coverage under *Q*'s plan, and *C* wants to revoke *C*'s election for health coverage and elect no health coverage under *P*'s cafeteria plan for the remainder of the year.

(ii) *Q*'s addition of family coverage as an option under its health plan constitutes a new coverage option described in paragraph (f)(3)(ii) of this section. Accordingly, pursuant to paragraph (f)(4)(i) of this section, *P*'s cafeteria plan may permit *C* to revoke *C*'s health coverage election if *D* actually elects family health coverage under *Q*'s group health plan. Employer *P*'s plan may not permit *C* to change *C*'s health FSA election.

Example 4. (i) Employer *R* maintains a cafeteria plan under which employees may elect accident or health coverage under either an indemnity plan or an HMO. Before the beginning of the year, *R*'s employee, *E* elects coverage under the HMO at a premium cost of $100 per month. During the year, *E* decides to switch to the indemnity plan, which charges a premium of $140 per month.

(ii) *E*'s change from the HMO to indemnity plan is not a change in cost or coverage under this paragraph (f), and none of the other election change rules under paragraphs (b) through (e) of this section apply. While *R*'s health plan may permit *E* to make the change from the HMO to the indemnity plan, *R*'s cafeteria plan may not permit *E* to make an election change to reflect the increased premium. Accordingly, if *E* switches from the HMO to the indemnity plan, *E* may pay the $40 per month additional cost on an after-tax basis.

Example 5. (i) Employee *A* is married to Employee *B* and they have one child, *C*. Employee *A*'s employer, *M*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *C* attends *X*'s on site child care center at an annual cost of $3,000. Prior to the beginning of the year, *A* elects salary reduction contributions of $3,000 during the year to fund coverage under the dependent care FSA for up to $3,000 of reimbursements for the year. Employee *A* now wants to revoke *A*'s election of coverage under the dependent care FSA, because *A* has found a new child care provider.

(ii) The availability of dependent care services from the new child care provider (whether the new provider is a household employee or family member of *A* or *B* or a person who is independent of *A* and *B*) is a significant change in coverage similar to a benefit package option becoming available. Thus, *M*'s cafeteria plan may permit *A* to elect to revoke *A*'s previous election of coverage under the dependent care FSA, and make a corresponding new election to reflect the cost of the new child care provider.

Example 6. (i) Employee *D* is married to Employee *E* and they have one child, *F*. Employee *D*'s employer, *N*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *F* is cared for by *Y*, *D*'s household employee, who provides child care services five days a week from 9 a.m. to 6 p.m. at an annual cost in excess of $5,000. Prior to the beginning of the year, *D* elects salary reduction contributions of $5,000 during the year to fund coverage under the dependent care FSA for up to $5,000 of reimbursements for the year. During the year, *F* begins school and, as a result, *Y*'s regular hours of work are changed to five days a week from 3 p.m. to 6 p.m. Employee *D* now wants to revoke *D*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual cost of $4,000 to reflect a reduced cost of child care due to *Y*'s reduced hours.

(ii) The change in the number of hours of work performed by *Y* is a change in coverage. Thus, *N*'s cafeteria plan may permit *D* to reduce *D*'s previous election under the dependent care FSA to $4,000.

Example 7. (i) Employee *G* is married to Employee *H* and they have one child, *J*. Employee *G*'s employer, *O*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *J* is cared for by *Z*, *G*'s household employee, who is not a relative of *G* and who provides child care services at an annual cost of $4,000. Prior to the beginning of the year, *G* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *G* raises *Z*'s salary. Employee *G* now wants to revoke *G*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual amount of $4,500 to reflect the raise.

(ii) The raise in *Z*'s salary is a significant increase in cost under paragraph (f)(2)(ii) of this section, and an increase in election to reflect the raise corresponds with that change in status. Thus, *O*'s cafeteria plan may permit *G* to elect to increase *G*'s election under the dependent care FSA.

(g) *Special requirements relating to the Family and Medical Leave Act.* [Reserved]

* * * * *

(i) * * *

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a

dependent of both parents, and, for purposes of dependent care assistance provided through a cafeteria plan, a dependent means a qualifying individual (as defined in section 21(b)(1)) with respect to the employee.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AA06

Public Use of NARA Facilities

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations for use of its facilities. This proposal entirely rewrites and reorganizes this portion of NARA's regulations to incorporate several changes, and also to clarify it using plain language. The regulation has been updated to include new rules for public use of the National Archives at College Park, MD, and procedures for using the Exhibition Hall of the National Archives Building in Washington, DC, for a private event. It also lowers the age at which an unaccompanied child can visit a NARA facility from 16 to 14 years old. This change conforms with an earlier revision of 36 CFR part 1254 that lowered the age at which an individual can conduct research in NARA facilities to 14 years old. This revised regulation will govern the public's activity while on NARA property; however, it does not contain rules for conducting research at NARA facilities. Those rules are found in 36 CFR part 1254.

DATES: Comments must be received on or before May 22, 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.

Comments on the information collections contained in this proposed rule should also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NARA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes have been made and the proposed regulation has been written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

We are reorganizing Subpart A for clarity and making some policy changes in this subpart. Section 1280.12(a), which defines what property is under control of the Archivist of the United States, has been moved and redesignated as § 1280.2 in this proposed rule. We expanded this definition to include the National Archives at College Park and the Presidential Libraries. We want to clarify that the definition of NARA property applies to the entire regulation, and not just to the section on photography where it is currently located.

The provisions of the current § 1280.2 are moved to proposed § 1280.4, and we have lowered the age that an unaccompanied child may be admitted to a NARA facility to 14 years old. This change conforms with a May 1999 change to 36 CFR Part 1254, Researcher Registration and Research Room Procedures, that lowers the minimum age at which an individual may be granted full research privileges to 14 years old.

In the proposed § 1280.10 (currently § 1280.4), concerning vehicular and pedestrian traffic, we added a provision which states that NARA may deny any vehicle access to NARA property for public safety or security reasons. We specify in this section that NARA may tow, at the owner's expense, any vehicle that is illegally parked. We also added a new section, § 1280.12, which explains parking at NARA facilities. The National Archives Building has no onsite parking. The National Archives at College Park does have limited parking, as do most of the regional records services facilities. All of the Presidential libraries have onsite parking for researchers and museum visitors. We are also adding a new § 1280.14 that defines NARA's rules for use of the shuttle bus that travels between the National Archives Building in Washington, DC, and the National Archives at College Park. This shuttle service is intended for the use of NARA employees who are on official business. Other government employees and researchers may use the shuttle if space is available.

We are adding a new § 1280.24, which bans smoking inside all NARA facilities. You may smoke only in designated outdoor areas. This policy is based on Executive Order 13058 that prohibits, with limited exceptions, smoking of tobacco products in all Federal buildings.

The proposed Subpart B clarifies the rules for filming, videotaping, or taking photographs in NARA facilities. This new subpart is an expansion of the current §§ 1280.12 through 1280.18 and has been revised to include the National Archives at College Park and the Presidential Libraries. We have removed all references to the Pickett Street Annex that NARA no longer leases. We are rewriting this subpart primarily to clarify the differences between photographing or filming for personal use, and photographing or filming for news purposes. Filming, videotaping, and photographing on NARA property for commercial purposes continues to be prohibited. You do not need prior permission to film, photograph, or videotape inside or outside NARA facilities for personal use as long as you observe the rules in § 1280.46. When applying to film, photograph, or videotape for news purposes, the proposed § 1280.48(c) specifies that you must supply the name of the company you represent, the areas you wish to film, photograph, or videotape, and the nature of the project that the film, photographs, or videotape will be used for. The proposed § 1280.52(b) allows you, subject to the approval of the NARA Public Affairs Officer, to film, photograph, or videotape for news purposes in records storage (stack) areas containing unclassified records. This is not allowed under the current regulation.

The proposed Subpart C sets forth additional rules for using the National Archives Building in Washington, DC, and the National Archives at College Park, MD. The proposed §§ 1280.60 and 1280.66 will replace the current §§ 1280.10 and 1280.20 respectively. The proposed § 1280.64 designates the public and delivery entrances of the National Archives at College Park. The proposed § 1280.68 explains that the cafeteria at the National Archives at College Park is open to the general public.

The proposed Subpart D explains how an organization or other Federal agency can request to use NARA's Washington, DC, area facilities for events. This subpart covers §§ 1280.22 through 1280.28 in the current Subpart B. We revised this subpart to include

procedures for using public areas in the National Archives at College Park, and we are reorganizing it to standardize the application procedures for requesting use of all public areas in the National Archives at College Park and the National Archives Building. The Exhibition Hall is the ceremonial center of NARA and it houses the Charters of Freedom—the Declaration of Independence, the Constitution, and the Bill of Rights. Therefore we require that any requests to use the Exhibition Hall be submitted 120 days in advance as opposed to 30 days for requests to use other areas. In addition, requests to use the Exhibition Hall must be approved by the Archivist of the United States.

We are redesignating the current Subpart C, Facilities in Presidential Libraries, as Subpart E and rewriting it in plain language. We are incorporating the current § 1280.48 on photographing documents into the proposed Subpart B on filming or photographing in NARA facilities. We have updated the references to the facilities and made other minor clarifications.

The current Subpart D, Federal Records Centers and National Archives Field Branches, will become Subpart F in this proposal. It is updated to reflect current organizational titles.

Information Collections Subject to the Paperwork Reduction Act

The information collections in §§ 1280.48 and 1280.74 are subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. NARA invites the general public and other Federal agencies to comment on the proposed information collections. Comments should be addressed to NARA and OMB (see **ADDRESSES**).

The information collection in § 1280.48 is designed to assist NARA in determining whether or not to approve a request to film, photograph, or videotape at a NARA facility for news purposes. The affected publics are persons, businesses, or news organizations that would like to film, photograph, or videotape at any NARA facility for news purposes. We estimate that we will receive 660 requests per year from 37 respondents and that the respondent burden to provide the information will be 10 minutes per request, for a total burden of 110 hours.

The information collection in § 1280.74 is designed to assist NARA in determining whether or not to approve a request to hold an event in a NARA facility in the Washington, DC, area. The affected publics are organizations and other Federal agencies that would like to use a NARA public space for an event. We estimate that we will receive 52 requests per year from non-Federal respondents and that the respondent burden to provide the information will be 30 minutes per request, for a total burden of 26 hours.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; it has been submitted to the Office of Management and Budget for review of the information collections subject to the Paperwork Reduction Act. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this regulation will affect individuals wishing to visit a NARA facility, a small number of news organizations wishing to film, and organizations wishing to use NARA public areas for events. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Archives and records, Federal buildings and facilities, Reports and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to revise 36 CFR Part 1280 to read as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

Subpart A—What Are the General Rules of Conduct on NARA Property?

General Information on Using NARA Facilities

Sec.
1280.1 What is the purpose of this part?
1280.2 What property is under the control of the Archivist of the United States?
1280.4 Can children under the age of 14 use NARA facilities?
1280.6 May I bring a seeing-eye dog or other assistance animal?
1280.8 Will my belongings be searched?
1280.10 Are there special rules for driving on NARA property?
1280.12 Is parking available?
1280.14 May I use the shuttle bus to travel to the National Archives at College Park or to the National Archives Building in Washington, DC?
1280.16 Are there additional rules posted?

Prohibited Activities

1280.18 May I bring guns or other weapons onto NARA property?
1280.20 What is your policy on illegal drugs and alcohol?
1280.22 Is gambling allowed on NARA property?
1280.24 Is smoking allowed on NARA property?
1280.26 May I pass out fliers on NARA property?
1280.28 Where can I eat and drink on NARA property?
1280.30 Are soliciting, vending, and debt collection allowed on NARA property?
1280.32 What other behavior is not permitted?

Subpart B—What Are the Rules for Filming, Photographing, or Videotaping on NARA Property?

1280.40 Definitions.
1280.42 When do the rules in this subpart apply?
1280.44 May I film, photograph, or videotape on NARA property for commercial purposes?
1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?
1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?
1280.50 What will I be allowed to film, photograph, or videotape for news purposes?
1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?

Subpart C—What Are the Additional Rules for Using NARA Facilities in the Washington, DC, Area?

1280.60 Where do I enter the National Archives Building in Washington, DC?
1280.62 When is the Exhibition Hall open?
1280.64 What entrance should I use to enter the National Archives at College Park?
1280.66 May I use the National Archives Library?
1280.68 May I use the cafeteria at the National Archives at College Park?

Subpart D—How Do I Request to Use Washington, DC, Area NARA Facilities for an Event?

1280.70 When does NARA allow other groups to use its public areas for events?
1280.72 What are the general rules for using NARA public areas?
1280.74 How do I apply to use NARA public areas in Washington, DC, area facilities?
1280.76 What will I have to pay to use a NARA public area for an event?
1280.78 How will NARA handle my request to use a lecture room, the auditorium, the Theater, or the Archivist's Reception Room?
1280.80 How will NARA handle my request to use the Exhibition Hall?

Subpart E—What Additional Rules Apply for Use of Facilities in Presidential Libraries?

1280.90 What are the rules of conduct while visiting the Presidential libraries?
1280.92 When are the Presidential library museums open to the public?
1280.94 When do Presidential libraries allow other groups to use their public areas for events?
1280.96 Supplemental rules.

Subpart F—What Additional Rules Apply for Use of Public Areas at Regional Records Services Facilities?

1280.100 What are the rules of conduct at NARA regional records services facilities?
1280.102 When do NARA regional records services facilities allow other groups to use their public areas for events?

Authority: 44 U.S.C. 2104(a).

Subpart A—What Are the General Rules of Conduct on NARA Property?

General Information on Using NARA Facilities

§ 1280.1 What is the purpose of this part?

(a) This part tells you what rules you must follow when you use property under the control of the Archivist of the United States (the National Archives Building, the National Archives at College Park, and the Presidential libraries).

(b) When you are using other NARA facilities, the General Services Administration (GSA) regulations, Conduct on Federal Property, at 41 CFR subpart 101–20.3 apply to you. These facilities are the NARA regional records services facilities, the Washington National Records Center in Suitland, MD, and the National Personnel Records Center in St. Louis, MO. The rules in Subpart B of this part also apply to you if you wish to film, take photographs, or make videotapes. The rules in Subpart F of this part also apply to you if you wish to use the NARA-assigned conference rooms in those facilities.

(c) If you are using records in a NARA research room in a NARA facility, you must also follow the rules in 36 CFR part 1254.

§ 1280.2 What property is under the control of the Archivist of the United States?

The following property is under the control of the Archivist of the United States and is defined as ''NARA property'' in this part 1280:

(a) The National Archives Building. Property under the control of the Archivist includes:

(1) The Pennsylvania Avenue, NW, entrance between 7th and 9th Streets including the area within the retaining walls on either side of the entrance, inclusive of the statues, and the steps and ramps leading up to the entrance of the building;

(2) On the 7th Street, 9th Street, and Constitution Avenue, NW, sides of the building, all property between the National Archives Building and the curb line of the street, including the sidewalks and other grounds, the steps leading up to the Constitution Avenue entrance, the Constitution Avenue entrance, and the portico area between the steps and the Constitution Avenue entrance.

(3) The National Park Service controls the areas on the Pennsylvania Avenue side of the National Archives Building that are not under the control of the Archivist of the United States.

(b) The National Archives at College Park. Property under control of the Archivist includes approximately 37 acres bounded:

(1) On the west by Adelphi Road;

(2) On the north by the Potomac Electric Power Company right-of-way;

(3) On the east by Metzerott Road; and

(4) On the south by the University of Maryland.

(c) The Presidential Libraries. Property under control of the Archivist includes the Presidential Libraries and Museums that are listed in 36 CFR 1253.3.

§ 1280.4 Can children under the age of 14 use NARA facilities?

Children under the age of 14 will be admitted to NARA facilities only if they are accompanied by an adult who will supervise them at all times while on NARA property. The director of a NARA facility may authorize a lower age limit for admission of unaccompanied children to meet special circumstances (*e.g.*, students who have been given permission to conduct research without adult supervision).

§ 1280.6 May I bring a seeing-eye dog or other assistance animal?

Yes, persons with disabilities may bring guide dogs or other animals used for guidance and assistance onto NARA property. You may not bring any other animals into a NARA facility except for official purposes.

§ 1280.8 Will my belongings be searched?

Yes, at any time NARA may inspect all packages, briefcases, and other containers that you bring onto NARA property, including when you are entering or exiting NARA property.

§ 1280.10 Are there special rules for driving on NARA property?

(a) You must obey speed limits, posted signs, and other traffic laws, and park only in designated spaces.

(b) NARA will tow, at the owner's expense, any vehicle that is parked illegally. Except in emergencies, you may not park in spaces reserved for holders of NARA parking permits. If an emergency forces you to leave your vehicle in an illegal area, you must notify the security guards at that NARA facility as soon as possible. We will not tow your illegally parked car if you have notified a security guard of an emergency unless it is creating a hazard or blocking an entrance or an exit.

(c) We may deny any vehicle access to NARA property for public safety or security reasons.

§ 1280.12 Is parking available?

(a) The National Archives Building. There is no parking available for researchers or visitors to the National Archives Building. However, this building is easily accessible by bus or subway and there are several commercial parking lots located near the building.

(b) The National Archives at College Park. The National Archives at College Park has limited public parking space. The garage is open to the public on a first-come, first-served basis during the hours the research rooms are open. There is public bus service to this building. Individuals and groups visiting the National Archives at College Park are encouraged to use public transportation or car pool to get to the building as the parking lot is often full during our busiest hours.

(c) Regional records services facilities. Most regional records services facilities have onsite parking available for researchers. Parking at these facilities and at the Washington National Records Center is governed by GSA regulations, Management of Buildings and Grounds, found at 41 CFR Part 101–20. The regional archives on Market Street in Philadelphia and the regional archives in New York City do not have onsite parking. However, there is ample parking in commercial parking garages near these facilities.

(d) Presidential Libraries. All of the Presidential Libraries have onsite parking for researchers and museum visitors. Some of the spaces are reserved for staff and for security reasons.

§ 1280.14 May I use the shuttle bus to travel to the National Archives at College Park or to the National Archives Building in Washington, DC?

The NARA shuttle, which travels concurrently each hour between the National Archives Building and the National Archives at College Park, is intended for NARA employees. Other Government employees on official business or researchers may also use the shuttle if space is available. The shuttle operates Monday through Friday, excluding Federal holidays, 8:00 a.m. to 5:00 p.m.

§ 1280.16 Are there additional rules posted?

Yes, there are additional rules posted on NARA property. You must, at all times while on NARA property, comply

with official NARA signs and with the directions of the guards and NARA staff.

Prohibited Activities

§ 1280.18 May I bring guns or other weapons onto NARA property?

No, you may not bring firearms or other dangerous or deadly weapons either openly or concealed onto NARA property except for official business. You also may not bring explosives, or items intended to be used to fabricate an explosive or incendiary device, onto NARA property. State-issued concealed-carry permits are not valid on NARA property.

§ 1280.20 What is your policy on illegal drugs and alcohol?

You may not use or be in possession of illegal drugs on NARA property. You also may not enter NARA property while under the influence of illegal drugs or alcohol. Using alcoholic beverages on NARA property is prohibited except for occasions when the Archivist of the United States or his/her designee has granted an exemption in writing.

§ 1280.22 Is gambling allowed on NARA property?

(a) No, you may not participate in any type of gambling while on NARA property. This includes:

(1) Participating in games for money or other personal property;

(2) Operating gambling devices;

(3) Conducting a lottery or pool; or

(4) Selling or purchasing numbers tickets.

(b) This rule does not apply to licensed blind operators of vending facilities who are selling chances for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

§ 1280.24 Is smoking allowed on NARA property?

Smoking is not allowed inside any NARA facility.

§ 1280.26 May I pass out fliers on NARA property?

No, you may not distribute or post handbills, fliers, pamphlets or other materials on bulletin boards or elsewhere on NARA property, except in those spaces designated by NARA as public forums. This prohibition does not apply to displays or notices distributed as part of authorized Government activities or bulletin boards used by employees to post personal notices.

§ 1280.28 Where can I eat and drink on NARA property?

You may only eat and drink in designated areas in NARA facilities. Eating and drinking is prohibited in the research, records storage, and museum areas unless specifically authorized by the Archivist or designee.

§ 1280.30 Are soliciting, vending, and debt collection allowed on NARA property?

(a) No, on NARA property you may not:

(1) Solicit for personal, charitable, or commercial causes;

(2) Sell any products;

(3) Display or distribute commercial advertising; or

(4) Collect private debts.

(b) If you are a NARA employee or contractor, you may participate in national or local drives for funds for welfare, health or other purposes that are authorized by the Office of Personnel Management and/or approved by NARA (e.g. the Combined Federal Campaign). Also, nothing in this section prohibits employees from activities permitted under the Standards of Ethical Conduct and Office of Government Ethics rules.

§ 1280.32 What other behavior is not permitted?

We reserve the right to remove anyone from NARA property who is:

(a) Stealing NARA property;

(b) Willfully damaging or destroying NARA property;

(c) Creating any hazard to persons or things;

(d) Throwing anything from or at a NARA building;

(e) Improperly disposing of rubbish.

(f) Acting in a disorderly fashion;

(g) Acting in a manner that creates a loud or unusual noise or a nuisance;

(h) Acting in a manner that unreasonably obstructs the usual use of NARA facilities:

(i) Acting in a manner that otherwise impedes or disrupts the performance of official duties by Government and contract employees;

(j) Acting in a manner that prevents the general public from obtaining NARA-provided services in a timely manner; or

(k) Loitering.

Subpart B—What Are the Rules for Filming, Photographing, or Videotaping on NARA Property?

§ 1280.40 Definitions.

(a) Filming, photographing, or videotaping for commercial purposes. Any filming, photographing, or videotaping to promote commercial enterprises or commodities.

(b) News filming, photographing, or videotaping. Any filming, photographing, or videotaping done by a commercial or non-profit news organization that is intended for use in a television or radio news broadcast, newspaper, or periodical.

(c) Personal use filming, photographing, or videotaping. Any filming, photographing, or videotaping intended solely for personal use that will not be commercially distributed.

§ 1280.42 When do the rules in this subpart apply?

(a) These rules apply to anyone who is filming, photographing, or videotaping inside any NARA-run facility and while on NARA property.

(b) Filming, photographing, and videotaping on the grounds of any NARA regional records services facility, or on the grounds surrounding the Washington National Records Center are governed by GSA regulations, Management of Buildings and Grounds, found at 41 CFR Part 101–20, and must be approved by a GSA official.

§ 1280.44 May I film, photograph, or videotape on NARA property for commercial purposes?

No, filming, photographing, and videotaping on NARA property for commercial purposes is prohibited.

§ 1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?

(a) You may film, photograph, or videotape outside a NARA facility so long as you do not impede vehicular or pedestrian traffic.

(b) You may film, photograph, or videotape inside a NARA facility during regular business hours in public areas, including research rooms and exhibition areas, under the following conditions:

(1) You may not use a flash or other supplemental lighting;

(2) You may not use a tripod or similar equipment; and

(3) You may not film, photograph, or videotape while on the interior steps or ramp leading to the Declaration of Independence, the Constitution, and the Bill of Rights in the Exhibition Hall of the National Archives Building.

§ 1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?

(a) If you wish to film, photograph, or videotape for news purposes at the National Archives Building, the National Archives at College Park, or the Washington National Records Center, you must request permission from the NARA Public Affairs Officer, 8601 Adelphi Road, College Park, Maryland, 20740–6001.

(b) If you wish to film, photograph, or videotape for news purposes at a Presidential library or at a regional records services facility, you must contact the director of the library (see 36 CFR 1253.3 for contact information) or regional records services facility (see 36 CFR 1253.6 for contact information) to request permission.

(c) Your request for permission to film, photograph, or videotape for news purposes must contain the following information:

(1) The name of the organization you are working for;

(2) Areas you wish to film, photograph, or videotape;

(3) Documents, if any, you wish to film;

(4) The purpose of the project you are working on;

(5) What you intend to do with the film, photograph, or videotape; and

(6) How long you will need to complete your work on NARA property.

(d) You must request permission at least one week in advance of your desired filming date. If you make a request within a shorter time period, we may not be able to accommodate your request.

(e) OMB control number 3095–00xx has been assigned to the information collection contained in this section.

(f) This section does not apply to you if you have permission to use your own microfilming equipment to film archival records and donated historical materials under the provisions of 36 CFR 1254.90 through 1254.102. You must follow the procedures in 36 CFR Part 1254 for permission to film archival records and donated materials for research purposes or for microfilm publications.

§ 1280.50 What will I be allowed to film, photograph, or videotape for news purposes?

(a) NARA will permit you to film, photograph, or videotape sections of the interior or exterior of any NARA facility only for stories about:

(1) NARA programs;

(2) NARA exhibits;

(3) NARA holdings;

(4) NARA services;

(5) A former President;

(6) A researcher who has made or is making use of NARA holdings (provided that the researcher also approves your request); or

(7) Any other NARA-related activity approved by the appropriate NARA representative.

(b) NARA reserves the right to reject any request that does not meet the criteria set forth in 36 CFR 1280.50(a) and (c) or because of scheduling or staffing constraints.

(c) We will not grant you permission to film, photograph, or videotape if you intend to use the film, photographs, or videotape for commercial, partisan political, sectarian, or similar activities.

§ 1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?

The following conditions and restrictions apply to anyone that has been granted permission to film, photograph, or videotape for news purposes under Subpart B:

(a) NARA may limit or prohibit use of artificial light in connection with the filming, photographing, or videotaping of documents for news purposes. You may not use any supplemental lighting devices while filming, photographing, or videotaping inside a NARA facility in the Washington, DC, area without the prior permission of the NARA Public Affairs Officer. If the Public Affairs Officer approves your use of artificial lighting in the Exhibition Hall, NARA will use facsimiles in place of the Declaration of Independence, the Constitution, and the Bill of Rights. If NARA approves your use of high intensity lighting, NARA will cover or replace with facsimiles all other exhibited documents that fall within the boundaries of such illumination. You may not use any supplemental lighting devices at the Presidential Libraries and the regional records services facilities without permission from a NARA representative at that facility.

(b) On a case-by-case basis, the Public Affairs Officer or other appropriate NARA representative may grant you permission to film, photograph, or videotape in stack areas containing unclassified records.

(c) While filming, photographing, or videotaping, you are liable for injuries to people or property that result from your activities on NARA property.

(d) At all times while on NARA property, you must conduct your activities in accordance with all applicable NARA regulations contained in this part.

(e) Your filming, photographing, or videotaping activity may not impede people who are entering or exiting any NARA facility unless otherwise authorized by the facility's director, or by the NARA Public Affairs Officer for Washington, DC, area facilities.

(f) You must be accompanied by a NARA staff member when filming, photographing, or videotaping the interior of any NARA facility.

(g) NARA will approve your request to do press interviews of NARA personnel on NARA property only when such employees are being interviewed in connection with official business. Interviews with NARA staff and researchers may take place only in areas designated by the NARA Public Affairs Officer for Washington, DC, area facilities, or by the appropriate NARA representative at other NARA facilities.

(h) You may film and photograph documents only in those areas which the NARA Public Affairs Staff designates in the National Archives Building, the National Archives at College Park, or the Washington National Records Center or in those areas designated as appropriate by the staff liaison at other NARA facilities.

(i) We will limit your film and photography sessions to two hours.

(j) You may not state or imply that NARA approves of or will sponsor:

(1) Your activities or views; or

(2) The uses to which you put images depicting any NARA facility.

Subpart C—What Are the Additional Rules for Using NARA Facilities in the Washington, DC, Area?

§ 1280.60 Where do I enter the National Archives Building in Washington, DC?

(a) To conduct research or official business, you must enter the Pennsylvania Avenue entrance of the National Archives Building.

(b) To visit the Exhibition Hall of the National Archives Building, you must enter through the Constitution Avenue entrance. However, the guards are authorized to admit through the Pennsylvania Avenue entrance and the Main Floor gates visitors who:

(1) Are using wheelchairs or other medical appliances;

(2) Are pushing strollers; or

(3) Have other medical or physical conditions that preclude using the steps at the Constitution Avenue entrance.

§ 1280.62 When is the Exhibition Hall open?

You may enter the Exhibition Hall from 10 a.m. to 9 p.m. except during winter months (the day after Labor Day through March 31) when the Exhibition Hall closes at 5:30 p.m. The Archivist of the United States reserves the authority to close the Exhibition Hall to the public at any time for special events or other purposes. The building is closed on December 25.

§ 1280.64 What entrance should I use to enter the National Archives at College Park?

You may enter the National Archives at College Park facility only through the main entrance on Adelphi Road. This entrance will be open to visitors during normal business hours described in 36 CFR 1253.2. Commercial deliveries

must be made at the loading dock which is accessible only from Metzerott Road.

§ 1280.66 May I use the National Archives Library?

The National Archives Library facilities in the National Archives Building and in the National Archives at College Park are operated to meet the needs of researchers and NARA staff members. If you are not conducting research in archival materials at NARA, NARA Library staff will refer you to public libraries and other possible sources for such published materials.

§ 1280.68 May I use the cafeteria at the National Archives at College Park?

Yes, the cafeteria at the National Archives at College Park is open to the public during normal business hours.

Subpart D—How Do I Request to Use Washington, DC, Area NARA Facilities for an Event?

§ 1280.70 When does NARA allow other groups to use its public areas for events?

(a) All public areas in NARA facilities are intended for official NARA functions. However, if NARA does not have an event scheduled in a particular area, we may allow the use of that area for an event sponsored by another Federal agency or private group. The event must comply with the conditions in this subpart.

(b) In the National Archives Building, you may request to use the following areas:

Area	Capacity
Theater	216 persons.
Exhibition Hall	100–300 persons.
Archivist's Reception Room.	70 to 150 persons.
Conference Rooms	30 to 70 persons.

(c) In the National Archives at College Park, you may request to use the following areas:

Area	Capacity
Auditorium	332 persons.
Lecture Rooms	30 to 70 persons (or up to 300 with all dividers removed).

§ 1280.72 What are the general rules for using NARA public areas?

(a) You must adhere to the following rules when using any NARA facility for an event:

(1) Any use of NARA public areas for an event must be for the benefit of or in connection with the archival and records activities administered by NARA and must be consistent with the public perception of NARA as a research and cultural institution as articulated in our Strategic Plan.

(2) The event must be sponsored, cosponsored, or authorized by NARA.

(3) You are not allowed to charge an admission fee or make any indirect assessment for admission, and you may not otherwise collect money at the event unless specifically authorized by the Archivist of the United States for special not-for-profit events which are held by organizations sponsored by NARA. Commercial advertising or the sale of any items is not permitted.

(4) No areas on NARA property may be used to promote commercial enterprises or products or for partisan political, sectarian, or similar purposes.

(5) Use of NARA public areas will not be authorized for any organization or group that engages in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.

(6) You must not misrepresent your identity to the public nor conduct any activities in a misleading or fraudulent manner.

(7) You must ensure that no Government property is destroyed, displaced, or damaged during your use of NARA public areas. You must take prompt action to replace, return, restore, repair or repay NARA for any damage caused to Government property during the use of NARA facilities.

(8) Most areas are available from 8:00 a.m. until 9:30 p.m., Monday through Friday, and from 9:00 a.m. until 4:30 p.m. on Saturday. A NARA staff member must be present at all times when the NARA facility is in use. If the facilities and staff are available, NARA may approve requests for events that would be held before or after these hours.

(9) You must provide support people as needed to register guests, distribute approved literature, name tags, and other material; and

(10) NARA must approve any item that you plan to distribute or display at the event, and any notice or advertisement that mentions NARA, the National Archives Trust Fund Board, or incorporates any of the seals described in 36 CFR 1200.2.

(b) Events in the Exhibition Hall must be consistent with the mission of NARA as a research and cultural institution as articulated in its Strategic Plan. In addition to the rules listed in 36 CFR 1280.72(a), the following rules apply to the use of the Exhibition Hall in the National Archives Building:

(1) You must include NARA as a cosponsor of your event and place the Archivist or his/her designee on the program to welcome guests;

(2) You must include the Archivist and appropriate members of the NARA staff, as identified by NARA, on the invitation list;

(3) You must ensure that no food or beverage is held or consumed near any records on display in the Exhibition Hall. NARA will provide stanchions to ensure protection of the records in the Exhibition Hall.

§ 1280.74 How do I apply to use NARA public areas in Washington, DC, area facilities?

(a) How do I request to use a NARA public space for an event? To request the use of a NARA public space in the Washington, DC, area, you must complete NA Form 16008, Application for Use of Space. OMB control number 3095–00xx has been assigned to the information collection contained in this section. Copies of the form are available from the Facilities and Materiel Management Services Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. Completed forms must be sent to this address.

(b) When do I need to submit my request? You must submit requests to use the Exhibition Hall at least 120 calendar days before the proposed event is to occur. You must submit requests for use of other NARA public areas at least 30 calendar days before the proposed event is to occur.

§ 1280.76 What will I have to pay to use a NARA public area for an event?

(a) Non-Federal organizations will be required to make a contribution to the National Archives Trust Fund to maintain the public area and to cover the cost of additional cleaning, guard and other required services. NARA will determine how much your contribution will be, based upon the level of NARA-provided services for your event. If you wish to hold an event in the Exhibition Hall, in addition to the contribution to the National Archives Trust Fund, you must make a contribution to the Foundation for the National Archives. This contribution will be used to further the programs and activities of the Foundation for the National Archives for the benefit of NARA.

(b) Federal agencies using these spaces for official government functions must reimburse NARA only for the cost of additional cleaning, security, and other staff services.

(c) An estimate of the costs can be obtained by contacting the Facilities and Materiel Management Services Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001.

§ 1280.78 How will NARA handle my request to use a lecture room, the auditorium, the Theater, or the Archivist's Reception Room?

(a) When you request use of a NARA lecture room, auditorium, the Theater, or the Archivist's Reception Room, the Facilities and Materiel Management Services Division will review your request:

(1) To ensure that it meets all of the provisions in this subpart;

(2) To determine if the room you have requested is available on the date and time you have requested; and

(3) To determine the cost of the event.

(b) When the Facilities and Materiel Management Services Division has completed this review, they will notify you of their decision. They may ask for additional information before deciding whether or not to approve your event.

(c) NARA reserves the right to reject or require changes in any material, activity, or caterer you intend to use for the event.

§ 1280.80 How will NARA handle my request to use the Exhibition Hall?

(a) Upon receiving your request, the Facilities and Materiel Management Services Division will review your request to determine if it meets the requirements of this subpart and to determine the costs.

(b) You will be contacted by the NARA Development Staff to discuss your contribution to the Foundation for the National Archives.

(c) The Development Staff will submit a recommendation to the Archivist of the United States based on their discussion with you and on the review of your request by the Facilities and Materiel Management Services Division. The Archivist will decide whether to approve or deny your request.

(d) The Development Staff will notify you at least 60 calendar days before the event whether your request has been approved or denied. If your request is denied, you may appeal in writing directly to the Archivist of the United States within 10 calendar days after being notified that your request is denied.

(e) After your request is approved, you must work with the Development Staff to create all literature or posters to be distributed or exhibited during the event, including all written information that mentions NARA, the National Archives Trust Fund Board, the Foundation for the National Archives, or incorporates any of the NARA seals in 36 CFR 1200.2.

(f) NARA reserves the right to reject or require changes in the guest list, any printed material, any activity, or the caterer you intend to use for the event.

(g) You will be assigned a point of contact in Facilities and Materiel Management Services Division and in the Development Staff to arrange the event.

Subpart E—What Additional Rules Apply for Use of Facilities in Presidential Libraries?

§ 1280.90 What are the rules of conduct while visiting the Presidential libraries?

In addition to the rules in Subpart A, when visiting the museums of the Presidential Libraries, you may be required to check all of your parcels and luggage in areas designated by Library staff.

§ 1280.92 When are the Presidential library museums open to the public?

(a) The hours of operation at Presidential Library museums vary. Please contact the individual facility you wish to visit for the hours of operation. See 36 CFR 1253.3 for Presidential Library contact information. All Presidential Library museums are closed on Thanksgiving, December 25, and January 1, with the exception of the Lyndon Baines Johnson Library Museum, which is closed only on December 25.

(b) See 36 CFR 1253.3 for the operating hours of the research rooms of the Presidential Libraries.

§ 1280.94 When do Presidential libraries allow other groups to use their public areas for events?

(a) Although Presidential Library buildings and grounds are intended primarily for the libraries' use in carrying out their programs, you may request the use of Presidential Library facilities when the proposed activity is:

(1) Sponsored, cosponsored, or authorized by the library;

(2) Conducted to further the library's interests; and

(3) Scheduled so as not to interfere with the normal operation of the library.

(b) Your event at the library must be for the benefit of or in connection with the mission and programs of the library and must be consistent with the public perception of the library as a research and cultural institution.

(c) To request the use of a library area, you must apply in writing to the library director (see 36 CFR 1253.3 for the address) and complete NA Form 16011, Application for Use of Space in Presidential Libraries. OMB control number 3095–0024 has been assigned to the information collection contained in this section.

(d) You may not use library facilities for any activities that involve:

(1) Profit making;

(2) Commercial advertising and sales;

(3) Partisan political activities;

(4) Sectarian activities, or other similar activities; or

(5) Any use inconsistent with those authorized in this section.

(e) You may not charge admission fees, indirect assessment, or take any other kind of monetary collection at the event. NARA will charge normal admission fees to the museum if that area is used for the event.

(f) You will be assessed additional charges by the library director to reimburse the Government for expenses incurred as a result of your use of the library facility.

§ 1280.96 Supplemental rules.

Library directors may establish appropriate supplemental rules governing use of Presidential libraries and adjacent buildings and areas under NARA control.

Subpart F—What Additional Rules Apply for Use of Public Areas at Regional Records Services Facilities?

§ 1280.100 What are the rules of conduct at NARA regional records services facilities?

While at any NARA regional records services facility, you are subject to the GSA regulations, Conduct on Federal Property (41 CFR subpart 101–20.3).

§ 1280.102 When do NARA regional records services facilities allow other groups to use their public areas for events?

(a) Although NARA regional records services facility auditoriums and other public spaces in the facility buildings and the facility grounds are intended primarily for the use of the NARA regional records services facility in carrying out its programs, you may request to use one of these areas for lectures, seminars, meetings, and similar activities when these activities are:

(1) Sponsored, cosponsored, or authorized by the NARA regional records services facility;

(2) To further NARA's interests; and

(3) Scheduled so as not to interfere with the normal operation of the NARA regional records services facility.

(b) Your event at the NARA regional records services facility must be for the benefit of or in connection with the mission and programs of NARA.

(c) You must ask permission to use a public area at a NARA regional records services facility from the director of that facility (see 36 CFR 1253.6 for a list of addresses).

(d) NARA regional records services facilities will not allow use of any auditoriums or other public spaces for any activities that involve:

(1) Profit making;
(2) Commercial advertising and sales;
(3) Partisan political activities;
(4) Sectarian activities, or other similar activities; or
(5) Any use inconsistent with those authorized in this section.

(e) You may not charge admission fees, indirect assessment, or take any other kind of monetary collection at the event.

(f) You will be assessed a charge by the facility director to reimburse the Government for expenses incurred as a result of the your use of the facility.

Dated: March 17, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–7209 Filed 3–22–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PR Docket No. 93–144; FCC 00–95]

Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: In this document, the Commission requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio (SMR) commercial licensees that are part of a wide area system (''wide-area licensees'') operating on non-SMR channels (*e.g.*, Business and Industrial /Land Transportation (BI/LT) channels) through inter-category sharing. Comment is sought based on the Commission's decision in its *Memorandum Opinion and Order on Remand (Remand Order)* responding to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Fresno Mobile Radio, Inc.* v. *FCC (Fresno)*. The Commission has decided to determine the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing by separate order in the *Fresno Remand* proceeding. Interested parties may file comments on or before March 27, 2000. Parties interested in submitting reply comments must do so on or before April 6, 2000.

DATES: Comments due March 27, 2000 and Reply Comments due April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Don Johnson, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This *Public Notice* in PR Docket No. 93–144, adopted and released March 10, 2000 is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036 (202) 857–3800. The document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Public Notice/1999/index2.html.*

Synopsis of Public Notice

The Commission requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio (SMR) commercial licensees that are part of a wide area system (''wide-area licensees'') operating on non-SMR channels (*e.g.*, Business and Industrial /Land Transportation (BI/LT) channels) through inter-category sharing. In the *Remand Order*, the Commission stated that it would allow incumbent wide-area 800 MHz SMR licensees, who were within their construction periods at the time of the *Fresno* decision, to elect to satisfy either: (1) Construction requirements similar to those given to Economic Area (EA) licensees in the 800 MHz band; or (2) the original construction requirements outlined in the *800 MHz Rejustification Order*. The *Remand Order* stated that the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing was beyond the scope of the proceeding and would be considered in the context of the Commission's rulemaking proceeding to implement the Balanced Budget Act of 1997 (BBA proceeding).

The Commission has decided to determine the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing by separate order in the *Fresno Remand* proceeding rather than in the BBA proceeding. Therefore, we seek comment on whether the Commission should adopt construction rules for these incumbent wide-area licensees operating on BI/LT frequencies similar to those adopted in the *Remand Order* for wide-area licensees operating on SMR frequencies. The Commission also requests further comment on the applicable construction requirements (*e.g.*, substantial service or population-based) for wide-area SMR licensees that operate on BI/LT frequencies through inter-category sharing. This request is limited to comments on the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing. We do not seek comment on any issues relating to construction requirements for Private Mobile Radio Service (PMRS) licensees.

The Commission notes that, regardless of its decision in this matter, we intend to allow the affected SMR licensees on BI/LT channels six months after the adoption of a final order in this proceeding to complete buildout, unless a longer period is specified in that order. We note that the Bureau has already granted extensions to the Southern Company and to Nextel Communications, Inc., of the extended implementation period for construction of their Business and Industrial/Land Transportation channels, until final rules regarding licensing of the BI/LT frequencies in the context of the Commission's rulemaking proceeding to implement the Balanced Budget Act of 1997 take effect. By this Public Notice, the Commission modifies the term of each of these two waivers to expire six months after the adoption of a final order in the instant proceeding.

Interested parties may file comments on or before March 27, 2000. Parties interested in submitting reply comments must do so on or before April 6, 2000. All comments should reference PR Docket No. 93–144 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–B204, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036. In addition, parties should send two copies each to:

(1) Don Johnson, Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW, Room 4A–332, Washington, DC 20554; and
(2) Jennifer Mock, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW, Room 3–C400, Washington, DC 20554.

Copies of the comments and reply comments will be available for inspection and duplication during regular business hours in the Public Reference Room, 445 Twelfth Street,

SW, Room CY–8257, Washington, DC 20554. Copies also may be obtained from ITS, 1231 20th Street, NW, Washington, DC 20036; (202) 857–3800.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7164 Filed 3–22–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 00–83]

Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission invites comment on a number of issues that it believes require resolution to ensure that the digital televison (DTV) conversion progresses and that potential sources of delay are eliminated. Among these are: first, whether to adopt a service replication requirement and to require enhanced service to the DTV station's city of license; second, whether to adopt a requirement that DTV stations elect their post-transition DTV channel by a certain date; and third, how to resolve mutually exclusive DTV and DTV/NTSC applications. Comment is also requested on a number of other issues related to the transition to digital television.

DATES: Comments are due on or before May 17, 2000; reply comments are due on or before June 16, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Policy and Rules Division, Mass Media Bureau at (202) 418–2190, or Keith A. Larson, Office of the Bureau Chief, Mass Media Bureau at (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (''*NPRM*''), FCC 00–83, adopted March 6, 2000; released March 8, 2000. The full text of the Commission's *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this *NPRM* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. With this *NPRM,* we commence our first periodic review of the progress of the conversion of our nation's television system from analog technology to digital television (''DTV''). In the *Fifth Report and Order* in MM Docket No. 87–268 (63 FR 13546, May 20, 1998), we stated that we would conduct a review every two years to ''ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest.'' For the most part, this conversion is progressing, and television stations are working hard to convert to digital television pursuant to the construction schedule we established in the *Fifth Report and Order.* In this *NPRM,* we invite comment on a number of issues that we believe require resolution to ensure that this progress continues and that potential sources of delay are eliminated. Specifically, we invite comment on: (1) Whether to adopt a service replication requirement and to require enhanced service to the DTV stations' city of license; (2) whether to adopt a requirement that DTV stations elect their post-transition DTV channel by a certain date; and (3) how to resolve mutually exclusive DTV and DTV/NTSC applications.

II. Background

2. Our efforts to convert our nation's television system to digital television began in 1987, when we issued our first inquiry into the potential for advanced television (''ATV'') services (52 FR 34259, September 10, 1987). The ensuing proceeding lasted a decade, during which we had the benefit of numerous comments and participation by broadcasters, equipment manufacturers, public interest groups, and the public. As the proceeding progressed, all-digital advanced television systems were developed and we began to refer to advanced television as digital television (''DTV''), recognizing that technological developments meant that any ATV system was certain to be digital. In February of 1993, the Advisory Committee on Advanced Television Service (the ''Advisory Committee'') reported that a digital HDTV system was achievable, but that all four competing digital systems then under consideration would benefit significantly from further development and none would be recommended over the others at that time. In May of 1993, seven companies and institutions that had been proponents of the four tested digital ATV systems, joined together in a ''Grand Alliance'' to develop a final digital ATV system for the standard. Over the next two-and-a-half years, that system was developed, extensively tested, and is documented in the ATSC DTV Standard. On November 28, 1995, the Advisory Committee voted to recommend the Commission's adoption of the ATSC DTV Standard. In 1996, the Commission adopted a standard for the transmission of digital television based on the ATSC DTV Standard with minor modifications. *Fourth Report and Order* in MM Docket No. 87–268 (62 FR 14006, March 25, 1997).

3. In 1997, in the *Fifth Report and Order,* the Commission adopted rules to implement the Telecommunications Act of 1996 (''1996 Act''), which provided that initial eligibility for any advanced television licenses issued by the Commission should be limited to existing broadcasters, conditioned on the eventual return of either the current 6 MHz channel or the new digital channel. The Commission issued initial licenses for DTV, established service rules, including a requirement that broadcasters continue to provide free, over-the-air television service, and set an aggressive but reasonable construction schedule and a target date of 2006 for the completion of the transition. The Commission adopted a simulcasting requirement phased in at the end of the transition period. The Commission also recognized that digital broadcasters remain public trustees of the nation's airwaves and have a responsibility to serve the public interest. In the *Sixth Report and Order* (63 FR 15774, April 1, 1998), the Commission adopted a DTV Table of Allotments. After the adoption of the *Fifth Report and Order,* Congress made the 2006 reversion date statutory, in enacting the Balanced Budget Act of 1997, which provides that ''[a] broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006'' unless the Commission grants an extension based on specific criteria enumerated in the statute. 47 U.S.C. 309(j)(14). With this *NPRM,* we commence our first periodic review in our continuing effort to assure that the transition goes smoothly for American consumers, broadcasters, and other interested parties.

III. Progress Report

4. Affiliates of the top four networks in the top ten television markets were

required to complete construction by May 1, 1999; top four network affiliates in markets 11–30 by November 1, 1999; all remaining commercial television stations by May 1, 2002; and all noncommercial television stations by May 1, 2003. 47 CFR 73.624(d). Construction permit applications are required to be filed before the mid-point in a particular applicant's required construction period. Thus, all commercial television stations subject to the May 1, 2002 buildout deadline were required to file their DTV construction permit applications by November 1, 1999, and all noncommercial television stations are required to file their construction permit applications by May 1, 2000.

5. As of February 23, 2000, a total of 1376 television stations in all markets (amounting to 81% of all stations) have filed DTV construction permit applications, regardless of whether they were required to file by November 1, 1999. Applications have been received from approximately 97% of the 1314 commercial TV stations that were required to file by November 1, 1999. Requests for extensions of the filing deadline filed by stations that are not included in this 97% category generally indicated that they had pending rule making petitions requesting changes to their DTV channel, tower site problems or that their consulting engineer was unable to complete studies by the deadline. A total of 316 of all of these applicants have been granted construction permits; and 92 of those stations are on the air pursuant to those permits. Twenty-seven other stations are on the air with special or experimental DTV authority. The remaining pending applications are either awaiting additional information or Mexican, Canadian or other clearances or are technically more difficult to process because they require an interference analysis (applications that do not meet the ''checklist'' criteria for streamlined processing). Thirty-three of the 40 stations in the top ten markets required to complete construction by May 1, 1999, are on the air, and 6 others have been granted construction permits to build. In each of these markets, there is at least one DTV facility on the air pursuant to its permit and in six of these markets, the four affiliates of the largest commercial networks are all on the air. In markets 11–30, 78 of the 79 stations required to file construction permit applications by August 3, 1998 have filed these applications. The one remaining station that has not yet filed a construction permit application is Station WTVJ, Miami, which has not done so because it has an outstanding rule making petition pending to change its DTV channel. Seventy-two of these stations have been granted a construction permit and three others have been granted special temporary authority to operate while action on their application is pending. Forty-two stations are on the air pursuant to their permits, and 34 stations have requested extensions of time to complete construction and go on the air. Of these 34 stations requesting extensions, all but seven are facing practical and easily resolvable delays, according to the licensees. Examples of factors causing these delays are untimely delivery of equipment, bad weather and unavailability of tower crews. Most of these stations expect to be on the air early in 2000.

6. Initial evidence indicates that stations are facing relatively few technical problems in building digital facilities. Some stations are facing problems with tower availability and/or local zoning issues, but these problems do not seem to be widespread at this time, and, while some cases may be problematic, it appears that many cases are being worked out. Indeed, the Commission has helped broadcasters remedy such local problems in a number of ways, including creating, in May, 1998, a DTV Tower Strike Force, chaired by Commissioner Susan Ness to target potential problems in the implementation of DTV and to work with local authorities and broadcasters to expedite implementation of DTV. The Strike Force makes Commission staff available to aid local authorities and broadcasters by providing expedited answers to questions related to the process of assessing tower modification or construction and to facilitate the deliberations of reviewing entities. The DTV Strike Force has, for example, assisted local and county governments in understanding the FCC's Radio-frequency Radiation (RFR) requirements as they relate to the implementation of DTV and the related construction of towers. In one instance, the Strike Force sent technical experts to make RFR measurements with county engineers and to testify in an effort to assure these officials that radiation harmful to humans would not result from the proposed DTV construction. Commissioner Ness and the Strike Force also regularly participate in the meetings of the FCC Local and State Government Advisory Committee (LSGAC). The Strike Force presents the current facts regarding the DTV rollout and related tower construction issues and takes comments and ideas from the Committee under advisement.

IV. Issue Analysis

7. In the *Fifth Report and Order,* we concluded that we should undertake a periodic review every two years until the cessation of analog service to help the Commission ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest. We noted that, during these reviews, we would ''address any new issues raised by technological developments, necessary alterations in our rules, or other changes necessitated by unforeseen circumstances.'' We invite commenters to provide us with information not previously presented to the Commission raising issues that must be resolved in order to assure a smooth transition. Our goal is to assure an open proceeding that will allow us to resolve any impediments to a complete and rapid transition. Aside from regulatory benchmarks, is the digital transition proceeding in such a way as to serve the public interest? Are there factors such as the pace of DTV receiver sales or the availability of financing for digital facilities that reflect the state of the digital transition?

8. Concerns have arisen in a number of areas, including tower siting, copy protection, and cable compatibility. We invite comment on the critical unresolved issues in these areas and how they affect the progress of the digital transition. Are broadcasters able to secure necessary tower locations and construction resources? To what extent do zoning disputes, private negotiations with tower owners, and the availability of tower construction resources affect the transition?

9. With respect to cable compatibility, a recent agreement between the Consumer Electronics Association (''CEA'') and the National Cable Television Association (''NCTA'') should permit introduction of cable-compatible television receivers in the near term. While the agreement covers a number of technical specifications, including on-screen program guides, the agreement does not cover labeling of digital receivers. While we favor allowing the affected industries to reach agreement on this issue, industry failure to reach such agreement on a timely basis may necessitate further Commission action in the form of initiating a rule making proceeding. To what extent would a failure to reach agreement on the labeling of digital receivers hinder the transition?

10. In addition, the agreement does not cover the copy protection issues. We

also seek comment on the extent to which a failure to reach agreement on copy protection technology licensing and related issues would hinder the transition.

11. Concerns also have arisen regarding the DTV transmission standard. We adopted the DTV Standard in the *Fourth Report and Order* in the digital television proceeding after extensive testing and with the participation of the affected industries and the public. While we continue to believe that NTSC service replication is achievable by DTV operations using the 8–VSB standard, we recognize that some in the industry have raised various issues with respect to that standard. For example, Sinclair Broadcasting Group filed a Petition for Expedited Rulemaking urging the Commission to modify its rules to permit the use of COFDM modulation in addition to the 8-VSB standard. Sinclair argued that the COFDM standard offered easier reception with simple antennas and would enable broadcasters to provide fixed, mobile and portable video services with greater capacity for technological improvement. We dismissed that petition, indicating that concerns about 8-VSB, such as those raised in the Petition, were better addressed in the context of this proceeding.

12. We invite comment on the current status of the 8–VSB DTV standard. We are particularly interested in the progress being made to improve indoor DTV reception under the existing transmission standard and manufacturers' efforts to implement DTV design or chip improvements. We also ask the industry to submit information regarding any additional studies that may have been conducted regarding NTSC replication using the 8–VSB standard.

13. Some broadcasters have recommended that the Commission address over-the-air signal reception by setting receiver standards, which we understand to mean performance thresholds (like the UHF noise figure requirement), as opposed to mandatory technology specifications (like the ATSC digital standard itself). Accordingly, we ask for comment first on whether we have the authority to set minimum performance levels for DTV receivers. This issue was pleaded several years ago by various parties in response to the Commission's *Fourth and Fifth Further Notices of Proposed Rule Making* (60 FR 42130, August 15, 1995 and 61 FR 26864, May 29, 1996) in the DTV proceeding, and comments in this proceeding should take account of these earlier submissions. Second, we request comment on the desirability of adopting minimum performance levels. And, third, comments should address how these requirements should be structured, including timing considerations.

14. Some additional issues pertain to the transition, such as the issue of digital broadcast signal carriage on cable systems, and are the subject of their own separate proceedings. *Notice of Proposed Rule Making* in CS Docket No. 98–120 (63 FR 42330, August 7, 1998). While we intend for this proceeding to be a broad and open proceeding, it would not be constructive, as a general matter, to unduly burden this proceeding with issues that are the subject of their own proceedings or with requests for reconsideration of issues that have already been decided, or where the standard set out in the *Fifth Report and Order* is not met. Some of the issues that are outside the scope of this proceeding include: fee issues; eligibility issues; issues relating to public television, (*Notice of Proposed Rulemaking*, MM Docket No. 98–203, (63 FR 68722, December 14, 1998); and channel allotment or change requests. In addition, we believe that it is too early in the transition to address a number of issues referenced in the *Fifth Report and Order*, as issues we would handle in our periodic reviews. These issues include reconsidering the flexible approach to ancillary or supplementary services, the proper application of the simulcast requirement, and the special needs of noncommercial stations in converting to digital television beyond the accommodation granted them by allowing them to complete construction a year after the last category of commercial broadcasters. The issue of the appropriateness of 2006 as a target recovery date, also referenced in the *Fifth Report and Order*, is inappropriate for this review as Congress has, in the Balanced Budget Act of 1997, confirmed December 31, 2006 as the date for completion of the transition and established a procedure and standards for stations to seek an extension of that date. 47 U.S.C. 309(j)(14). Other issues referenced on reconsideration that we will not review here include: minimum programming hours, tower space issues for noncommercial FM stations, and adopting an immediate transition. We believe it is too early in the transition to consider increasing the number of required digital programming hours and to consider adopting an immediate transition. Moreover, it does not appear that noncommercial FM stations are having difficulties based on the loss of tower space to digital stations.

15. In addition to inviting general comment on the progress of the transition, we invite specific comments on the areas discussed.

A. Full-Replication and Principal Community Coverage

16. *Replication*. In the DTV *Sixth Report and Order*, we established ''replication'' as a goal in the creation of the initial DTV Table of Allotments. Our replication goal means that each DTV channel allotment was chosen to best allow its DTV service to match the Grade B service of the NTSC station with which it was paired. Implicit in our use of this criterion in creating the initial DTV Table is an expectation that DTV stations will eventually be constructed with ''full-replication'' facilities. Full-replication facilities would entail a combination of transmitter site, effective radiated power, directional antenna characteristics and antenna height that is adequate to cover at least the same area as is served by the NTSC station.

17. While expecting eventual use of full-replication facilities by each station, we recognized that there initially would be few DTV receivers on which DTV stations could be viewed. Thus, early DTV broadcasts would reach very few viewers and present negligible opportunity for revenue to offset the DTV construction costs that were expected to exceed one million dollars per station. Accordingly, we granted the flexibility for DTV stations to build initial facilities that would cover a significantly smaller area than full-replication facilities, provided that the predicted DTV service contour covered the station's city of license. We did not, therefore, in previous DTV proceedings, adopt an explicit replication requirement or a requirement that DTV stations provide a higher level of service than Grade B to their city of license. Nevertheless, we are presently protecting the full replicated service areas based on the engineering parameters associated with the DTV allotment table. As discussed, we are concerned that the lack of an explicit replication requirement and a city-grade service requirement may encourage some licensees to locate their proposed DTV facilities at a substantial distance from their NTSC facilities and their communities of license. This may have negative consequences for the transition to digital television.

18. We expected that some stations would build their DTV station at a different site from their authorized NTSC site. In particular, we encouraged stations in a market to explore development of a common site where

that was feasible. We also allowed the flexibility to move within a 5-kilometer radius of the DTV Table reference coordinates with a streamlined ''checklist'' application. While anticipating some movement and allowing small initial DTV facilities, we expected that most stations would build their DTV facilities at or near their NTSC sites. We did not focus on stations that operate from ''fringe'' sites, such as those licensed to smaller communities near the edge of their market or those that are site restricted and required to broadcast from a site that does not serve their market as well as other stations with which they compete. Nor did we consider that some small market stations operate adjacent to a larger market. These fringe area stations often would prefer to operate from a central location or in the larger market where they can potentially serve a larger population and achieve higher revenues.

19. Most of the DTV applications that have been filed and granted thus far are for locations at or near their current NTSC antenna sites. However, in conformance with the rules we established, several licensees have sought authority to move their DTV station to a more central location in their market or toward a larger market. Others have filed petitions for rule making to change their DTV allotment, including their assumed transmitter site and/or technical facilities.

20. These situations pose a problem with respect to our expectation that licensees will eventually replicate their NTSC facilities. Licensees that build DTV facilities that do not cover the same area as their NTSC stations may present problems at the end of the transition. If these stations choose to, and are able to, remain on their DTV channel at the end of the transition, people within the NTSC service area but outside of the DTV service area will lose service. We question whether this loss of service would serve the public interest. Similarly, the goals of our requirement that the NTSC programming be simulcast on the DTV channel near the end of the transition would be undermined if the DTV coverage does not approximate or encompass the NTSC coverage area. In addition, a large scale move of DTV stations to larger urban markets would pose a problem under 47 U.S.C. 307(b), as it might represent a *de facto* reallotment from smaller, more rural and underserved areas to larger well-served urban areas and might undermine our allotment decisions.

21. *Request for Comments.* We believe it is important now to consider what requirements are appropriate for eventual replication so that stations can take account of these requirements as they plan and construct their DTV facilities. We seek comment on whether we should establish a replication requirement and, if so, how we should frame it, when it should become effective, and what consequences should follow for stations that fail to meet it.

22. If we decide to adopt a replication requirement, we must decide how to determine whether a DTV station is replicating its NTSC facilities. One possible approach would be to require essentially the same service as is provided by the NTSC facilities. In order to implement this approach, we would need to decide whether to depict NTSC and DTV service using coverage contours or using the Longley-Rice propagation model in accordance with OET Bulletin 69 (July 2, 1997). *See* 47 CFR 73.622(e). We would also need to decide whether the replication requirement should be based on the population or the area served. We note that our rules for determining interference between DTV stations are based on population. *See* 47 CFR 73.623(c). Finally, we would need to address the question of what percentage of the NTSC Grade B service must be replicated. While conceptually straightforward, this approach may be difficult to implement, with many circumstances needing individual interpretations or exceptions. For example, how would replication be determined if the NTSC station's authorized coverage has changed or if it has both licensed facilities and facilities authorized by a construction permit and those facilities would cover different areas?

23. A possible alternative is the use of a DTV principal community service requirement as discussed. Such a requirement might be easier to implement than a service replication requirement, but the extent to which replication would actually be achieved could vary significantly and for some stations it may leave more people unserved. A requirement for a stronger signal to cover a station's city of license would effectively ensure that the DTV service contour would extend some distance beyond the city of license. The field strengths suggested would be based on the differences between NTSC Grade B and principal community service. We believe that the resulting DTV coverage would extend past the DTV principal community service contour to an extent that would approximate NTSC Grade B service. We invite comment on these proposals and invite commenters to offer their own additional or alternative proposals as to how we might assure eventual full replication by DTV licensees of their NTSC facilities.

24. We also seek comment on when we should implement a replication requirement. While many of the DTV applications that have been filed propose facilities that would serve a high percentage of the station's analog Grade B contour, and some have sought to maximize facilities in a manner that would expand their DTV coverage, there are also a large number of applicants that have chosen to ''start small.'' Construction of most of these stations is not required to be completed until May 1, 2002. Noncommercial educational DTV stations do not need to complete construction until May 1, 2003. In order to allow stations a reasonable period to operate with smaller facilities, it seems appropriate to delay a replication requirement until at least May 1, 2004. Other possible choices include requiring full replication by the planned end date of the transition, which is December 31, 2006, or by the date the transition actually ends for the stations in each particular market, whether or not that date is extended beyond December 31, 2006 pursuant to the statute. It is possible that delaying the replication requirement for too long could undermine the broad availability of digital service and thus forestall the transition itself by blunting the incentive for digital set penetration. One alternative that might mitigate this effect would be to require each DTV station to achieve replication by one year after the date it is required to complete construction pursuant to the DTV construction schedule. We invite comment on these alternatives. The appropriate date by which we should require full replication may also depend on how strictly replication is required and on the consequences of not complying. Another factor in our decision as to when to institute a replication requirement is the timing and options available for licensees choosing which of their two channels they want to operate their DTV station on after the transition. We invite comment on these issues.

25. We presume that licensees will follow all applicable FCC rules as a matter of course. Moreover, with respect to any replication rule we might adopt, we note that it would be in a licensee's best interest to comply with a replication rule in order to maximize potential audiences. Nonetheless, we propose that any station's failure to comply with the proposed replication rule would result in the loss of

protection of the station's full-replication allotment facilities. We also invite comment on what, if any, other consequences we might impose for a station's failure to replicate.

26. We note that we have proposed as a possible consequence for failing to meet a replication requirement, the loss of protection of the full allotted DTV facility. We invite comment as to whether regardless of what other consequence we impose for failure to replicate, or even in the event that we do not adopt a full-replication requirement, we should, by a certain date, place an end to our current policy of protecting the full replication facility regardless of the parameters and service contour a DTV station provides. Such a policy would foster spectrum efficiency. It would allow increased opportunities for new DTV service by new entrants and would allow other existing stations to maximize their service on what would otherwise be fallow or wasted spectrum, in that it is being protected but not used. If we adopt such a policy, when should we stop protecting a station's DTV facilities beyond the actual service contour?

27. *DTV Principal Community Coverage.* Although we referred to the provision we made for allowing DTV stations to operate initially with limited minimum DTV facilities as a requirement for coverage of a station's principal community, it is actually inconsistent with the NTSC principal community coverage requirement, as the city-grade coverage requirement for NTSC stations is stronger than a Grade B signal. For NTSC stations, the principal community requirement is a significantly stronger signal level than the Grade B service standard. For DTV stations, the initial required signal over the community of license is the same as the DTV service contour standard. A signal that meets the principal community coverage standard (''city grade signal'') is commonly considered to be one that produces a better picture quality than a Grade B signal. While it is true for NTSC that service can be described as a picture quality that gets better as the median signal level increases, it can also be described in terms of an ''acceptable'' picture quality being available for a larger percentage of the time as the median signal level increases.

28. In DTV, there are virtually no gradations in picture quality that are dependent on signal strength. The signal must reach a certain minimum threshold for a picture to occur; it does not matter how little or much the signal exceeds that threshold requirement, the picture quality will not change. When the signal is insufficient, the picture screen will freeze or go blue. Thus, DTV levels of service can be described in terms of the percentage of the time that the picture is available. An individual's subjective determination of ''acceptable'' DTV service would be based on their tolerance for interruptions to the programming (picture freezing or going to a blue screen). Some viewers may find DTV service acceptable, even if lost for a minute or two each hour (two to three percent of the time). Others may find service to be unacceptable if disruptions exceed 10 or 20 seconds in an average hour (less than one half percent of the time).

29. For the most part, we believe DTV stations that replicate their NTSC service will effectively provide city grade service to their community of license. Such DTV stations would provide a signal level over their city of license that is stronger than the signal level we established for the DTV service contour by an amount comparable to the difference between NTSC city grade and Grade B service contour values. Also, where a DTV station is paired with an NTSC station, its DTV allotment is protected, which maintains its ability to replicate to a great extent and therefore protects its ability to provide a stronger signal level over its city of license. Thus, in these instances, sufficient signal strength will be available to maintain reliable reception. However, we have been presented with proposals that do not involve replication. In such situations, a DTV licensee might seek to locate its station so that its city of license is barely within its service contour, which may result in service that is less reliable or available to a smaller percentage of locations than usually expected for ''city grade service.''

30. *Request for Comments.* In most respects, the planning factors for the DTV service contour correspond to the planning factors for the NTSC TV Grade B service contour. Applications to change the power, antenna height or location of other DTV stations are permitted to cause interference, as long as the interference is ''*de minimis*'' (reducing the population served by a station by no more than 2%, not to exceed 10% for all interfering sources). Reception near the edge of the DTV service contour is not protected from interference. A similar situation occurs among NTSC stations where a new or modified NTSC facility is permitted to cause interference within another station's Grade B contour, as long as the minimum distance spacing requirements are met. Accordingly, we invite comment as to how to define adequate DTV service to the city of license.

31. How to define adequate service to the city of license also is an issue for DTV stations that do not have a paired NTSC channel. In the *Fifth MO&O* (63 FR 13546, March 20, 1998), we afforded applicants for NTSC stations whose construction permit applications were not granted as of the date of adoption of the *Fifth Report and Order* (and who therefore were not eligible for initial paired DTV licenses) the opportunity to construct a DTV station immediately on their single 6 MHz NTSC channel provided that the proposed DTV facility protected all DTV and NTSC stations by complying with all applicable DTV technical rules. Alternatively, if they chose first to construct an NTSC station, they would be allowed to convert it to a DTV station, upon application to the Commission, at any time during the transition (and they would be required to convert to DTV at the end of the transition, when NTSC broadcasting ceases). In the *DTV Second MO&O* (64 FR 4322, January 28, 1999), we clarified that the pending NTSC applicants could convert to DTV without first being granted an NTSC construction permit. We seek comment on the appropriate level of principal community service for these DTV stations. We also seek comment on the appropriate level of principal community service for those DTV stations that have changed their DTV channel (and authorized facilities) pursuant to rule making, where there is no longer a correspondence between NTSC and DTV service areas.

32. In order to address the foregoing concerns while minimizing the impact on DTV broadcasters, we propose to require that a DTV principal community be served by a stronger signal than that specified for the general DTV service contour. By requiring that DTV broadcasters provide a minimum, higher, level of service over their community of license, we would limit the extent to which DTV broadcasters can migrate from their current service contour. A stronger principal community coverage requirement would improve the availability and reliability of DTV service in the city of license. It would also provide an extra measure of protection from interference to DTV service in the city of license. Finally, it would provide a method of requiring improved replication performance that can be determined by relatively simple and straightforward methods that are well established in the NTSC service. We note that NTSC broadcasters must provide a signal over their city of license that is stronger than the signal

strength defined for their Grade B service contour. *See* 47 CFR 73.685(a). We invite comment on this approach of requiring DTV stations to provide a similarly stronger signal. Would it resolve the problems that we have identified? Would it create undue difficulties for DTV broadcasters to accomplish, and, if so, would these difficulties be so severe as to delay the transition?

33. We invite comment as to the signal level that we should require to be placed over the DTV station's principal community, should we adopt such a requirement for DTV. One approach to resolving this issue is to use a set of field strength values that corresponds to the current principal community signal requirements for NTSC stations. We note that the required principal community service contours for NTSC stations are 27, 21 and 16 dB higher than the Grade B service contours for channels 2–6, 7–13 and 14–69 respectively. *See* 47 CFR 73.685(a). The stronger NTSC principal community contours are based on an assumed receiving antenna with less gain, urban noise, and greater probability of locations receiving service (90%). Adding the same amounts to the DTV service field strength values results in the following table:

Channels	Field strength (dBu)
2–6	55
7–13	57
14–69	57

Even though these signal intensities are defined as discrete values measured in dBu's, the intensity of broadcast signals at particular locations and at particular times cannot be precisely determined, regardless of the predictive method used. Signal strength varies randomly over location and time, so signal propagation must be considered on a statistical basis. Most prediction methods, including the Commission's propagation curves, predict the occurrence of median signal strengths (i.e., signal strengths expected to be exceeded at 50% of the locations in a particular area at least 50% of the time). Under this approach, ''location'' and ''time'' variability factors are added to the signal level so that the desired statistical reliability is achieved. The values chosen for the principal community signal intensity account for this variability. Therefore, assuming the use of a receiving antenna with 0 dB gain relative to a half-wave dipole, the values predict that at least 90% of the locations along principal community contour will receive an acceptable picture 90% of the time. We invite comment on whether this required signal coverage to the community of license is an appropriate one to adopt for DTV stations. Could it be accomplished readily? Would the economic costs of adopting the proposed level of principal community service outweigh the benefits that we seek to achieve? If so, we invite commenters to address whether we should adopt an alternative minimum level of principal community service and to justify that alternative proposed level.

34. We tentatively believe that we can minimize any increased difficulties such a requirement might place on DTV broadcasters by delaying its implementation. Accordingly, we seek comment on when any such requirement should be made effective. We tentatively propose that DTV stations that are paired with NTSC stations be required to meet the new principal community requirement by May 1, 2004. Alternatively, we invite comment as to whether we should tie the city-grade service requirement to the construction schedule, with the requirement imposed within a certain period, a year, for example, after construction is scheduled to be completed. For licensees with paired DTV and NTSC stations that intend to operate with DTV on their current NTSC channel after the transition, we propose that they be required to file a DTV application reflecting that decision by that date. For NTSC stations that do not have a paired DTV station, we propose that the stronger DTV principal community service be required when they seek to switch to DTV operation. For petitioners seeking a DTV channel change, we propose to require a showing that the principal community service requirement can be met with the proposed DTV allotment facilities or a commitment to elect their NTSC channel for their post-transition DTV operation. The 2004 date is two years before the end of the transition, and by that point DTV broadcasters should be able to build out their permanent facilities. That date is at least one year after the deadline for all broadcasters, including noncommercial broadcasters, to complete construction, and commercial broadcasters by that date will have been on the air for at least two years. For these reasons we believe that it would not be unduly onerous to implement a requirement for a higher principal community service contour at this date. We invite comment on these proposals and ask commenters to address whether other measures are necessary in addition to or as an alternative to these proposals to address our concerns.

B. Channel Election

35. In the DTV *Sixth MO&O* (63 FR 15774, April 1, 1998), the Commission decided that the DTV service after the transition will be limited to core spectrum, comprised of current TV channels 2 through 51. We had minimized the number of out-of-core DTV channel allotments and made a special effort to designate a DTV channel in the core for each station that had its NTSC channel outside of the core. In this way, at the end of the transition, whichever channel (DTV or NTSC) was in the core could become the station's permanent DTV channel. There are currently 17 stations that have both their NTSC and their DTV channels outside of the core. We indicated that once the transition ended and one of the two channels each broadcaster is temporarily authorized to use is recovered, there will be adequate spectrum to ensure that all stations with initial out-of-core DTV allotments can be provided with new channels within core spectrum between channels 2–51

36. On reconsideration of the DTV *Sixth Report and Order,* some broadcasters asked that we require stations with both channels in the core to immediately choose the channel they intend to keep following the transition. We declined to require early channel election at that time based on the small number of situations with both NTSC and DTV on out-of-core channels and the lack of needed experience with DTV operation, which would prevent many broadcasters with both channels in the core from making an appropriate decision.

37. Changed circumstances suggest that it would be helpful now to adopt a deadline for channel election. We believe that there will be more out of core stations that must be accommodated with a core channel than we initially anticipated. As discussed, new applicants will be allowed to convert their single NTSC channels to DTV operation and those on channels outside the core will be provided a post-transition channel inside the core. There are a number of such ''new applicant'' NTSC stations authorized on channels outside the core, and dozens more could be authorized under procedures announced in the recent filing window Public Notice (64 FR 67267, December 1, 1999). The problem of finding a core channel for these stations is exacerbated because there are more stations currently occupying core channels than

we initially planned on. Pursuant to the window filing Public Notice, some of those pending applications and rule making petitions could also be granted on core channels, if they can adequately protect NTSC and DTV stations from interference. Further, recent legislation requires the establishment of a new category of primary, ''Class A'' TV stations, which also may limit availability of core channels in some areas. Community Broadcasters Protection Act of 1999, Section 5008 of Public Law 106–113, 113 Stat. 1501 (1999), *Appendix I, codified at* 47 U.S.C. 336(f). The Community Broadcasters Protection Act was enacted as part of the Intellectual Property and Communications Omnibus Reform Act of 1999, which itself is part of a larger consolidated omnibus appropriations bill, entitled, ''Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.'' *See Order and Notice of Proposed Rule Making* in MM Docket Nos. 00–10 & 99–292 (64 FR 56999, October 22, 1999), In the Matter of Establishment of a Class A Television Service. In addition, maximized DTV facilities that operate on channels within the core might complicate the problem of finding a core channel for out-of-core stations because these maximized stations are more difficult to protect.

38. *Request for Comments.* We tentatively conclude that it is now time to begin setting up a process to assure early election by DTV stations of their post-transition channel. Stations making the channel conversion at the end of the transition will need time to plan facilities, order equipment and arrange for construction. Ideally, they would turn on their DTV station on their new core channel the day after the transition ends and other broadcasters turn off their second channel. With the target date for the end of the transition set for December 31, 2006, it seems reasonable to identify the channels these stations will be moving to not later than 2004. To accomplish this, we could require DTV licensees to make a binding decision and elect one of their two core channels by early 2004, at the latest. One possibility is to impose May 1, 2004 as the deadline for election. This date would allow at least one year of DTV operation pursuant to our staggered construction schedule (with noncommercial educational TV stations provided the longest time to construct and required to complete construction by May 1, 2003). We seek comment on whether this date represents the proper balance between the goals of allowing DTV stations enough time to gain experience with DTV operation and allowing stations that must move enough time to plan for their DTV channel conversion. We note that the recently adopted Community Broadcasters Protection Act of 1999 requires the Commission, within 18 months of the Act's enactment, to identify by channel, location, and applicable technical parameters, the 175 additional DTV channels that were referenced in paragraph 45 of the Commission's ''February 23, 1998, *Memorandum Opinion and Order* on Reconsideration of the *Sixth Report and Order.*'' 47 U.S.C. 336(f)(6)(B). In that Order, the *Sixth MO&O*, the Commission expanded the DTV core spectrum to include all channels 2–51, and noted that this expansion would add approximately 175 additional DTV channels. We invite comment as to whether, based on the new obligations imposed by this recent legislation, we are required to impose an earlier election date than May 1, 2004. We note that in *Order and Notice of Proposed Rule Making* in MM Docket Nos. 00–10 & 99–292, we invited comment on aspects of this new DTV channel identification requirement.

39. We also seek comment on the appropriate criteria for determining who is allowed to participate in this process, whether any category of participants should have blanket priority over other participants, and which channels are available. Should all stations with an out-of-core DTV channel and a core NTSC channel be required to use their NTSC channel, as opposed to being permitted to seek an alternative in-core DTV channel? Additional stations may want to become involved in changing their DTV channels at the end of the transition in order to improve their replication or decrease interference. Some stations with both channels in the core may not want to remain on either channel. Should stations that must move to a new channel have the highest priority (first selection of channels that are returned)? We also seek comment on whether particular channels should be off limits as we explore the possibilities of alternative uses. For example, should channel 6 or another channel or channels be cleared for other broadcast purposes, such as is being considered in our terrestrial digital audio broadcasting proceeding? *See Notice of Proposed Rule Making* in MM Docket No. 99–325 (64 FR 61054, November 9, 1999), Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service. Should new use of channels 3 and 4 be avoided to minimize expense and inconvenience to cable subscribers whose cable boxes are wired for output on one of those channels? We also invite comment on whether the FCC should select the final channels in order to allow us to maximize efficiency of broadcast allotments. Assuming we do allow broadcasters to elect their channel, of course, under our authority to manage the spectrum, we would review the stations' channel elections to be sure that the use of spectrum is efficient and serves the public interest.

C. Mutually Exclusive Applications

40. We also wish to use this proceeding to examine some DTV application processing procedures. In particular, we invite comment on (1) whether to establish DTV application cut-off procedures; (2) how we should resolve conflicts between DTV applications to implement ''initial'' allotments; and (3) the order of priority between DTV applications and NTSC applications.

41. DTV applications must protect DTV allotments from predicted interference as indicated in the *Sixth Report and Order* and § 73.623 of our rules. In general, DTV applications that do not expand the coverage area of their DTV allotment also do not increase the interference that the applied-for station would be predicted to cause. In this respect, these applications are treated like ''checklist'' applications, which conform to their allotment and accordingly are subject to streamlined processing that allows them to be granted without analysis of predicted interference. In addition, the protection afforded facilities authorized pursuant to such applications is based on the required protection of their DTV allotment.

42. Applications for the paired DTV allotments in the initial DTV table (whether the first application for a construction permit (CP), a subsequent application to modify a DTV CP, or an application for a CP to change a licensed DTV facility) generally may request facilities that would expand their coverage area, subject to not exceeding the maximum facilities permitted by the rules. As indicated, such an area-expanding application must protect DTV stations, including DTV allotments and authorized (CP or licensed) DTV stations. Where two DTV applications seek to expand their allotment coverage area and one or both would cause prohibited interference with the facilities specified in the other application, such applications are mutually exclusive (MX). If the first-filed application is granted before the

second application is filed, the second application must protect the first, which would then be an authorized DTV facility. If the second application is filed before the first is granted, the two conflicting applications would be mutually exclusive. We wish to explore several options for resolving such MX cases.

43. *Request for Comments.* As a primary matter, we seek comment on whether to adopt a cut-off procedure for such DTV area-expansion applications to minimize the number of mutual exclusivities and to facilitate applicants' planning with respect to their proposals. A cut-off process could minimize the number of MX situations that develop by requiring conflicting applications filed after a cut-off date to protect the earlier-filed, cut-off application. In the past, the Commission has managed the processing of some other categories of broadcast service applications by publishing ''cut-off'' notices that established a date after which competing or otherwise mutually exclusive applications were not allowed to be filed. NTSC minor change applications have not been subject to cut-off procedures, so such applications can become MX until the day they are granted. We have previously indicated that we would treat an initially eligible station's DTV construction permit application as a ''minor change.'' Minor change status meant that we did not consider these initial applications to be requests for new stations but rather a modification of facilities. Under current processing procedures, we do announce the acceptance of these DTV applications without establishing a cut-off date. With respect to DTV service area-expansion applications (service area-expansion includes ''maximization'' applications that increase power and site or facilities change applications that increase a station's DTV service area in one or more directions beyond the area resulting from the station's allotment parameters), we could augment this public notice by including a cut-off date provision, which would announce that MX applications must be filed within a period of time. Under such an approach, conflicting applications filed after that time has passed would not be considered MX, but would have to protect the earlier-filed application. We seek comment on an appropriate duration for a cut-off period should we adopt such an approach. This approach could be similar to the process established for DTV ''maximization'' applications, where we allow a thirty day period during which oppositions to the application must be filed. Another option would be to consider such applications cut-off as of the close of business on the date they are filed. We would be concerned that such a day-to-day cut-off could prompt an initial surge of area-expansion applications on the first day it became effective. However, after that day, such an approach would minimize the number of MX situations. We invite comment on whether we should adopt a cut-off process and if so, on the appropriate duration. On January 4, 2000, Fox Television Stations, Inc., filed a letter with respect to DTV application cut-off procedures and other DTV maximization application processing issues. We incorporate the letter in the record of this proceeding and seek comment on the issues raised therein.

44. Next, we seek comment on how to resolve mutual exclusivities that arise. There are a number of alternative methods we could use, and we invite comment on these as well as others that commenters may wish to propose. Under one possible approach, where two or more DTV area-expansion applications are MX, we could grant all such applications regardless of the interference that could be caused in areas beyond the DTV allotment service area. Such an approach would facilitate Commission action on applications, resulting in an early resolution of contested cases and more rapid grant of construction permits. This option might prove to be an effective system to provide DTV service to the public at the earliest date. We anticipate that where each application proposal protects the other DTV allotment and any authorized DTV service area, but their mutual expansion efforts result in a prohibited amount of interference, the loss of service would be to areas that would not have been served by the original allotments, anyway. If we adopt such an approach and grant all applications in such a situation, we would encourage the stations to negotiate and seek engineering solutions to minimize the loss of service in a mutually agreeable manner. It appears that if both stations begin transmissions with their proposed facilities at the same time, the people subject to interference will not be suffering a loss of service as they will not have had sufficient signal for service prior to the interfering power increases. Instead, they simply will never gain the service they might have had if only one of the stations had sought to expand its coverage. We invite comment on this view.

45. As an alternative to the foregoing approach, we invite comment as to whether we should consider MX DTV area-expansion applications using a DTV new station application procedure. Using such an approach, we would encourage pending mutually exclusive new DTV applications (or modifications involving area expansion) to resolve their mutual exclusivity by engineering solutions or by settlements. We note the statutory directive to ''use engineering solutions * * * and other means'' to resolve competing applications. 47 U.S.C. 309(j)(6)(E). We invite comment on this approach for resolving MX situations involving new DTV station applications, as well as situations involving only DTV area-expansion applications. Where such mutual exclusivities cannot be resolved by negotiation, we invite comment as to whether these applications should be dismissed or, alternatively, whether spectrum auctions are legally permitted and, if so, to what extent, and whether they are an appropriate approach. We note that section 309(j) of the Communications Act of 1934, as amended (''the Act''), 47 U.S.C. 309(j), added by the Balanced Budget Act of 1997, provided for competitive bidding to resolve mutually exclusive applications for ''any initial license or construction permit,'' but specifically excludes from competitive bidding, ''initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses.* * *'' 47 U.S.C. 309(j)(2)(B). Thus, by its terms, section 309(j) would permit us to use competitive bidding to resolve mutual exclusivities for DTV applications for new facilities that are not intended to replace analog stations.

46. We invite comment as to whether we could use competitive bidding to resolve mutually exclusive applications from initial DTV licensees involving area expansion beyond the full-replication facility. In the *First Report and Order* in MM Docket No. 97–234, GC Docket No. 92–2, and GEN Docket No. 90–264, (63 FR 48615, September 11, 1998), we concluded that the Commission is not precluded by the language of section 309(j) from auctioning mutually exclusive analog modification applications. As we noted, ''applications proposing major changes to existing facilities are, in our view, analogous to applications for construction permits for new stations.'' The Commission also noted that ''subjecting a modification application to competitive bidding may also be particularly appropriate where it is mutually exclusive with one (or more) initial applications, as section 309(j) mandates the use of auctions where

mutually exclusive applications are accepted for ''*any* initial license or construction permit.'' The Commission was there speaking about analog applications. To what extent, if any, do the considerations involving digital area-expansion applications dictate a different result? We note that we are precluded by section 309(j) from auctioning initial DTV replacement licenses (or the accompanying construction permits), but it does not appear that a digital area-expansion application would constitute such a replacement. We seek comment, however, on whether grant of such area-expansion applications is properly viewed as merely a component of the replacement of the analog television service license, or whether it should be classified as an extension of the analog authorization outside the statutory exclusion from competitive bidding. We also invite comment as to how to resolve mutually exclusive applications where one applicant is seeking a new DTV facility, which conflicts with an area-expansion request by an initial DTV licensee.

47. The *First Auction R&O* decided that competitive bidding would not be used to resolve mutually exclusive minor change applications submitted for analog TV stations. We invite comment as to whether the same conclusion would apply in the context of DTV. The *First Auction R&O* noted that analog minor modification applications are infrequently mutually exclusive and involve less significant changes than major modifications. Thus, the Commission held that there would be greater utility in expecting parties to work together to resolve the mutual exclusivity in the rare instances in which minor modification applications become mutually exclusive. NTSC minor change applications only become MX if they involve a site change and become short-spaced with another application. In the case of DTV, MX situations may arise in more cases. Use of engineering criteria to determine interference protection can result in MX situations where stations seek to increase their power or antenna height, even if they do not seek to change their site. With the large number of DTV applications being filed, we do expect that there will be numerous mutual exclusivities involving area-expansion applications.

48. If commenters oppose use of competitive bidding, we invite them to suggest alternative approaches to resolving mutual exclusitivities. Would these alternative methods be permitted under the Balanced Budget Act? Finally, in the event we hold auctions, we propose to use the auction techniques established in the *First Auction R&O.* We invite comment on this approach.

49. *Application Processing/Protection Priority.* We invite comment on what processing priorities we should establish as between DTV area-expansion applications and NTSC applications and rule making petitions. We have determined and reiterated several times that the future of television is DTV. For that reason, in 1996, the Commission decided to stop accepting petitions to add new NTSC channels and applications for new NTSC stations. *See Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87–268 (61 FR 43209, August 21, 1996). Those pending applications for new NTSC stations that were not subject to the TV application freeze were protected by the initial DTV table of allotments. *See Order,* RM–5811 (52 FR 28346, July 29, 1987). Applications for new NTSC stations in the areas subject to the TV freeze and rule making petitions to add new NTSC channels were not protected or otherwise accommodated in the development of the initial DTV table of allotments or subsequent amendments to that initial table. Similarly, NTSC applications for minor changes in existing or authorized stations were not protected or otherwise considered when the DTV table was developed, adopted or amended.

50. The Commission addressed the need for new NTSC station construction permit applications that sought a waiver of the TV application freeze in major markets to amend or propose a substitute channel in the DTV *Second MO&O.* At that time, we decided that those NTSC applications must protect all DTV stations, including authorized DTV stations, facilities requested in DTV station applications, DTV allotments, and rule making proposals to change or add a DTV channel allotment. A recent Public Notice opened a window for amendments or channel change proposals to be submitted for such NTSC freeze-area applications, as well as new NTSC station applications that had not been subject to the freeze, but requested an allotment in the range of channels 60 to 69 and pending petitions for rule making seeking to add an NTSC channel allotment. *See Public Notice* (64 FR 67267, December 1, 1999), Mass Media Bureau Announces Window Filing Opportunity For Certain Pending Applications and Allotment Petitions for New Analog TV Stations. In that processing Public Notice, we also clarified that rule making petitions seeking to add an NTSC channel allotment must protect all DTV stations (including allotments, applications and rule making proposals as listed). NTSC applications for minor changes in authorized stations also must protect all such DTV stations.

51. We have not clarified the extent to which these NTSC petitions and applications could have protection from later-filed DTV applications and at what point such protection should be afforded. It is important to specify such a priority to allow orderly processing and reasonable certainty that an NTSC applicant or petitioner's grant is valid.

52. We note that Congress recently enacted new legislation to provide for Class A TV stations. This legislation establishes the priority such stations would have with respect to DTV and NTSC stations. Public Law 106–113, 113 Stat. 1501 (1999) Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes. Community Broadcasters Protection Act of 1999, section 5008 of Title V of S. 1948, the ''Intellectual Property and Communications Omnibus Reform Act of 1999. In order to receive a Class A license, the applicant must show interference protection to:

(i) The predicted Grade B contour (as of the date of enactment of the Community Broadcasters Protection Act of 1999, or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or

(ii)(A) the digital television service areas provided in the DTV Table of Allotments; (B) the areas protected in the Commission's digital television regulations (47 CFR 73.622(e) and (f)); (C) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application; and (D) stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D)* * *. 47 U.S.C. 336(f)(7)(A). We do not herein discuss the provisions with respect to protection of low power television stations or low power television translator stations as these are not pertinent.

This legislation would thus require Class A stations to protect: (1) TV stations ''transmitting in analog format'' as of the enactment date, November 29, 1999, or ''change'' applications filed as of that date; (2) DTV service areas provided by the DTV allotment Table, including DTV service authorized before the filing of a Class A application; and (3) DTV stations seeking to ''maximize'' their service areas, provided they notify

the Commission by December 31, 1999, of their intent to maximize and file their maximization applications by May 1, 2000. In the *Class A NPRM,* we invite comment as to the interpretation and implementation of this priority scheme. The *Class A NPRM,* notes that we are inclined to include among the NTSC facilities that Class A stations must protect stations that are transmitting and stations that are authorized to construct facilities.

53. We invite comment as to whether a similar priority scheme should be adopted as between DTV and NTSC stations, and, if so, what the priorities should be as between DTV and NTSC applications and stations. There are a number of pending new NTSC station and NTSC minor change applications. Some of the pending new NTSC station applications were the subject of competitive bidding in the Commission's broadcast auction this past fall. Should we follow an analogous priority scheme to that established in the new Class A legislation in prioritizing between DTV and NTSC applications? If so, should the reliance interest of the applicants that have participated in the auction and won change the result for these particular applicants? If we should not follow an analogous scheme, what priority scheme should be established and what, if any, cut-off protection should be established to protect new NTSC station applications from last-minute DTV applications and allow NTSC applicants to participate in auctions and plan their facilities? What processing priorities should apply between applications for minor changes in authorized NTSC stations and DTV area-expansion applications?

V. Administrative Matters

54. *Initial Paperwork Reduction Act of 1995 Analysis.* This *NPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collection that might be required, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM* (*i.e.,* May 17, 2000); OMB comments are also due May 17, 2000. Comments should address: (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 estimates; (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. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Room 10236, NEOB, Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

55. *Filing of Comments and Reply Comments.* Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before May 17, 2000, and reply comments on or before June 16, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

56. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

58. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, S.W., 2–C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 00–39), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., CY–B402, Washington, D.C. 20554.

59. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, S.W., CY–A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.*

60. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

61. *Initial Regulatory Flexibility Analysis.* With respect to this *NPRM,* an Initial Regulatory Flexibility Analysis (''IRFA'') is contained. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *NPRM.* Written public comments are requested on the IFRA. In order to fulfill the

mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM,* and must have a distinct heading designating them as a response to the IRFA. The Reference Information Center, Consumer Information Bureau, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

VI. Ordering Clause

62. Accordingly, pursuant to the authority contained in 47 U.S.C. 4(i) & (j), 303(r), 307, 309, and 336, this *Notice of Proposed Rule Making* is adopted.

63. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Initial Regulatory Flexibility Analysis

Need for, and Objectives of, the Proposed Rules

65. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603 (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (''NPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

Legal Basis

66. This *NPRM* is adopted pursuant to sections 4(i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) & (j), 303(r), 307, 309, and 336.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

67. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. This action concerns TV broadcast stations.

68. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the proposed rule changes will affect approximately 1,616 television stations, approximately 1,244 of which are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

69. *Television Equipment Manufacturers:* Since the Commission had not developed a definition of small entities applicable to manufacturers of television equipment, it decided in its *6th R&O,* to utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. We will again take that approach here. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

70. *Household/Consumer Television Equipment:* Since the Commission had not developed a definition of small entities applicable to manufacturers of television equipment used by consumers as compared to industrial use by television licensees and related businesses, it decided in its *6th R&O,* to utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. We will again take that approach here. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

71. Comments are sought as to whether to explicitly require DTV stations to replicate the coverage areas of their paired analog stations, whether to require enhanced signal strength to the DTV station's city of license, whether to require that broadcasters elect which of their channels will be the DTV channel after the transition at an early date, and how to resolve mutually exclusive DTV and DTV/NTSC applications. The *NPRM* also invites comment on other issues that must be resolved in order to assure a smooth transition, including critical unresolved issues relating to tower siting, copy protection, and cable compatibility and how they affect the progress of the digital transition. With respect to the DTV transmission standard, while the Commission continues to believe that

NTSC service replication is achievable by DTV operations using the 8–VSB standard, we recognize that some in the industry, including Sinclair Broadcasting Group, have raised various issues with respect to that standard. Comments are sought on the current status of the 8–VSB DTV standard. We are particularly interested in the progress being made to improve indoor DTV reception under the existing transmission standard and manufacturers' efforts to implement DTV design or chip improvements.

72. Some broadcasters have recommended that the Commission address over-the-air signal reception by setting receiver standards, which we understand to mean performance thresholds (like the UHF noise figure requirement), as opposed to mandatory technology specifications (like the ATSC digital standard itself). Accordingly, comment is sought first on whether we have the authority to set minimum performance levels for DTV receivers. Comment is also sought on the desirability of adopting minimum performance levels, and comments are asked to address how these requirements should be structured, including timing considerations.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

73. We have described various proposals (with alternatives considered) that we believe will accrue to the benefit of the described licensees, including small entity licensees. We seek comment on whether, to further benefit small entity licensees while remaining consistent with the stated objectives of this proceeding, we should utilize some of the alternatives described, or perhaps utilize others that commenters might provide.

74. In order to allow stations a reasonable period to operate with smaller facilities and thus minimize potential burdens, the *NPRM* states that it seems appropriate to delay a replication requirement until at least May 1, 2004, a year after the last stations are required to complete construction. Other options referenced by the *NPRM* as to the date for any required replication include December 31, 2006, or the date the transition actually ends in the station's market, or one year after the station is required to complete construction pursuant to the DTV construction schedule. We seek small entity comments on these alternatives, which we expect to lessen small entity burdens.

75. The *NPRM* states the Commission's tentative belief that it can minimize any increased difficulties that might result from a city grade signal requirement by delaying its implementation. The *NPRM* tentatively proposes that DTV stations that are paired with NTSC stations be required to meet the new principal community requirement by May 1, 2004. As an alternative, the *NPRM* invites comment as to whether the city-grade service requirement should be tied to the construction schedule, with the requirement imposed within a certain period—a year, for example, after construction is scheduled to be completed. For licensees with paired DTV and NTSC stations that intend to operate with DTV on their current NTSC channel after the transition, the *NPRM* proposes that they be required to file a DTV application reflecting that decision by that date. For NTSC stations that do not have a paired DTV station, the *NPRM* proposes that the stronger DTV principal community service be required when they seek to switch to DTV operation. For petitioners seeking a DTV channel change, the *NPRM* proposes to require a showing that the principal community service requirement can be met with the proposed DTV allotment facilities or a commitment to elect their NTSC channel for their post-transition DTV operation. The 2004 date is two years before the end of the transition, and by that point DTV broadcasters should be able to achieve their permanent facilities. That date is at least one year after the deadline for all broadcasters, including noncommercial broadcasters, to complete construction, and commercial broadcasters by that date will have been on the air for at least two years. For these reasons the Commission believes that it would not be unduly onerous to implement a requirement for a higher principal community service contour at this date. The *NPRM* invites comment on these proposals and asks commenters to address whether other measures are necessary in addition to or as an alternative to these proposals to address the Commission's concerns.

76. The *NPRM* tentatively concludes that it is now time to begin setting up a process to assure early election by DTV stations of their post-transition channel. Stations making the channel conversion at the end of the transition will need time to plan facilities, order equipment and arrange for construction. The *NPRM* states that, with the target date for the end of the transition set for December 31, 2006, it seems reasonable to identify the channels these stations will be moving to not later than 2004. To accomplish this, the *NPRM* states that we could require DTV licensees to make a binding decision and elect one of their two core channels by early 2004, at the latest and suggests imposing May 1, 2004 as the deadline for election. This date would allow at least one year of DTV operation pursuant to our staggered construction schedule (with noncommercial educational TV stations provided the longest time to construct and required to complete construction by May 1, 2003). The *NPRM* seeks comment on whether this date represents the proper balance between the goals of allowing DTV stations enough time to gain experience with DTV operation and allowing stations that must move enough time to plan for their DTV channel conversion. The *NPRM* invites comment as to whether we are required to impose an earlier date based on recent legislation requiring identification of 175 additional DTV channels within 18 months of the law's enactment.

77. To the extent the Commission may adopt performance thresholds for DTV receivers, the Commission has requested comment on timing considerations, which will enable it to take into account potential burdens that may otherwise be placed on small entity manufacturers of these receivers. In contrast, any action taken with respect to the DTV transmission standard (specifically in connection with the 8–VSB standard) will have only an indirect effect on manufacturers of television equipment designed for use by the industry. Nevertheless, the comment sought in the *NPRM* is broad enough to provide the Commission with sufficient opportunity to address this issue.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

78. None.

List of Subjects in 47 CFR Part 73.

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7130 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 57
Thursday, March 23, 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

Submission for OMB Review; Comment Request

March 17, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Scrapie Flock Certification, Animal Identification, and Indemnification Procedures.

OMB Control Number: 0579–0101.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134C, 134f, and 134g, of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as scrapie, and other domestic diseases, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing our ability to compete in exporting animals and animal products. Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The disease develops slowly, with an incubation period lasting from months to years. The Animal and Plant Health Inspection Service (APHIS) will collect information using forms VS 5–18, 5–21, 5–22, and 5–23.

Need and Use of the Information: APHIS will collect information from flock owners that include the following: flock owner's name, address, telephone, location of flock, number of flock, animals identification, and destination or origin. The information will help in identifying and eliminating infected animals or herds in order to prevent the disease from spreading. If the information is not collected the Scrapie Flock Certification Program could not be conducted and this could cause the disease to spread throughout the United States.

Description of Respondents: Farms; business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,081.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 15,846.

Farm Service Agency

Title: ELS Cotton Competitiveness Payment Program.

OMB Control Number: 0560–NEW.

Summary of Collection: The Consolidated Appropriations Act for FY 2001 (Pub. L. 106–113) authorized the ELS Cotton Competitiveness Payment Program. The objective of Congress in authorizing ELS cotton competitiveness payments was to help ensure the U.S. grown ELS cotton would remain competitive in world trade, particularly in the face of subsidies being offered by other producing countries. The program is designed so that competitiveness payments would trigger in response to deterioration in the competitive position of U.S. grown ELS cotton in relation to foreign ELS cotton growths. The Farm Service Agency (FSA) will collect information using forms CCC–1045A and CCC–1045–2.

Need and Use of the Information: FSA will collect the name of exporter, address or recordkeeping office, and taxpayer I.D. The information will be collected to determine the eligibility of the manufacture to receive payment, the eligibility of the cotton on which a claim for payment is based, the appropriate payment rate and the value of the payment. If the information is not payment inaccuracies could occur.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: Weekly.

Total Burden Hours: 780.

Agency is requesting an emergency approval by 3/27/00.

Farm Service Agency

Title: Cottonseed Payment Program Application/Certification.

OMB Control Number: 0560–NEW.

Summary of Collection: The Consolidated Appropriation Act for FY 2000 provides authority for the Secretary of Agriculture to provide assistance to producers or first handlers of the 1999 crop of cottonseed. This authority is being used to implement a new program because of the continuing low prices of cottonseed that, in some cases, have been passed along to cotton producers in the form of increased ginning fees. The application form for which approval is requested, CCC Cotton A–6, will identify potential payment recipients and serve as their request for payments.

Need and Use of the Information: FSA will collect the following information: (1) Applicant name, address, and a contact person and phone; (2) bank

account information for direct deposit payment (account name, number, routing number); (3) the gin 5-digit identifying code; (4) the numbers of bales of cotton ginned from the 1999 cotton crop according to the Agricultural Marketing Service (AMS) and certified as correct by the applicant; and (5) the weight (in pounds) of cotton lint of the reported bales for which payment is requested. The proposed information collection is the application and certification form to be used by cotton gins to request payments under the Cottonseed Payment Program. The information will be used to determine the national payment rate and to compute individual program payment amounts for each applicant.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 733.

Agency is requesting an emergency approval by 3/17/00.

Farm Service Agency

Title: Emergency Assistance for Harney County, Oregon—7 CFR 1478.

OMB Control Number: 0560–NEW.

Summary of Collection: On November 29, 1999, the President signed H.R. 3194, Pub. L. 106–113 (113 Stat. 1501) (Act), which provides under Section 207 of this Act, the Secretary of Agriculture discretionary authority to use not more than $1,090,000 to provide for losses to producers who suffered flood-related crop and forage during 1999. The program will provide compensation to approximately 40 producers whose land was inaccessible for incapable of crop production, grazing, or haying at any time during the 1999 calendar year. The Farm Service Agency (FSA) will collect information using form CCC–454.

Need and Use of the Information: FSA will collect information to determine if: (1) Producers incurred crop, forage, and grazing losses during the 1999 calendar year; (2) producers were under obligation due to a binding lease to make a fair market value rental payment for flooded land for crop year 1999; (3) producers had land that was inaccessible or incapable of crop production, haying, or grazing due to flooding during the 1990 calendar year.

The information collected will be used by the County Committee to determine whether flooding causing loss of production and/or grazing during the 1999 calendar year. If the producer does not provide the information to accurately substantiate that the flooded land has been inaccessible or incapable of crop production, haying, or grazing due to flooding during the 1990 calendar year, the producers will not be able to receive assistance under the program.

Description of Respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 40.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 80.

Agency is requesting an emergency approval by 3/31/00.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–7159 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Content Reinterview Survey.

Form Number(s): D–1010.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 20,000 hours.

Number of Respondents: 30,000.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: As part of its plan to evaluate the quality of data collected in the Census 2000, the Census Bureau plans to conduct the Census 2000 Content Reinterview Survey (CRS). The evaluation of the quality of data collected in the Census 2000 is important for both data users and census planners. Data users must have knowledge of the accuracy and reliability of the data in order to make informed decisions about how errors in the data may affect the conclusions they draw from analyzing the data. Census planners require similar information to develop and test methods to improve the overall quality of the data produced in future censuses.

The purpose of the CRS is twofold. First, it will be used to estimate response variance for most items on the census long form. To measure response variance, the reinterview will re-ask the same set of questions applying, to the extent possible, similar survey procedures and replicating a similar set of conditions. Secondly, the reinterview will be used to make historical comparisons to previous studies of census content error.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 16, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7136 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposal of excess commodities currently held in the National Defense Stockpile.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of the Department of Defense proposed revisions to the disposal levels for Columbium Concentrates, Mica (All Forms), Palladium, Sebacic Acid, and Tantalum Minerals under the Fiscal Year 2000 and proposed Fiscal Year 2001 Annual Materials Plans (AMPs).

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

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; FAX (202) 482–5650.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h7–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposal of materials from the stockpile * * * ''. The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The Committee is now considering the DOD proposed revisions to the disposal levels of Columbium Concentrates, Mica (All Forms), Palladium, Sebacic Acid, and Tantalum Minerals in the FY 2000 and proposed FY 2001 AMPs as set forth in Attachment 1 to this Notice. In order for the Committee to obtain sufficient information to prepare its recommendations to DOD on these proposed revisions, the Committee requests that interested parties provide comment on the potential market impact of the proposed revisions.

The quantities of each material listed in Attachment 1 are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time, as well as on the quantity of material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by April 24, 2000, to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Information that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: March 20, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

Attachment

Material	Units	Current FY 2000 and proposed FY 2001 quantity	Revised FY 2000 and proposed FY 2001 quantity
Columbium Concentrates	LB Cb	FY 2000, 200,000. FY 2001, 250,000.	375,000
Mica (All Forms)	LB	2,260,000	4,000,000
Palladium	TR Oz	200,000	300,000
Sebacic Acid	LB	400,000	600,000
Tantalum Minerals	LA Ta	200,000	300,000

[FR Doc. 00–7249 Filed 3–22–00; 8:45 am]
BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–803

Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews in accordance with court decision.

SUMMARY: On February 17, 1999, the Court of International Trade (CIT) affirmed the second remand determination of the Department of Commerce (the Department) arising from the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Olympia Industrial, Inc.,* v. *United States,* Slip Op. 99–18, 36 F. Supp. 2d 414 (CIT 1999). As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department issued antidumping duty orders on HFHTs from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China,* 56 FR 6622 (February 19, 1991) (*Antidumping Duty Orders*). On September 22, 1995, the Department published its final results of the second administrative reviews of HFHTs for two PRC exporters, Fujian Machinery and Equipment Import and Export Corporation (FMEC) and Shandong Machinery Import and Export Corporation (SMC). *See Heavy Forged Hand Tools from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 60 FR 49251 (September 22, 1995) (*Final Results*).

On April 10, 1997, the CIT issued an order remanding these final results to the Department. *See Olympia Indus., Inc.* v. *United States,* Slip Op. 97–44, 1999 Ct. Int'l Trade Lexis 43 (April 10, 1997). The CIT instructed the Department to (1) assess the reliability of PRC trading company data for valuing steel inputs used to produce HFHTs during the period of review (POR) and (2) calculate inland freight expenses based on the longest distance between input suppliers to the factory.

On July 21, 1997, in accordance with the CIT's remand order, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand* (July 21, 1997). In considering the Department's remand determination, the CIT sustained Commerce's recalculation of inland freight expenses. The CIT, however, found unreasonable the Department's rejection of the PRC import data without having assessed its reliability. As a result, the CIT again remanded the results so that the Department might consider whether the PRC trading companies' steel input data was the best information available to value the factors of production. *Olympia Industrial, Inc.* v. *United States,* Slip Op. 98–49, 7 F. Supp. 2d 997 (CIT 1998).

On August 31, 1998, in accordance with the CIT's second remand order, the Department filed its second final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, Olympia Indus., Inc.* v. *United States* (August 31, 1998). In this redetermination, the Department first examined the pricing data regarding steel inputs imported into the PRC. The Department determined that the prices paid by the trading company for these imported steel inputs were aberrationally low. Therefore, the Department determined that the PRC trading company pricing data were unreliable and, hence, unacceptable for purposes of valuing the steel inputs used to produce the HFHTs. On February 17, 1999, the CIT upheld the Department's second redetermination on remand. *Olympia Industrial, Inc.* v. *United States,* 36 F. Supp. 2d 414. Neither party appealed the CIT's decision.

There is now a final and conclusive court decision in this action; therefore, we are amending our final results of review for the period February 1, 1992 through January 31, 1993. We recalculated margins on each product category for FMEC and SMC. The revised weighted average margins are as follows:

Manufacturer/Exporter	Margin (percent)
Fujian Machinery & Equipment Import & Export Corp.:	
Axes/Adzes	14.23
Bars/Wedges	47.88
Hammers/Sledges	27.71
Picks/Mattocks	89.70
Shandong Machinery Import & Export Corp.:	
Axes/adzes	14.23
Bars/Wedges	33.87
Hammers/Sledges	22.44
Picks/Mattocks	36.62

Accordingly, the Department will determine, and the Customs Service will assess, anticumping duites on all entries of subject merchandise from FMEC and SMC in accordance with these amended final results. For assessment purposes, we have calcualted importer-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of anticumping duties calculated for the examined sales furing the POR to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to Customs. The above rate will not affect FMEC or SMC's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recent completed review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: March 15, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–7236 Filed 3–22–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review

(''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration by phone at (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice in writing to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230, or transmitted by E-mail to oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–3A003.''

The Association for the Administration of Rice Quotas, Inc. (''AARQ'') original Certificate was issued on January 21, 1998 (63 FR 4223, January 28, 1998) and lastly amended on September 4, 1998 (63 FR 53013 October 2, 1998). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Association for the Allocation of Rice Quotas, Inc. (''AARQ''), c/o Thomas Ferrara, AC HUMKO CORP., 7171 Goodlett Farms Parkway, Cordova, Tennessee 38018–4909.

Contact: M. Jean Anderson, Esquire; Telephone: (202) 682–7217.

Application No.: 97–3A003.

Date Deemed Submitted: March 10, 2000.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): ADM Latin, Inc., Decatur, Illinois, and ADM Rice, Inc., Tarrytown, New York (subsidiaries of Archer Daniels Midland Company); AFE (USA), Inc., Houston, Texas; California Commodity Traders, LLC, Sacramento, California; California Pacific Rice Milling, Ltd., Arbuckle, California; Family & Sons, Inc., Miami, Florida; Far West Rice, Inc., Durham, California; Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division and Glencore Ltd.'s subsidiary, LaGrain International Inc., Baton Rouge, Louisiana; Incomar Texas, Ltd. and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas; International Grain Brokerage, LLC, Yuba City, California; JFC International Inc., San Francisco, California (a subsidiary of Kikkoman Corp.); Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Co., Ltd.); Mermentau Rice, Inc., Mermentau, Louisiana; Nishimoto Trading Company, Ltd., Los Angeles, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan)); PS International, Ltd., Durham, North Carolina; Texana Rice, Inc., Houston, Texas; Wehah Farm, Inc., dba Lundberg Family Farms, Richvale, California;

2. Delete the following companies as ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Broussard Rice Mill, Inc.; Cargill, Inc., for the activities of its division, Cargill Rice Milling; Cargill Rice, Inc.; and Gulf Rice Arkansas, Inc.;

3. Change the listings of the current Members as follows: ''AC HUMKO, Corp. for the activities of AC HUMKO Rice Specialties, Brinkley Rice Milling Company, and El Campo Rice Milling Company, Dallas, Texas'' should be amended to read ''AC HUMKO Corp., Cordova, Tennessee;'' ''Busch Agricultural Resources, Inc., St. Louis, Missouri'' and ''Pacific International Rice Mills, Inc., Woodland, California'' should be amended to read ''Busch Agricultural Resources, Inc., St. Louis, Missouri, and its subsidiary, Pacific International Rice Mills, Inc., Woodland, California;'' ''Continental Grain Company, New York, New York'' should be amended to read ''ContiGroup Companies, Inc., New York, New York;'' ''Gulf Rice Milling, Inc.'' and ''Gulf Pacific Rice Co., Inc.'' should be amended to read ''Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas;'' and ''The Connell Company for the activities of Connell Rice & Sugar Co. and Connell International Co.'' should be amended to read ''The Connell Company, Westfield, New Jersey.''; and

4. Amend the portion of its Certificate entitled ''Export Markets'' to reflect that, because of the dissolution of the Trust Territory of the Pacific Islands and the formation of several independent nations therefrom, export markets that will serve as the basis for distribution of bid proceeds may include the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Dated: March 20, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–7233 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of

1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230, or transmit by E-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 00–00001.'' A summary of the application follows.

Summary of the Application

Applicant: North America Export Trading, LLC (''NAXT''), 28746 Calle Vista, Laguna Niguel, California 92677. Contact: Sharleen Maldonado, President, Telephone: (562) 434–5408.

Application No.: 00–00001.

Date Deemed Submitted: March 13, 2000.

Members (in addition to applicant): None.

North America Export Trading, LLC seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products*—All products.

2. *Services*—All services.

3. *Technology Rights*—Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)*—Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; grantsmanship; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions and organization; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

The proposed Export Trade Certificate of Review would extend antitrust protection to NAXT to conduct the following export trade activities:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in Mexico, Latin America, and all other Export Markets allowable;

3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;

4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products, and Services;

5. Enter into exclusive or non-exclusive licensing agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;

6. Allocate export orders among Suppliers;

7. Allocate the sales, export order and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale and maintenance of Products and Services;

8. Allocate the licensing of Technology Rights among Suppliers, Export Intermediaries, or other persons;

9. Establish the price of Products and Services for sale in Export Markets;

10. Establish the fee for licensing of Technology Rights in Export Markets, as well as maintenance and financing commitments;

11. Negotiate, enter into, and/or manage licensing agreements and long-term purchase arrangements involving the export of Technology;

12. Provide extensive intergovernmental services to facilitate the grants and funding involvement of public and nongovernmental funding sources for private sector benefits in term of export activity for goods and services.

Dated: March 20, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–7235 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000B]

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Federal Fisheries Permits.

Agency Form Number(s): None.

OMB Approval Number: 0648–0203.

Type of Request: Revision of a currently approved collection.

Burden Hours: 605.

Number of Respondents: 796.

Average Hours Per Response: Ranges between 20 minutes and 1 hour depending on the requirement.

Needs and Uses: This submission supports a request for renewal of the

Northwest region Federal Fisheries Permits. Under the Fishery Management Plan, there are three (3) types of permits issued for the groundfish fishery off the states of Washington, Oregon, and California. These include the experimental fishing permits; limited entry permits; and at sea-processors. In addition, there is a permit requirement for mothership processing vessels over 125 feet. The information requested in the permit application form is used by several offices of the National Marine Fisheries Service (NMFS), and the U.S. Coast Guard and state fishery enforcement agencies under contract to NMFS. This information may be used in developing management measures and to control fishing effort.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 16, 2000.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7216 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.031400C]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from April 18 - 20, 2000.

DATES: The meetings are scheduled as follows:

1. April 18, 2000, 8:00 a.m. - 5:00 p.m.
2. April 19, 2000, 8:00 a.m. - 5:00 p.m.
3. April 20, 2000, 8:00 a.m. - 3:00 p.m.

ADDRESSES: The meetings will be held at The Westin Francis Marion Hotel, 387 King Street, Charleston, South Carolina. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lu Cano, Designated Federal Officer; telephone: (301) 713–2252.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, and other national interests.

Matters to Be Considered

April 18, 2000

Multi-Disciplinary Science, Legislative, Budget, and Fisheries Overcapacity Subcommittee Meetings

April 19, 2000

Outreach/Communications Work Group and Vessel Monitoring Work Group Meeting, Steering Committee Views Paper Scoping Meeting, and TEAMWARE: Quick Place Program Presentation

April 20, 2000

Steering, Budget, Legislative, Multi-Disciplinary Science and Fisheries Overcapacity Committees, and Vessel Monitoring Systems, and Outreach/Communications Work Groups Reports and Recommendations

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: March 16, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 00–7217 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000D]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Board will hold a public meeting.

DATES: The meeting will be held on Wednesday, April 5, 2000, from 1:00–4:00.

ADDRESSES: This meeting will be held at the Radisson Hotel, 901 N. Fairfax Street, Alexandria, VA; telephone: 703–683–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Council and Board will propose and address possible scup management measures for the summer 2000 fishery.

Although non-emergency issues not contained in this agenda may come before the Council and Commission for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Joanna Davis at the Council (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: March 20, 2000.

Richard W. Surdi,

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

[FR Doc. 00–7250 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

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 April 24, 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: March 17, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Department of Education

Type of Review: Reinstatement.

Title: Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 30. Burden Hours: 450.

Abstract: The Even Start Family Literacy program for federally recognized Indian tribes and tribal organizations is designed to help break the cycle of proverty by integrating early childhood education, adult literacy or adult basis education, and parenting education into a unified family literacy program for families with young children (ages 0 through seven) most-in-need of family literacy services. Program funds are awarded through competitive grant process. The agency needs the information in the application to determine which projects should be funded. Respondents are federally recognized Indian tribes and tribal organizations.

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. Comments 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. 00–7165 Filed 3–22–00; 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 April 24, 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: March 17, 2000.

William Burrow,

Leader, Information Management GroupOffice of the Chief Information Officer.

Office Of Student Financial Assistance Programs.

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart K—Cash Management.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 6,576. Burden Hours: 1,214,241.

Abstract: These regulations comprise the existing provisions of the Student Assistance General Provisions guidance regarding cash management. Information collection under these regulations relates to cash management requirements and practices for institutions participating in the Title IV, Higher Education Act (HEA) programs.

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.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7166 Filed 3–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.069]

Office of Student Financial Assistance; Leveraging Educational Assistance Partnership Program and Special Leveraging Educational Assistance Partnership Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for fiscal year 2000.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 2000 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs. The LEAP Program, through matching formula grants to States, provides grant aid to students with substantial financial need to help them pay for their postsecondary education costs.

The SLEAP Program, through matching formula grants to States: (1) Provides aid to students with financial need to help them pay for their postsecondary education costs; or (2) helps the State to carry out service programs to strengthen the opportunities for elementary and secondary students with financial need to enter postsecondary education. Both the LEAP and SLEAP programs support Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

Under section 415C(a) of the Higher Education Act of 1965, as amended (HEA), a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Secretary has approved, a different State agency to administer the LEAP Program.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

Authority for the LEAP and SLEAP programs is contained in sections 415A through 415F of the HEA.

Closing Date for Transmittal of Applications: Applications for fiscal year 2000 LEAP and SLEAP funds must be mailed or hand-delivered by May 15, 2000.

Application Forms: The Office of Student Financial Assistance Programs mails the required application forms for receiving LEAP and SLEAP funds to officials of the appropriate State agency in each State or territory at least 30 days before the closing date.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Greg Gerrans, Financial Partners, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, S.W., ROB–3, Room 4616, Washington, DC 20202.

The Secretary accepts the following proof of mailing

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 2000 funding.

Applications Delivered By Hand: Applications that are hand-delivered must be taken to Mr. Greg Gerrans, Financial Partners, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, S.W., ROB–3, Room 4616, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date and cannot be assured of consideration.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State or territory to receive LEAP and SLEAP funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package. State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1999, 47 States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the Trust Territory (Palau), and the Virgin Islands received funds under the LEAP Program.

Applicable Regulations: The following regulations are applicable to the LEAP Program:

(1) The LEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

And the following regulations are applicable to both the LEAP and SLEAP programs:

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses) and parts 97, 98, and 99 (Protection of Human Subjects).

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Greg Gerrans, Program Specialist, Financial Partners, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, S.W., ROB–3, Room 4616, Washington, DC 20202; telephone (202) 401–2280. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8393.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this 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

(Authority: 20 U.S.C. 1070c *et seq.*)

Dated: March 17, 2000.

Greg Woods,

Chief Operating OfficerOffice of Student Financial Assistance Programs.

[FR Doc. 00–7253 Filed 3–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–176–A]

Application to Export Electric Energy; Sempra Energy Trading Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Energy Trading Corp. (SET) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 27, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy issued Order No. EA–176 authorizing SET to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities owned and operated by San Diego Gas & Electric Company. That two-year authorization will expire on March 25, 2000.

On February 28, 2000, SET filed an application with FE for renewal of the export authority contained in Order No. EA–176. SET has requested that the authorization be issued for a five-year term and that the international transmission facilities of the El Paso Electric Company, Central Power and Light Company, and the Comision Federal de Electricidad, the national electric utility of Mexico, be added to the list of authorized export points.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on SET's request to export to Mexico should be clearly marked with Docket EA–176–A. Additional copies are to be filed directly with Michael A. Goldstein, Esq., Senior Vice President and General Counsel, Sempra Energy Trading Corp., 58 Commerce Road, Stamford, CT 06902.

DOE notes that the circumstances described in this application are virtually identical to that for which export authority had previously been granted in FE Order EA–176. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–176 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on March 15, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–7182 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory

Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 5, 2000: 6:00 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Operations Office, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Discussion and review of Underground Testing Area issues

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on March 20, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7178 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 6, 2000: 6:00 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-Level Multi-Purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Update from the Defense Nuclear Facilities Safety Board

Presentation and Discussion on Soil Action Levels

Committee Updates

Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on March 20, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7179 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 5, 2000: 6–9 p.m.

ADDRESSES: Roane State Community College, 701 Briarcliff Avenue, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Theresa Perry, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (865) 576–8956.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Oak Ridge SSAB Project Teams will discuss their current activities.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carol Davis at the address or

telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that had to be resolved.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Teresa Perry, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–8956.

Issued at Washington, DC on March 20, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7180 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 00–03, C&E 00–04 and C&E 00–04 Certification Notice—185]

Office of Fossil Energy; Notice of Filings of Coal Capability of Reliant Energy Desert Basin, LLC, Tenaska Alabama Partners, L.P. and Liberty Generating Company, LLC Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Reliant Energy Desert Basin, LLC (Reliant), Tenaska Alabama Partners, L.P. and Liberty Generating Company, LLC submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in accordance with section 201(d).

Owner: Reliant (C&E 00–03).

Operator: Reliant Energy Power Generation, Inc.

Location: Casa Grande, Pinal County, Arizona.

Plant Configuration: Combined-cycle.

Capacity: 551 MW.

Fuel: Natural gas.

Purchasing Entities: Reliant Energy Services, Inc. or one of its affiliates.

In-Service Date: September 2001.

Owner: Tenaska Alabama Partners, L.P. (C&E 00–04).

Operator: Tenaska Alabama Partners, L.P.

Location: Autagua County near the town of Billingsly, Alabama.

Plant Configuration: Combined-cycle.

Capacity: 846 MW.

Fuel: Natural gas.

Purchasing Entities: Williams Energy Marketing & Trade Company.

In-Service Date: May, 2002.

Owner: Liberty Generating Company, LLC (C&E 00–05).

Operator: Liberty Generating Company.

Location: Linden, New Jersey.

Plant Configuration: Combined-cycle.

Capacity: 1090 MW.

Fuel: Natural gas.

Purchasing Entities: Competitive wholesale power market.

In-Service Date: Second quarter of 2003.

Dated: Issued in Washington, DC, March 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power IM/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–7184 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–14–000]

AIM Pipeline Company; Notice of Petition for Rate Approval

March 17, 2000.

Take notice that on March 14, 2000, AIM Pipeline Company (AIM) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.2565 per MMBtu for interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AIM states that it is an intrastate natural gas pipeline within the meaning of Section 2(16) of the NGPA, which operates wholly within the State of Mississippi.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate of transportation services will be deemed to be fair and equitable. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before April 3, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7154 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–54–029]

Colorado Interstate Gas Company; Notice of Offer of Settlement

March 17, 2000.

Take notice that on March 8, 2000, Colorado Interstate Gas Company (CIG), The Public Service Company of Colorado (PSCo), Cheyenne Light Fuel and Power Company (Cheyenne) and Colorado Springs Utilities (Colorado Springs) (collectively called Sponsoring Parties) jointly filed an Offer of Settlement under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. Sponsoring Parties filed the Offer of Settlement relating to refunds of the Kansas ad valorem taxes to resolve for Consenting Working Interest Owners (as defined in the Offer) the issue of refunds due to CIG for reimbursements of the Kansas ad valorem taxes consistent with the requirements of *Public Service Company of Colorado* v. *FERC*[1] and the Commission's subsequent orders. A copy of the Offer of Settlement, is on file with the Commission and is available for public inspection in the Public Reference Room. The Offer of Settlement may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Under the Offer of Settlement, each Consenting Working Interest Owner's refund liability will be reduced by 12.5% which represents the typical landowners royalty share of the total refunds. In addition, each Consenting Working Interest Owner will receive an additional reduction in its refund liability of $10,000, except where a lesser amount will extinguish its liability in its entirety.

The Offer of Settlement, when approved, will eliminate substantially, if not entirely, the obligation of Consenting Working Interest Owners to pursue refund claims against their landowner royalty owners. This is accomplished through the 12.5% reduction in the total refund obligation otherwise owed by Consenting Working Interest Owners.

An estimated 600 or more working interest owners received the benefit of CIG's reimbursement of the Kansas ad valorem taxes. Many of those parties have small refund obligations. The Settlement will eliminate entirely the refund obligations of those Consenting Working Interest Owners whose remaining refund obligation after the 12.5% reduction discussed above is $10,000 or less. It is estimated that 400–450 working interest owners' refunds will be entirely eliminated under the Settlement.[2] Further, every other Consenting Working Interest Owner whose refund obligation, after the 12.5% reduction, exceeds $10,000 will have that refund obligation reduced by $10,000 under the Settlement. Thus the Settlement will reduce the collection and administrative burdens on the parties and the Commission while expediting the recovery of the refunds.

In accordance with Section 385.602(f), initial comments on the Offer of Settlement are due on March 28, 2000 and any reply comments are due on April 7, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–7157 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 91 F.3d 1478 (D.C. Cir., 1996), cert. denied 520 U.S. 1227 (1997).

[2] The Sponsoring Parties assert that the number and identity of the working interest owners who will have their refund obligation eliminated by the Settlement cannot be determined at this time since the Commission had required that the well operators—the parties to whom CIG made the tax reimbursements in the first place—provide working interest ownership data to CIG. Since a very large number of well operators have not provided that information to CIG, CIG, PSCo and Colorado Springs also filed a Complaint against those well operators in Docket No. RP00–213–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1259–000, EL00–38–000, and EC00–48–000]

Louisiana Generating, L.L.C. Cajun Electric Power Cooperative, Inc. Louisiana Generating, L.L.C.; Notice of Filing

March 17, 2000.

Take notice that on March 17, 2000, Louisiana Generating, L.L.C. (Generating, and Southwestern Electric Power Company (SWEPCO), tendered for filing a supplement to its January 13, 2000 power purchase agreement between SWEPCO and Cajun Electric Power Cooperative, Inc. (Cajun) in the above-referenced dockets.

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 and protests should be filed on or before March 27, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7175 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–91–000]

National Fuel Gas Supply Corporation; Notice of Site Visit

March 17, 2000.

On March 28 and 29, 2000, the Office of Energy Project's (OEP) staff will inspect National Fuel Gas Supply Corporation's (National Fuel) proposed Line AM–60 Replacement Project involving the construction and operation of facilities in Elk, McKean and Warren Counties, Pennsylvania. The areas will be inspected by automobile and on foot. Representatives of National Fuel will accompany the OEP staff. Anyone interested in participating in the site visits must provide their own transportation.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7150 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–15–000]

Overland Trail Transmission Company; Notice of Petition for Rate Approval

March 17, 2000.

Take notice that on March 14, 2000, Overland Trail Transmission Company (OTTCO) filed pursuant to Section

284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum system wide rate of $0.3948 per MMBtu for interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGP).

OTTCO states that it is an intrastate natural gas pipeline within the meaning of Section 2(16) of the NGPA, which operates wholly within the State of Wyoming.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate for transportation services will be deemed to be fair and equitable, The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before April 3, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7155 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–117–000 and CP00–117–001]

Southern Natural Gas Company; South Georgia Natural Gas Company; Notice of Joint Application

March 17, 2000.

Take notice that on March 10, 2000, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563 and South Georgia Natural Gas Company (South Georgia) Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP00–117–000 a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, for a certificate of public convenience and necessity for Southern to acquire facilities and authorization for South Georgia to abandon facilities all as more fully set forth in the application which is on file with the Commission and open to public inspection.[1] The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Patrick Pope, General Counsel, Southern Natural Gas Company, Post Office Box 35202–2563, Birmingham, Alabama 35202–2563 or call (205) 325–7126.

Southern requests a certificate of public convenience and necessity pursuant to Section 7(c) of the NGA authorizing it to acquire the facilities of South Georgia, and South Georgia requests approval under Section 7(b) of the NGA to abandon all of its jurisdictional transmission facilities, operations, and certain services not subject to pre-granted abandonment. Southern and South Georgia state that the acquisition will be accomplished by a merger between Southern and South Georgia which is a wholly owned subsidiary of Southern. Further, they state that Southern will acquire South Georgia's assets at the original cost with the same accumulated depreciation and accumulated deferred income taxes as are currently reflected in South Georgia's books.

Southern avers that it will contact with the existing South Georgia customers to provide the same quality and type of service as South Georgia provides today, but under the terms and conditions of Southern's FERC Gas Tariff, as revised pursuant to this application and the Offer of Settlement. To implement the service, Southern and South Georgia seek: (1) Authorization for South Georgia to terminate Volumes I and II of its FERC Gas Tariff; (2) Authorization for Southern to revise its CSS–1, CSS–2, and STS Rate Schedules to incorporate the South Georgia ST–1 and ST–2 Rate Schedules into its First Revised Volume No. 2A of its FERC Gas Tariff; (3) Cancellation of South Georgia's Order No. 234 Blanket Certificate; and (4) Authorization for Southern to implement the changes to its tariff necessary to implement the terms of the certificate requested herein.

Southern and South Georgia state that the acquisition is part of an overall Offer of Settlement filed concurrently in Docket No. RP99–496–004 to resolve all outstanding issues in Southern's pending Section 4 rate proceeding and they request that the certificate application be processed concurrently with the Offer of Settlement. Southern and South Georgia request that the authorization requested herein take effect on August 1, 2000 and be conditioned upon the approval of the Offer of Settlement. If the settlement is not approved on terms acceptable to the parties thereto, Southern and South Georgia state that they will withdraw the certificate application.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before March 28, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a 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 NGA (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 protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA 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 a grant of the certificate is 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.

[1] This application is also incorporated in the Offer of Settlement filed by Southern pursuant to Rule 602 of the Commission's regulations (§ 385.602) in Docket No. RP99–496–004. The portion of the Offer of Settlement relating to the transfer of South Georgia's facilities to Southern has been docketed as CP00–117–001. Pursuant to Rule 602(d)(2) Southern states that it has notified all parties in the rate proceeding as all other persons required by Rule 602(d)(1) that Comments and Reply Comments on the Offer of Settlement are due to be filed by March 28, 2000, and Reply Comments are due to be filed by April 7, 2000.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Southern or South Georgia to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–7152 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–010]

Trunkline Gas Company; Notice of Compliance Filing

March 17, 2000.

Take notice that on March 13, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2000:

Second Revised Sheet No. 205
Original Sheet No. 205A

Trunkline states that the purpose of this filing is to comply with the Commission's Order Accepting Contested Settlement and Dismissing Request for Rehearing issued on February 1, 2000 in Docket No. RP96–129–005 (Phase I Remand), RP96–129–006 and RP96–129–007, 90 FERC ¶ 61,099 (2000). In accordance with the September 16, 1999 Stipulation and Agreement in the subject proceeding, the revised tariff sheets modify the General Terms and Conditions, Section 13, Quality, to provide that Shipper or Shipper's designee may elect to receive its retrograde condensate removed at the Terrebonne liquids separation facility commencing on May 1, 2000.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7156 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP00–1–000]

Williams Energy Marketing & Trading Co.; Notice of Petition for Declaratory Order

March 17, 2000.

Take notice that on March 14, 2000 William Energy Marketing & Trading Company (Williams) tendered for filing a petition for a declaratory order to remove uncertainty regarding the applicability of the Commission's ''buy/sell'' policy to offshore production area transactions. Specifically, Williams requests a declaratory order confirming that the buy/sell policy does not apply to Outer Continental Shelf production-area arrangements like those contemplated by Royalty-In-Kind pilot projects recently initiated by the U.S. Department of Interior's Minerals Management Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7153 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–381–004]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

March 17, 2000.

Take notice that on March 14, 2000, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective on January 1, 2000:

Sub Alternate Original Sheet No. 85A
Sub Alternate Original Sheet No. 85B

WIC asserts that the purpose of this filing is to comply with a Commission Order issued on February 29, 2000 (90 FERC ¶61,200), in Docket No. RP99–381 *et al.* Specifically, the filing reflects revised tariff language in General Terms and Conditions Section 33.4 that clarifies that WIC may in general rate cases seek a discount-type adjustment for negotiated discounts.

WIC states that a full copy of its filing is being served on each jurisdictional customer, interested state commission, and each party that has requested service as well as upon each party appearing on the Commission's official service list for Docket No. RP99–381.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on the file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7158 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–40–000, et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

March 16, 2000.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Company and Atlantic City Electric Company

[Docket Nos. EC00–40–000 and EL00–52–000]

Take notice that on March 1, 2000, Delmarva Power & Light Company (Delmarva) and Atlantic City Electric Company (Atlantic) (collectively, Applicants), tendered for filing a request for approval regarding journal entries reflecting dividend payments out of paid-in capital related to the transfer of certain facilities from Delmarva and Atlantic to Conectiv Delmarva Generating, LLC (CDG) and Conectiv Atlantic Generating, LLC (CAG), respectively (Facility Transfer). Journal entries based on then available data reflecting such dividend payments were included in a December 17, 1999 application which Delmarva and Atlantic submitted to the Commission under Section 203 of the Federal Power Act in Docket No. EC00–40–000 to accomplish the Facility Transfer.

Delmarva and Atlantic request that the Commission approve the use of journal entries and the related accounting reflecting the payment of dividends out of paid-in capital in connection with the Facility Transfer. They have asked that the Commission take this action by May 1, 2000, which is the date that the Applicants hope to accomplish the Facility Transfer and undertake new power supply arrangements related to the Facility Transfer.

Copies of the filing were served upon Delmarva's wholesale requirements customers, and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Public Service Commission and the Virginia State Corporation Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company, et al. and Midwest Independent Transmission System Operator

Docket Nos. EL00–25–001 and ER00–448–001]

Take notice that on March 10, 2000, the Midwest ISO Participants [1] tendered for filing revisions to Appendix I to the open access transmission tariff and related documents of the Midwest Independent Transmission System Operator, Inc., in compliance with the Commission's February 24, 2000 order in the proceedings captioned above. *Commonwealth Edison Company, et al.,* 90 FERC ¶ 61,192 (2000).

The Midwest ISO participants state that copies of this filing have been served on each person designated on the official service list compiled by the Secretary in these proceedings.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Horizon Energy Company and Central Maine Power Company

[Docket Nos. ER98–380–011 ER97–3390–002]

Take notice that on March 13, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Frederick C. Bustard

[Docket No. ID–3464–000]

Take notice that on March 8, 2000, the above-named individual filed with the Federal Energy Regulatory Commission an application for authority to hold an interlocking position in Maine Public Service Company and Northern Maine Independent System Administrator, Inc.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Atlantic City Electric Company

[Docket No. ER97–3189–026]

Take notice that on March 13, 2000, Atlantic City Electric Company tendered a compliance report in the above dockets pursuant to the Commission's February 29, 2000, order (90 FERC ¶ 61,224).

Copies of the filing were served on the official service list in these dockets.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. MEP Pleasant Hill, LLC

[Docket No. ER99–2858–001]

Take notice that on March 10, 2000, MEP Pleasant Hill, LLC (MEPPH), tendered for filing a notice of change in status reflecting the sale of a 50-percent interest in MEPPH to CPN Pleasant Hill, LLC. MEPPH also tendered for filing a list of the current generation projects of Calpine Corporation.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corporation

[Docket No. ER00–1863–000]

Take notice that on March 13, 2000, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commissions, 18 CFR part 35.12, an executed Amendment to a Mutual Netting Agreement with ConAgra Energy Services, Inc, previously filed with the FERC under Docket No. ER98–4413–000, Service Agreement No. 253, effective 8/1/98 changing billing and payment terms.

AVA requests waiver of the prior notice requirements and requests an effective date of March 1, 2000 for the amended terms for net billing of transactions.

Notice of the filing has been served upon ConAgra Energy Services, Inc.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER00–1864–000]

Take notice that on March 13, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to PP&L Electric Utilities Corporations d/b/a PPL Utilities, Inc. (PPL) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement becomes effective as of March 14, 2000.

NYSEG has served copies of the filing upon the New York State Public Service Commission and PPL.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

[1] The Midwest ISO Participants consist of Allegheny Energy, Ameren (which includes Central Illinois Public Service Company and Union Electric Company); Central Illinois Light Company; Cinergy (which includes PSO Energy and Cincinnati Gas & Electric Company); Commonwealth Edison; Hoosier Energy Rural Electric Cooperative; Illinois Power Company; Kentucky Utilities; Louisville Gas & Electric; Southern Indiana Gas and Electric Company; Wabash Valley Power Association; and Wisconsin Electric Power Company.

9. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1865–000]

Take notice that on March 13, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 15 to the Market Rate Tariff to incorporate a Netting Agreement with Rainbow Energy Marketing Corporation into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of February 14, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to 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: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Corporation

[Docket No. ER00–1866–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Duke Power, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–1867–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Commonwealth Edison Company, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER00–1868–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., Savannah Electric and Power Co., and Southern Company Services, Inc. for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Corporation

[Docket No. ER00–1869–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with American Electric Power Service Corp., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER00–1870–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power & Light Company, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–1871–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Virginia Electric and Power Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Corporation

[Docket No. ER00–1872–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Florida Power & Light Company, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–1873–000]

Take notice that on March 13, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing: (1) Revised tariff sheets amending Con Edison's Open Access Transmission Tariff, FERC Electric Rate Schedule No. 1; (2) a Notice of Cancellation of its Joint Open Access Transmission Tariff with Orange and Rockland Utilities, Inc.; and (3) a Notice of Cancellation of its Retail Access Sales Tariff. Con Edison states that the proposed tariff sheets amend the terms and conditions for transmission service to conform to (i) changes in Con Edison's Retail Access Program to be implemented during Phase 3 of that program and (ii) the commencement of operations by the New York

Independent System Operator (NYISO). Specifically, the proposed tariff sheets would close the Con Edison OATT to new wholesale services, would delete schedules for ancillary services, and would amend the terms and conditions for retail transmission service that are contained in Attachments K and L of the tariff. Con Edison also states that the tariff cancellations conform with the commencement of NYISO operations and Con Edison's divestiture of its generating facilities.

Comment date: April 4, 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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7149 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–89–001, et al.]

Louisiana Generating, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Louisiana Generating LLC

[Docket No. EG00–89–001]

Take notice that on March 15, 2000, Louisiana Generating LLC filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status, which was filed on February 3, 2000 in the above-referenced proceeding.

Comment date: March 27, 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. Engage Energy US, L.P.

[Docket No. ER97–654–015]

Take notice that on March 15, 2000, Engage Energy US, L.P. filed a quarterly report for information only.

3. Amerada Hess Corporation

[Docket No. ER97–2153–011]

Take notice that on March 13, 2000, Amerada Hess Corporation filed a quarterly report for information only.

4. ATCO Power Canada Ltd.

[Docket No. ER99–3282–003]

Take notice that on March 14, 2000, ATCO Power Canada Ltd. filed a quarterly report for information only.

5. J.T. Petillo

[Docket No. ID–3466–000]

Take notice that on March 13, 2000, J. T. Petillo filed an Application for Authority to Hold Interlocking Positions pursuant to 18 CFR 45.1, Section 305(b) of the Federal Power Act, 16 U.S.C. Section 825d(b) and the Federal Energy Regulatory Commission's (Commission) March 29, 1996 order in Docket No. ER96–939–000.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER98–441–017]

Take notice that on March 14, 2000, Williams Energy Marketing & Trading Company (Williams), tendered for filing a refund report as required by Commission Order issued January 31, 2000, in the above-captioned proceeding.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ogden Martin Systems of Union, Inc.

[Docket No. ER00–1155–001]

Take notice that on March 14, 2000, Ogden Martin Systems of Union, Inc., tendered for filing a supplement to its Power Sales Agreement filed with the Commission in Docket No. ER00–1155–000.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER00–1875–000]

Take notice that on March 14, 2000, Arizona Public Service Company (APS), tendered for filing a revised Market Power Study for APS FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served to all parties on the Service List.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER00–1876–000]

Take notice that on March 14, 2000, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Arizona Electric Power Cooperative, Inc. (2 agreements, for Non-Firm and Short-Term Firm Service, dated March 1, 2000). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Corporation

[Docket No. ER00–1878–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with El Paso Merchant Energy, L.P., for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–1879–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Aquila Energy Marketing Corporation, for Firm Point-To-Point Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the

Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER00–1880–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with El Paso Merchant Energy, L.P., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Corporation

[Docket No. ER00–1881–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Southern Company Energy Marketing L.P., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER00–1882–000]

Take notice that on March 14, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing a Notice of Cancellation of the Electric Peaking Power Agreement between City of Thayer, Missouri and Entergy Arkansas.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER00–1874–000]

Take notice that on March 14, 2000, the New England Power Pool Participants Committee submitted changes to Market Rules and Procedures 2, 2–A, 3, 3–A, 3–E and 17.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Texas-New Mexico Power Company v. Public Service Company of New Mexico

[Docket No. EL00–53–000]

Take notice that on March 15, 2000, Texas-New Mexico Power Company (TNMP), tendered for filing a Complaint against Public Service Company of New Mexico (PNM). TNMP requests that the Commission: (1) Issue an injunction that releases 30MW of firm point-to-point transmission service from Four Corners to southern New Mexico to TNMP; and (2) establish a hearing to address the policy issues raised in this Complaint and ascertain the appropriate monetary damages to be awarded to TNMP.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall also be fined on or before April 14, 2000.

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. 00–7174 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–64–000]

CNG Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Capstone Project, Request for Comments on Environmental Issues, and Notice of Site Visit

March 17, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Capstone Project involving construction and operation of facilities proposed by CNG Transmission Corporation (CNG) in Elk, Jefferson, Armstrong and Potter Counties, Pennsylvania, and in Montgomery County, New York.[1]

CNG would:

- Construct approximately 13.6 miles of 30-inch-diameter pipeline loop (the TL474x2 pipeline) and 800 feet of 30-inch-diameter connector pipeline in Armstrong County, Pennsylvania;
- Construct a 4,450-horsepower (hp) compressor at the Punxsutawney Compressor Station in Jefferson County, Pennsylvania;
- Construct two 3,200-hp compressors alongside the existing Little Greenlick Relay Station in Potter County, Pennsylvania;
- Construct a new 7,000-hp Brookman Corners Compressor Station in Montgomery County, New York;
- Upgrade the Ardell Compressor Station in Elk County, Pennsylvania by replacing a 12,600-hp engine with a 15,000-hp engine; and
- Abandon approximately 13 miles (11.2 miles in-place and 1.8 miles by removal) of the 12-inch-diameter LN–9 Pipeline in Armstrong County, Pennsylvania.

The facilities would allow CNG to provide service on CNG's system that is comparable to service currently provided under a contract with Tennessee Gas Pipeline Company.

Our EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you should have been contacted by the pipeline company about the

[1] CNG's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

acquisition of an easement to construct, operate, and maintain the proposed facilities. You should also have been contacted by CNG if you reside within ½ mile of a compressor station. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice CNG provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

The location of the proposed project facilities is shown in appendix 1, figures 1 through 6.[2]

Land Requirements for Construction

Constructing the proposed pipeline would generally require a 75-foot-wide corridor. Approximately 5 miles of the route which crosses agricultural land would require an additional 25 feet to stockpile topsoil (a 100-foot-wide easement). The proposed pipeline would parallel existing pipelines for 11.8 miles and would make use of (overlap) 25 feet of existing maintained pipeline easement during construction and only require an additional 25 feet of permanent right-of-way to accommodate the new pipeline. The 1.9 miles of new right-of-way to accommodate the new pipeline. The 1.9 miles of new right-ow-way to accommodate the pipeline. The 1.9 miles of new right-of-way at the southern end of the pipeline would require a 50-foot-wide new permanent easement.

Pipeline construction would disturb approximately 140 acres. Following construction, the land disturbed by construction activities would be restored and allowed to revert to its former use. The project would require approximately 47 acres of new permanent pipeline easement (35.5 acres paralleling existing right-of-way and 11.5 acres of new corridor).

Construction at the proposed Little Greenlick Compressor Station would require about 22.21 acres and at the proposed Brookman Corners Compressor Station about 15.5 acres. After construction these areas would also be restored and revert to previous use except for 6.3 acres that would be maintained at each location as compressor station yards. Construction at the Punxsutawney and Ardell Compressor stations would occur within existing fenced compressor station yards and would involve an acre or less of ground disturbance.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that would occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Public safety.

We will also evaluate possible alternatives to the proposed or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG. This preliminary list of issues may be changed based on your comments and our analysis.

1. Residences and Wells

—Impacts on 27 wells and 6 springs within 150 feet of the right-of-way.
—Impacts on four residences laying within 50 feet of the centerline of the new pipe; and another eight structures within 100 feet of the edge of the construction right-of-way.

2. Compressor Station Noise

Twenty-six residents near the Punxsutawney Compressor Station have expressed concern about existing noise levels and the potential for the project to result in further increases.

3. Geology and Soils Impacts

—Impacts on 3.3 miles of prime farmland soils.
—Impacts on 6.4 miles of erosion prone soils.

4. Water Resources and Wetlands

—Impacts to 3 perennial streams, 9 intermittent streams, and 10 drainage ways.
—Impacts to 19 wetlands.
—Impact to Crooked Creek from withdrawal of 2.5 million galls of water for hydrostatic testing of the pipeline.

5. Biological Resources

—Impacts on about 45 acres of deciduous forest.
—Impacts on the timber rattlesnake, *Crotalus horridus*, a Pennsylvania state candidate for the threatened and endangered list.
—Impacts on the Northern Harrier, *Circus cyaneus*, a New York state threatened species.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of the Gas Group 2, PJ–11.2.

• Reference Docket No. CP00–64–000.

• Mail your comments so that they will be received in Washington, DC on or before April 17, 2000.

On April 3 and 4, 2000, the Office of Energy Projects will conduct a precertification site visit of the pipeline route and compressor station sites. All parties may attend. Those planning to attend must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–7151 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments

March 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Five-year Review and Update of Land Use and Shoreline Management Plan.

b. *Project No.:* 516–318.

c. *Date Filed:* February 1, 2000.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda.

f. *Location:* The project is located in Saluda, Lexington, Newberry and Richland Counties, SC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Thomas G. Eppink, Esquire Senior Attorney, South Carolina Electric & Gas Company, Legal Department—130, Columbia, SC 29218, (803) 217–9448 or, Tommy Boozer, Lake Manager, (803) 217–9007.

i. *FERC contact:* John K. Hannula, (202) 219–0016.

j. *Deadline for filing comments, motions to intervene and protest:* 30 days from the issuance date of this notice. Please include the project number (516–318) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of the Application:* South Carolina Electric & Gas Company requests Commission approval of its 5-Year Review and Update of its Land Use and Shoreline Management Plan. The 5-year Review and Update considers recreational use, lake management, and land use management of the project shoreline. Specifically, the 5-year Review and Update addresses park improvements, dock policy, buffer zone and forest management, land sales and environmental resources.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7176 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): [Information Collection Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment Information, EPA ICR Number 1427.06, and OMB Control Number 2040–0110), expiring 09/30/00]. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: All public comments shall be submitted to: Betty West, Office of Wastewater Management, Water Permits Division, MC 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Interested persons may obtain a copy of the proposed ICR without charge by calling or writing to Betty West at the Office of Wastewater Management, Water Permits Division, MC 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–8486.

FOR FURTHER INFORMATION CONTACT: Betty West, telephone number (202) 260–8486; Facsimile Number (202) 260–1460; E-Mail address: west.betty@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are issued NPDES permits for the discharge of domestic wastewater, industrial wastewater, and storm water, and for the use and disposal of sewage sludge.

Title: Information Collection Agency Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment Information. (OMB Control No. 1040–0110; EPA ICR No.1427.06.) expiring 09/30/00.

Abstract: Pollutant discharge limits in a NPDES permit are designed to be protective of the environment and the public. Permitting authorities must assess whether the permittee is complying with these discharge limits on a consistent basis. Compliance is assessed by reviewing records, compliance schedule reports, and noncompliance reports for a bypass, upset, or maximum daily violation. Permittees must maintain such records, meet compliance schedules, and report violations as mandated in 40 CFR parts 122 and 501. The information that is collected can lead the permitting authority to follow through with informal discussions with the permittee (telephone and/or letters), permit modification, or enforcement action.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The information collection for compliance assessment and certification activities will involve an estimated 16,532 respondents per year with 2.15 total annual average responses per respondent. The time required for a response varies; the average burden hours per respondent is 6.6 hours. EPA estimates that the total annual cost is $19,161,763 for record keeping and $3,884,689 for reporting for a total respondent cost of $23,046,452. The total annual costs to respondents, recordkeepers, and government (excluding Federal government) is estimated to be $24,518,940. The compliance assessment and certification activities will entail an annual burden of 827,968 hours of recordkeeping and 147,207 hours of reporting for a total of 975,175 burden hours. These activities will also entail 51,089 burden hours for State governments as users of data.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 17, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–7230 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–3]

Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

The charter for the Environmental Protection Agency's Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year

period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App 9(c). The purpose of EFAB is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental financing.

It is determined that EFAB is in public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Alecia Crichlow, EFAB Coordinator, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 (Mailcode 2731R).

Dated: March 20, 2000.

Michael W.S. Ryan,

Acting Chief Financial Officer.

[FR Doc. 00–7321 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6563–8]

National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulations Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on April 3–4, 2000 from 8:30 AM until 5 PM (approximate), 401 M Street, SW, Conference Room 3 North, Washington, DC 20460. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is for the Working Group to develop and use robust and transparent protocols that can be used for making regulatory determinations from the CCL and for the periodic review of existing NPDWRs. The Working Group will provide specific recommendations for analyzing and presenting the available scientific data, and also recommend methods to identify and document the judgments made to arrive at a conclusion and the supporting rationale.

The CCL and 6-Year Review Working Group will develop specific protocols for making regulatory determinations and selecting existing NPDWRs for possible revision. The Working Group will provide specific recommendations for analyzing and presenting the available scientific data, and also recommend methods to identify and document the judgments made to arrive at a conclusion and the supporting rationale. Due to the statutory deadlines mandated by the SDWA's 1996 amendments, the Working Group will develop a protocol to support CCL regulatory determinations before beginning work on the protocol(s) for the 6-year review of existing NPDWRs.

For CCL regulatory determinations, the Working Group will develop protocols for both chemical and microbial contaminants that will be robust enough to apply to contaminants on the current and future CCLs. The Working Group will continue to evaluate the draft framework developed by the EPA for the first meeting.

The working group members will be asked to draft proposed position papers for deliberation by the advisory council, and provide advice and recommendations to the full National Drinking Water Advisory Council. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, contact Corry Westbrook, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, DC 20460. The telephone number is 202–260–3228, fax 202-260–3762, and e-mail address westbrook.corry@epa.gov.

Dated: March 17, 2000.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–7229 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30482A; FRL–6496–4]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by CYTEC Industries Inc, to conditionally register the pesticide product ECO2FUME containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; and e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 132532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

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

Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30482A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of phosphine gas, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use (methyl bromide alternative), application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of phosphine gas during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register**, of October 20, 1999 (64 FR 56500) (FRL–6382–8), which announced that BOC Gases America, 575 Mountain Ava, Murray Hill, NJ 07424 had submitted an application to register ECO2FUME fumigation gas (EPA File Symbol 38719–T). The end-use product, ECO2FUME, is an insecticide containing the new active ingredient phosphine gas at 2% in carbon dioxide. ECO2FUME is registered to control numerous insects which infest nonfood commodities (including tobacco). This product was subsequently transferred (prior to registration) to Cytec Industries Inc., 5 Garret Mountain Plaza, West Paterson, NJ 07424, and was assigned a new file number and ultimately the registration number: 68387–7.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 16, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–7232 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51943; FRL–6497–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 14, 2000 to February 25, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51943 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202)

554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

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

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51943. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51943 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51943 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 14, 2000 to February 25, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such

information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/00 TO 02/25/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0502	02/15/00	05/15/00	Lambent Technologies Corporation	(S) Metalworking fluids (lubricants & coolant); machine lubricants; agricultural (emulsifier); lumber industry (emulsifier)	(S) Glycerides, C_{14-22} and C_{16-22}-unsatd., ethoxylated propoxylated*
P–00–0503	02/15/00	05/15/00	Lambent Technologies Corporation	(S) Metalworking fluids (lubricants & coolant); machine lubricants; agricultural (emulsifier); lumber industry (emulsifier)	(S) Glycerides, C_{14-22} and C_{16-22}-unsatd., ethoxylated*
P–00–0504	02/15/00	05/15/00	Lambent Technologies Corporation	(S) Metalworking fluids (lubricants & coolant); machine lubricants; agricultural (emulsifier); lumber industry (emulsifier)	(S) Glycerides, C_{14-22} and C_{16-22}-unsatd., propoxylated*
P–00–0505	02/14/00	05/14/00	CBI	(G) Destructive use	(G) Substituted diphenyl imidazole
P–00–0506	02/14/00	05/14/00	CBI	(G) Intermediate	(G) Sodium salt of a naphthalene azo dyestuff
P–00–0507	02/15/00	05/15/00	Zeon Chemicals L.P.	(G) High molecular weight polyether polymer for electrical aplications	(S) Oxirane, methyl-, polymer with oxirane and [(2-propenyloxy)methyl]oxirane*
P–00–0508	02/15/00	05/15/00	CBI	(G) Destructive use	(G) Bis(halophenyl)-dialkoxyphenyl imidazole
P–00–0509	02/14/00	05/14/00	CBI	(S) Resin for inks	(G) Polyether polyurethane
P–00–0510	02/15/00	05/15/00	Reichhold, Inc.	(S) Wood coating	(G) Anionic oil modified polyurethane dispersion
P–00–0511	02/14/00	05/14/00	Shell Chemical Co.	(S) Coating for railcars; coating for marine vessels	(S) Formaldehyde, oligomeric reaction products with 4,4′-isopropylidenediphenol and m-phenylenebis(methylamine)*
P–00–0512	02/14/00	05/14/00	CBI	(G) Ink jet ink	(G) Mixed ammonium/sodium salt of naphthalene azo dyestuff
P–00–0513	02/14/00	05/14/00	CBI	(G) Dye for cotton	(G) Arylazo substituted sufonated naphthalene compound
P–00–0514	02/14/00	05/14/00	CBI	(G) Initiator, contained use	(G) Substituted diphenyl imidazolyl imidazole
P–00–0515	02/15/00	05/15/00	CIBA Specialty Chemicals Corporation	(S) Photoinitiator for uv-cured coatings and uv-cured printing inks	(G) Organoiodonium salt
P–00–0516	02/14/00	05/14/00	CBI	(G) Dye for cotton	(G) Sulfonated dioxazine compound
P–00–0517	02/14/00	05/14/00	CBI	(G) Dye for cotton	(G) Arylazo substituted sulfonated naphthalene compound
P–00–0518	02/16/00	05/16/00	CBI	(G) Chemical intermediate	(G) Perfluoroalkyl dicarboxylate
P–00–0519	02/16/00	05/16/00	CBI	(G) Ingredient for use in consumer products; highly dispersive use.	(G) Methyl carboxypentanoate
P–00–0520	02/16/00	05/16/00	CBI	(S) Chemical intermediate	(G) Perfluoroalkyl epoxide
P–00–0521	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0522	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0523	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0524	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0525	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0526	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0527	02/16/00	05/16/00	CBI	(G) Open non-dispersive use	(G) Polyester resin
P–00–0528	02/16/00	05/16/00	Elf Atochem North America, Inc.	(G) Metalworking lubricant	(G) Alkali salts of aryl carboxylates
P–00–0529	02/16/00	05/16/00	E.I. Du Pont De Nemours & Co.	(G) Polyamide additive	(G) Terpolyamide or copolyamide
P–00–0530	02/16/00	05/16/00	CBI	(S) Chemical intermediate	(G) Perfluoroalkyl acrylate
P–00–0531	02/22/00	05/22/00	Wacker silicones corp.	(S) Catalyst for htv silicon rubbers	(G) 1,5-cyclooctadiene, platinum complex
P–00–0532	02/22/00	05/22/00	CBI	(G) Destructive use	(G) Alkoxy alkyl aluminum halide

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/00 TO 02/25/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0533	02/18/00	05/18/00	Henkel Corp., Chemicals Group	(G) Dispersing agent	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2,2′′-[1,4-butanediylbis (oxymethylene)]bis[oxirane], dihydro-3-(tetrapropenyl)-2,5-furandione and α-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl)- compd. with 2-(dimethylamino)ethanol*
P–00–0534	02/22/00	05/22/00	CBI	(G) Coating component	(G) Copolymer of alkyl acrylates
P–00–0535	02/18/00	05/18/00	Condea Vista Company	(S) Feedstock for esterification	(S) 1-octadecanol, manuf. of distn. lights, fractionation heavies, distn. lights*
P–00–0536	02/18/00	05/18/00	U.S. Polymers Inc.	(S) A water soluble polyester for two component urethane coatings	(G) Reaction product of: polyoxyalkylene solution with trimethylolpropane, 1,4, cyclohexane dimethanol, cyclic aliphatic anhydrides, trimellitic anhydride and block copolymers of ethylene oxide + propylene oxide
P–00–0537	02/18/00	05/18/00	U.S. Polymers Inc.	(S) A water soluble polyester for two component urethane coatings	(G) Reaction product: polyoxyalkylene solution with trimethylolpropane, 1,4 cyclohexane dimethanol, cyclic aliphatic anhydrides and trimellitic anhydride
P–00–0538	02/22/00	05/22/00	CIBA Specialty Chemicals Corporation	(G) Isolated intermediate	(G) Piperidinol derivative
P–00–0539	02/22/00	05/22/00	CBI	(G) Open non-dispersive (resin)	(G) Blocked polyisocyanate
P–00–0540	02/22/00	05/22/00	CBI	(S) Processing aid for leather finishing	(G) Saturated dicarboxylic acid, polymer with polyester, polyamide and substituted carboxylic acids
P–00–0541	02/23/00	05/23/00	Eastman Chemical Company	(S) Chemical intermediate	(G) Chloro nitro phenyl ether
P–00–0542	02/22/00	05/22/00	Vianova Resins Incorporated	(S) Resin for can coatings;resin for tube coatings	(G) Modified phenol formaldehyde resin
P–00–0543	02/23/00	05/23/00	CBI	(G) Polymerization initiator	(S) Petanoic acid, 5,5′-dioxybis[5-oxo-]*
P–00–0544	02/22/00	05/22/00	3M Company	(S) Heat transfer;metal working;testing	(G) Hydrofluoroether
P–00–0545	02/22/00	05/22/00	CIBA Specialty Chemicals Corporation	(S) Light stabilizer for polyolefins	(G) Piperidinyl derivative
P–00–0546	02/23/00	05/23/00	CBI	(G) Dispersant/anti-agglomerant	(G) Alkyloxy-hydroxypropyl, trialkylamine, ammonium chloride
P–00–0547	02/23/00	05/23/00	CBI	(G) Precursor for dispersant/anti-agglomerant	(G) Alkyloxy-hydroxypropyl, dialkylamine
P–00–0548	02/23/00	05/23/00	CBI	(G) Additive for inks and coatings	(G) Polyurethane acrylate ester
P–00–0549	02/23/00	05/23/00	CBI	(G) Additive for inks and coatings	(G) Polyurethane acrylate ester
P–00–0550	02/23/00	05/23/00	CBI	(S) Chemical intermediate	(G) Acrylate ester
P–00–0551	02/23/00	05/23/00	CBI	(G) Polymerization initiator	(S) Butaneperoxoic acid, 2-ethyl-, 1,1-dimethylethyl ester*
P–00–0552	02/25/00	05/25/00	CBI	(G) Photocopying chemical	(G) Salicylic acid, zirconium salt
P–00–0553	02/25/00	05/25/00	Toagosei America Inc.	(S) Base material for acrylic coating	(S) 2-propenoic acid, 2-methyl-, 2-methylpropyl ester, telomer with 3-mercaptopropanoic acid, 2-hydroxy-3-[(2-methyl-1-oxo-2-propenyl)oxy]propyl ester*
P–00–0554	02/25/00	05/25/00	CBI	(G) Molded Parts Manufacture	(G)Diphenylmethane diisocyanate (mix of 4,4 isomers Terminated Polyester Poloyol*
P–00–0555	02/25/00	05/25/00	Wacker Silicones Corp.	(S) Plasters;building adhesive;hydrophobic coatings	(S) Neodecanoic acid, ethenyl ester, polymer with ethene and ethenyl acetate*
P–00–0556	02/25/00	05/25/00	CBI	(G) Open non-dispersive (thickening agent)	(G) Polyurethane
P–00–0560	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer
P–00–0561	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/00 TO 02/25/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0562	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer
P–00–0563	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICE RECEIVED FROM: 02/14/00 TO 02/25/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–00–0002	02/14/00	03/30/00	Lonza Inc.	(G) Organic intermediate (destructive use)	(S) *N,N'*-(2,5-dimethyl-1,4-phenylene)-bis-(3-oxo)-butanamide*

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 29 NOTICES OF COMMENCEMENT FROM: 02/14/00 TO 02/25/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0028	02/16/00	02/07/00	(G) Modified acrylic polymer
P–00–0046	02/15/00	01/29/00	(G) Aromatic substituted diurea
P–00–0062	02/22/00	01/25/00	(G) Metal complex tribromo tetrakis dimethyl methylethyl propoxy pthalocyanine derivative
P–00–0083	02/16/00	01/29/00	(G) Trimethylolpropane ester polymer
P–00–0120	02/18/00	02/09/00	(G) Hydroxy functional acrylic polymer
P–98–0524	02/14/00	02/02/00	(G) Hydrocy functional oligomer
P–99–0305	02/24/00	02/02/00	(G) Bisphenol a type polyester resin
P–99–0511	02/18/00	01/28/00	(G) Mixed metal oxide
P–99–0642	02/14/00	02/02/00	(G) Organomodified polysiloxane resin
P–99–0657	02/15/00	02/03/00	(G) Sodium alkoxide
P–99–0665	02/14/00	02/03/00	(G) Organomodified polysiloxane resin
P–99–0915	02/22/00	01/18/00	(G) Chromate, [[[(substituted)nitrophenyl] azo]naphthalenedisulfoanto] [[[(substituted)phenyl]azo]phenylbutanamidato]-, trisodium; chromate, bis [[[(substituted)nitrophenyl] azo]naphthalenedisulfoanto]-, pentasodium; chromate, bis [[[(substituted)phenyl]azo]phenylbutanamidato]-, sodium*
P–99–0928	02/15/00	02/01/00	(S) Ethanol, 2-[2-($C_{12–14}$-alkyloxy) ethoxy] derivs., hydrogen sulfates, compds. with triisopropanolamine*
P–99–0982	02/22/00	01/18/00	(G) Chromate, bis[[[(substituted) (phenylamino)ethyl]azo](substituted) benzenedisulfonato]-, potassium tetrasodium
P–99–0984	02/18/00	01/14/00	(G) Urethane acrylate oligomer
P–99–0985	02/24/00	02/08/00	(G) 1,3,6-substitutednapthalene-7-[[4,5-dihydro-3-methyl-5-oxo-1-(4-substitutedphenyl)-1*H*-pyrazol-4-yl]azo]-, tetrasodium salt
P–99–0986	02/24/00	02/08/00	(G) 1,3,6-substitutednapthalene-7-[[4,5-dihydro-3-methyl-5-oxo-1-(4-substitutedphenyl)-1*H*-pyrazol-4-yl]azo]-, tetrapotassium salt
P–99–1008	02/23/00	02/16/00	(G) Polyimide precursor solution
P–99–1042	02/22/00	01/27/00	(G) Alkoxylated dimer fatty acid, tall oil fatty acid ester
P–99–1081	02/14/00	02/02/00	(G) Saturated dicarboxylic acid, polymer with polyester, polyamide and substituted carboxylic acids
P–99–1082	02/22/00	01/28/00	(G) Inorganic salt
P–99–1089	02/22/00	02/11/00	(G) Polyether carboxylate
P–99–1091	02/22/00	02/11/00	(G) Polyether carboxylate
P–99–1106	02/23/00	02/07/00	(G) Sulfinic acid derivative
P–99–1150	02/24/00	02/03/00	(G) Cuprate (3)[3-hydroxy xo)4-[[2-(hydroxy-xo) carbomonocycle] azo xn'] carbopolycycle
P–99–1247	02/14/00	02/04/00	(G) Polymonomeric polyurethane
P–99–1252	02/24/00	02/06/00	(G) Polyamine adducts
P–99–1322	02/24/00	02/10/00	(G) Vegetable oil, chlorosulfurized
P–99–1367	02/23/00	02/14/00	(G) Allphatic anionic polyurethane dispersion in water

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 16, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–7248 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2392—Correction [1]]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 16, 2000.

Petiton for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed on or before March 27, 2000, and replies to oppositions on or before April 6, 2000. See Section 1.4(b)(1) of the Commission's Rules (47 CFR 1.4(b)(1)). The Commission is hereby waiving the filing requirements' deadlines established in accordance with 47 CFR Section 1.106 (g) and (h). However, all other requirements established in 47 CFR Section 1.106 are applicable. In addition, this proceeding will continue to be a non-restricted proceeding in which *ex parte* presentations are permitted, provided they are disclosed in conformance with Commission *ex parte* rules. See Sections 1.1202 and 1.1206(a) of the Commission's rules (47 CFR 1.1202, 1.1206(a)).

Subject: Application by New York Telephone Company (d/b/a Bell Atlantic—New York), Bell Atlantic Communications, Inc., Nynex Long Distance Company and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York (CC Docket No. 99–295).

Number of Petitions filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7299 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–M

[1] See 65 FR 12996 (March 10, 2000).

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–536]

Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests, if possible, to eliminate technical conflicts with digital television (DTV) stations and to move from channels 60 through 69 has been extended to July 15, 2000.

DATES: The window filing opportunity now closes July 15, 2000.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This window is available for (1) amendments (other than channel changes) to pending applications for new full-service NTSC television stations on channel 2 through 59, (2) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 60 through 69 (in addition, authorized NTSC stations and DTV allotments on channels 60 through 69 can seek permission to relocate to a lower channel at any time, including during this filing window, if they can identify a suitable channel) (3) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 2 through 59 at locations inside of the ''TV Freeze Areas'' and (4) amendments to pending rule making petitions to amend the TV Table of Allotments to add NTSC television allotments.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7172 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Application Pursuant to Section 19 of the Federal Deposit Insurance Act; (2) Public Disclosure by Banks; (3) Certification of Eligibility Under the Affordable Housing Program; and (4) Mutual-to-Stock Conversions of State Savings Banks.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

OMB Number: 3064–0018.

Form Number: 6710/07.

Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 80.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 1,280 hours.

General Description of Collection: Section 19 of the Federal Deposit Insurance Act requires insured depository institutions to obtain the FDIC's consent prior to any participation in their affairs by a person convicted of crimes involving dishonesty or breach of trust. Form 6710/07 is the vehicle for requesting FDIC consent.

2. *Title:* Public Disclosure by Banks.

OMB Number: 3064–0090.

Frequency of Response: Annually.

Affected Public: All financial institutions.

Estimated Number of Respondents: 6,374.

Estimated Time per Response: .5 hours.

Estimated Total Annual Burden: 3,187 hours.

General Description of Collection: 12 CFR 350 requires a bank to notify the general public, and in some instances shareholders, that disclosure statements are available upon request. Required disclosures consist of financial reports for the current and preceding year which can be copied directly from the year-end Call Report.

3. *Title:* Certification of Eligibility Under the Affordable Housing Program.

OMB Number: 3064–0116.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 1,000 hours.

General Description of Collection: The collection of information certifies income eligibility under the affordable housing program. This certification assists the FDIC in determining an individual's eligibility for purchasing affordable housing properties from the FDIC.

4. *Title:* Mutual-to-Stock Conversions of State Savings Banks.

OMB Number: 3064–0117.

Frequency of Response: On occasion.

Affected Public: State savings banks.

Estimated Number of Respondents: 25.

Estimated Time per Response: 50 hours.

Estimated Total Annual Burden: 1,250 hours.

General Description of Collection: 12 CFR 303.15 and 333.4 require state savings banks that are not members of the Federal Reserve System to file with the FDIC a notice of intent to convert to stock form and provide copies of documents filed with state and federal banking and or securities regulators in connection with the proposed conversion.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, D.C., this 16th day of March, 2000.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7252 Filed 3–22–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicant:

Samskip, Incorporated, 5365 Robin Hood Road, Suite A–2, Norfolk, VA 23513, Officers: Reynir Gislason, President (Qualifying Individual), Osk Gustafsdottir, Treasurer

Dated: March 20, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–7251 Filed 3–22–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Betty Ruth Womack (as trustee for the L.T. Womack Family Trust and the L.T. Womack Marital Trust) Litchfield Park, Arizona; to retain voting shares of Corn Belt Bancorporation, Lincoln, Nebraska, and thereby indirectly retain voting shares of Union National Bank, Anita, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Kelsoe Management Partnership, Ltd., Dallas, Texas; to acquire additional voting shares of WB&T Bancshares, Inc., Duncanville, Texas, and thereby indirectly acquire additional voting shares of Western Bank & Trust, Duncanville, Texas.

2. William Howard O'Brien, Amarillo, Texas; John Blake O'Brien, Amarillo, Texas; William Alexander O'Brien, Amarillo, Texas; Katherine O'Brien,

Wallin, Mountain View, California and Mary Fay Moore, Amarillo, Texas, to acquire additional voting shares of Grayco Bancshares, Inc., Mclean, Texas, and thereby indirectly acquire additional voting shares of Bank of Commerce, Mclean, Texas.

Board of Governors of the Federal Reserve System, March 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7134 Filed 3–22–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing project on ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on April 6 from 1:45–2:15 pm.

Dates/times	Location
April 6, 2000, 8:30 am–5:00 pm.	Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC.
April 7, 2000, 8:00 am–12:00 pm.	Same location as above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: March 17, 2000.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 00–7162 Filed 3–22–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00043]

Grants for National Academic Centers of Excellence on Youth Violence Prevention; Notice of Availability of Funds for Fiscal Year 2000

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for development of National Academic Centers of Excellence on Youth Violence Prevention (Centers). CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of injury and violence prevention, and mental health and mental disorders. For the conference copy of ''Healthy People 2010'', visit the Internet site: <http://www.health.gov/healthypeople>.

The primary goals of this program are to: (1) Build the scientific infrastructure necessary to support the development and widespread application of effective youth violence interventions, (2) promote interdisciplinary research strategies to address the problem of youth violence (3) foster collaboration between academic researchers and communities, and (4) empower communities to address the problem of youth violence.

B. Eligible Applicants

Eligible applicants are academic health centers, defined as public and private nonprofit universities, colleges, and university-associated teaching hospitals.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

C. Availability of Funds

Approximately $7,000,000 is available in FY 2000 to fund approximately seven to ten Centers. Applicants may apply for either a Developing Center or a Comprehensive Center, however, not for both.

Awards will begin on or about September 30, 2000, and will be made for a 12-month budget period. Developing Centers may be funded up to three years and Comprehensive Centers may be funded up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Awards for Developing Centers are expected to average $400,000 per year with a project period not to exceed three years. Awards for Comprehensive Centers are expected to average $1,000,000 per year and may be made up to a total of $1,500,000 per year (total of direct and indirect costs) with a project period not to exceed five years. For Comprehensive Center research projects can be submitted under two themes, Developmental/Risk Factor (DRF) Research and Efficacy/Effectiveness (EE) Research. Comprehensive Center applicants must submit from one to three DRF research project proposals, and/or from one to three EE research project proposals. Applicants may also apply for both themes under one Center for a cost of $1.5 million.

Use of Funds

Core budget with justification for categories corresponding to core activities, to include funds for management functions, non research activities, small one-year pilot projects of less than $15,000. The core budget should include items for development and implementation of a community response plan for youth violence, and development and implementation of curricula for training of health professionals.

D. Program Requirements

The following are applicant requirements for Developing and Comprehensive Centers:

1. Demonstrated expertise in:

(a) Research in risk and protective factors for youth violence and/or development and evaluation of preventive interventions for youth violence;

(b) Capacity to develop and facilitate implementation of a multi-disciplinary and multi-organizational community response plan for youth violence;

2. Provide evidence of capacity to develop, deliver, and maintain a training curriculum for health care professionals.

3. Provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, or vice president of a university. The director must have no less than 30 percent effort devoted solely to this project.

4. Provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

5. Provide evidence of involvement of a multi-disciplinary and multi-organizational group of specialists or experts in primary care, behavioral, and/or preventive medicine, epidemiology, law and criminal justice, behavioral and social sciences, and/or public health as needed to complete the plans of the center.

6. Demonstrate through documentation that full working partners must have established curricula and graduate training programs in disciplines relevant to youth violence prevention (e.g., epidemiology, criminology, social sciences, and behavioral sciences).

7. Demonstrate an established relationship with youth violence prevention programs through letters of commitment. Also include, established or planned relationships with organizations/individual leaders in communities where youth violence related injuries occur at high rates. A letter of support from an appropriate public health agency for support of the proposed center is required.

The following are additional applicant requirements for Comprehensive Centers only:

1. Demonstrated experience in successfully conducting, evaluating, and publishing youth violence prevention research and/or designing, implementing, and evaluating youth violence prevention programs (to include self-directed violence among the young).

2. Demonstrated ongoing youth violence prevention research projects and/or projects to develop and evaluate youth violence prevention interventions.

3. Demonstrated the capacity to disseminate youth violence prevention research findings, translate them into interventions, and evaluate their effectiveness.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should not be more than 25 single-spaced pages, printed on one side, with one inch margins, and unreduced font. Applications should follow the PHS 398 (rev. 4/98) application and Errata sheet, and should include the following information.

1. Cover Letter Outlining type of Center (Developing or Comprehensive) applying for.

2. Core budget (required for Developing and Comprehensive Centers).

F. Submission and Deadline

Letter of Intent (LOI)

Potential applicants should submit a LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section. Submit the original and two copies of the (LOI) on or before April 24, 2000. It should include what type of Center (Developing or Comprehensive) they may be applying. If applying for Comprehensive Center, identify which research areas will be addressed in the application; *i.e,* Development/Risk Factor and/or Efficacy Effectiveness. The LOI must also include the name and telephone number, of a contact person from the applicant institution. LOI's are intended for planning purposes only and are not binding. Facsimiles and E-mails are not accepted.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit. On or before May 22, 2000, submit applications to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are received either:

(a) On or before the deadline date; or

(b) Sent on or before the deadline date, and received in time for submission to the Special Emphasis Panel. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant. Bound materials may not be included in any part of the application.

Each proposed research project requires an RO1-type application using Form PHS 398 (Rev. 4/98) (http://grants.nih.gov/grants/forms.htm). The guidelines and page limits set forth in the PHS 398 should be followed, and the project should be included as a separate and distinct part of the overall application. Appendices for research projects shall not exceed 15 pages.

Additionally, within the narrative of the research plan section, include a brief description of each project in the following format (not to exceed one page for each Project):

Title of Project,

Topic Area; *i.e.,* Developmental/Risk Factor and/or Efficacy/Effectiveness.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel appointed by CDC. Applications which are complete and responsive will be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel(SEP) to determine if the application is of sufficient technical and scientific merit to warrant further full review by the SEP. Those applications judged to be competitive will be further evaluated by a dual peer review process.

CDC will withdraw from further consideration of applications judged to be noncompetitive.

Priority scores will be assigned by the SEP to the core and Efficacy/Effectiveness (EE) and Developmental/Risk Factor (DRF)applications.

1. Review by the Special Emphasis Panel (SEP)

a. Initial peer review of the applications will be conducted by the SEP, which will either recommend or not recommend the application for further consideration for funding.

Factors to be considered by the SEP for Core funding include:

(a) The specific aims of the application, *e.g.,* the long-term objectives and intended accomplishments for the proposed Center in relation to the problem of preventing youth violence and self-directed violence among the young. If the aims of the application are achieved, how will prevention of youth violence be advanced? What will be the effect of the Center's activities on violence prevention efforts within the Center's target community or region?

(b) The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives of the proposed Center.

(c) Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities. Project director: Is the proposed Center director appropriately trained and well-suited to carry out this work? Is the work proposed appropriate to the experience level of the proposed director and other key faculty and staff?

(d) Adequacy of institutional support and arrangements to ensure successful implementation of activities of the proposed Center; including arrangements for the Center director's time commitment and authority; and also including documentation of relationships and understanding of roles and responsibilities between partner institutions, and community organizations.

(e) Adequacy of plans to conduct pilot projects. Overall relevance of the project for the field of violence prevention. Adequacy of the setting and participants for the project. Relevance of outcome measurements, and expected results. Appropriateness of time lines, cost, and plans for translation/dissemination.

(f) Adequacy of plans and arrangements to develop and implement a community response to the problem of youth violence bringing together diverse perspectives (*i.e.* health and mental health professionals, educators, the media, parents, young people, police, criminal/juvenile courts, legislators, public health specialists, and business leaders. Documentation of agreements and clear understanding of roles and responsibilities of partner organizations.

(g) Adequacy of plans and arrangements to develop and implement curricula for training of health care professionals on violent behavior identification, assessment and intervention with high risk youth, and integrate this curriculum into medical, nursing, and other health professional training program.

(h) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

(i) Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

Factors to be considered by the SEP in reviewing Developmental/Risk Factors and Efficacy/Effectiveness research projects include:

(a) Does this research project application address an important problem? If the aims of the application are achieved, how will scientific prevention knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field forward?

(b) Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the research project application? Does the applicant acknowledge potential problem areas and consider alternative tactics?

(c) Does the research project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the research project challenge existing paradigms or develop new methodologies or technologies?

(d) Is the investigator appropriately trained and well-suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers?

(e) Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed project take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

(f) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

(g) Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of applications will be conducted by the Science and Program Review Work Group (SPRWG) of the ACIPC. The SPRWG consists of ACIPC members, Federal ex officio participants, and organizational liaisons. The Federal ex officio participants will be responsible for identifying projects in overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided. At the request of the SPRWG, the appropriate NCIPC divisional Associate Director for Science (ADS) or their designee may be invited to address the SPRWG during the secondary review to assure that research priorities of the announcement are understood and to provide background regarding current research activities. The SPRWG may reach over better ranked projects in order to assure maximal impact and balance of proposed research.

Factors to be considered by the ACIPC include:

a. The results of the peer (SEP) review.

b. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.

c. National and NCIPC priority needs and geographic balance.

d. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2010.

e. Budgetary considerations.

SPRWG members will vote on funding recommendations. The SPRWG may vote to approve, disapprove, or modify the recommendations for funding.

These recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRWG. The ACIPC can vote to approve, disapprove, or modify these recommendations for funding consideration. Recommendations are then presented to the Director, NCIPC, for funding decisions.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (annual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–20 Conference Activities within Grants/Cooperative Agreements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 391, 392, 393, and 394 of the Public Health Service Act, [42 U.S.C. 241, 280b, 280b-1, 280b-1a, and 280b-2] as amended. Program regulations are set forth in 42 CFR Part 52. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

For this announcement and other CDC program announcements see the CDC home page on the Internet: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the number for the announcement of interest. A complete program description and information on application procedures are contained in the application package.

Please refer to Announcement 00043 when requesting information and submitting an application. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2723, Email address slh3@cdc.gov.

Programmatic technical assistance may be obtained from: Enrique Nieves, Jr., Project Officer, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K–60), Atlanta, GA 30341–3724, Telephone number (770) 488–1281, Internet address: exn2@cdc.gov.

Other Potential Sources of Funds

The National Institute of Mental Health (NIMH) of NIH has announced the availability of funds for research grants in prevention strategies for disruptive behavior disorders in children and adolescents. The purpose of the RFA (RFA No. MH–00–011) is to encourage research applications addressing implementation, replication, and deployment strategies for sustaining prevention programs targeted towards reducing risks for or the onset of disruptive behavior problems in youth. The NIMH program announcements are available at http://www.nimh.nih.gov/grants/index.cfm.

Dated: March 17, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7167 Filed 3–22–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0792]

The Procter and Gamble Co.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 3, 2000 (65 FR 11585). The document announced that The Procter and Gamble Co. has filed a petition proposing that the food additive regulations regarding olestra be amended by removing the requirement for the label statement. A citation appeared incorrectly in the **SUPPLEMENTARY INFORMATION** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Mary D. Ditto, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3102.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–5096, appearing on page 11585 in the **Federal Register** of Friday, March 3, 2000, the following correction is made:

1. On page 11586, in the third column, under the **SUPPLEMENTARY INFORMATION** section, in the last paragraph, line 2, ''CFR 25.32(i)'' is corrected to read ''CFR 25.30(k)''.

Dated: March 14, 2000.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7133 Filed 3–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–012014
≤*Applicant:* Rare Feline Breeding Center, Center Hill, FL.

The applicant request a permit to sell in foreign commerce and export two males and two females tigers (*Panthera tigris*) to Bifengzia Ecological Zoo, Yaan City, China for the purpose of enhancement of the survival of the species through propagation and conservation education.

PRT–024236
Applicant: Richard A.Edlund, Muskegon, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–023045
Applicant: Ann Cornell, Joplin, M0.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–023047
Applicant: Harry M. Cornell, Jr. Joplin, M0.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd

maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–022663

Applicant: Columbus Zoo and Aquarium, Powell, OH.

The applicant requests a permit to import two male and one female captive-born African cheetahs (*Acinonyx jubatus*) from the Toronto Zoo, Ontario, Canada for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 17, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–7173 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Supplemental Environmental Assessment on the Continuation of General Swan Hunting Seasons in Parts of the Pacific Flyway

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This Notice advises the public that a Draft Supplemental Environmental Assessment on the Continuation of General Swan Hunting Seasons in Parts of the Pacific Flyway is available for public review. Comments and suggestions are requested.

DATES: You must submit comments on the Draft Environmental Assessment by May 22, 2000.

ADDRESSES: Copies of the Draft Environmental Assessment can be obtained by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Written comments can be sent to the same address. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Robert Trost at: Pacific Flyway Representative, U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6162.

SUPPLEMENTARY INFORMATION: The Draft Supplemental Assessment includes a review of the past 5-year experimental general swan hunting seasons in parts of the Pacific Flyway and alternatives for establishment of future operational swan hunting seasons in the same area. The Supplemental Assessment was prompted by requests from individuals, States, and various conservation organizations for a thorough examination of alternatives for swan hunting in the Pacific Flyway in light of continuing concerns for the Rocky Mountain Population of trumpeter swans. The Assessment deals with establishment of an operational approach for swan hunting and related efforts to address status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans. Four alternatives, including the proposed action, are considered.

Dated: March 13, 2000.

John G. Rogers,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–6933 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–220–1020XQ]

Call for Nominations for Northwest and Front Range Resource Advisory Councils (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of nomination period.

SUMMARY: The purpose of this notice is to extend the Nomination Period to fill positions which have recently been vacated on two Colorado, Bureau of Land Management (BLM), Resource Advisory Councils. The original notice calling for nominations appeared in the **Federal Register** on February 7, 2000 with the Nomination Period closing March 23, 2000. This Nomination Period has been extended to April 20, 2000.

The position to be filled on the Northwest Resource Advisory Council is ''Public-at-Large'' in Category 3.

The position on the Front Range Resource Advisory Council which is being filled is also ''Public-at-Large'' in Category 3.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the appropriate office by April 20.

ADDRESSES: Northwest Resource Advisory Council—Bureau of Land Management, Northwest Center, Attn: RAC Nomination, 2815 H Road, Grand Junction, Colorado 81506.

Front Range Resource Advisory Council—Bureau of Land Management, Front Range Center, Attn: RAC Nomination, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8553; for information about the Front Range Resource Advisory Council or Lynn Barclay, (970) 826–5096 for information about the Northwest Resource Advisory Council.

SUPPLEMENTARY INFORMATION: This Nomination Period has been extended to be consistent with the Bureau of Land Management's annual call for nominations to fill positions on the Councils whose terms expire each year.

Dated: March 14, 2000.

Donnie R. Sparks,

Center Manager.

[FR Doc. 00–7146 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–00–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, the Department of the

Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on April 26–28, 2000, at the James H. Baxter Civic Center, 313 E. 4th Street, Lordsburg, NM 88055.

There is an optional all day field trip on Wednesday, April 26, 2000, to the Gray Ranch area to look at vegetation and on-the-ground events. The optional tour will start at the Holiday Inn Express in Lordsburg, NM, at 8 a.m. and end back in Lordsburg, NM, at about 5 p.m. Transportation will be provided for RAC members. Any visiting public are welcome but must provide their own four-wheel-drive transportation, foods, and refreshments.

The meeting on Thursday, April 27, 2000, starts at 8 a.m. and will end about 5 p.m. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting. The meeting on Friday, April 28, 2000, starts at 8 a.m. and will end about 3:30 p.m. The ending time of 3:30 p.m. for the meeting may be changed depending on the work remaining for the RAC. The draft agenda for the RAC meeting includes an agreement on the meeting agenda; any RAC comments on the draft minutes of the last RAC meeting on February 24, 25, and 26, 2000, in Roswell, NM; and a check-in from the RAC members.

(The following are planned presentations that also include discussions:) A Standards and Guidelines update presentation; an update on the Robledo Mountains WSA; a presentation on RS 2477 (roads); BLM Field Office Managers State of the Field Office presentations with emphasis on invasive plants; several presentations on invasive plants from representatives of the State of New Mexico, BLM, RAC members, NM State Highway Department and a County; RAC Subcommittee reports from the Urban/Lands Subcommittee, the Oil and Gas Subcommittee, and the Roads and Trails Subcommittee; a public comment period to the RAC, RAC discussions and any RAC recommendations, develop draft agenda items and select a location for the next RAC meeting, and a RAC assessment on the current meeting.

The time for the public to address the RAC is on Friday, April 28, 2000, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10 starting time.

The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, NM 87502–0115; telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: March 17, 2000.

Richard A. Whitley,

Acting State Director.

[FR Doc. 00–7170 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–DE]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting April 27, 2000 at the Montana Fish, Wildlife, and Parks Conference Room west of Miles City starting at 8:00 a.m. Primary agenda topics include discussion on travel management, the BLM outfitter/guide program and updates on coalbed methane development, and the Pryor Mountain Wild Horse Herd Management Plan.

The meeting is open to the public and the public comment period is set for 11:00 a.m. on April 27. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: March 10, 2000.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 00–7212 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1651–DD]

Notice of Closure to Motorized Vehicles

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure Order for Motorized Vehicle Travel.

SUMMARY: Notice is hereby given that effective March 3, 2000 certain public lands in Chaffee County, Colorado are closed to all types of motorized vehicle travel. The purpose of this closure is to prevent the development of unauthorized user-created trails, to prevent resource damage to soils and vegetation, and to prevent wildlife harassment. This closure is made under the authority of 43 CFR 8364.1.

EFFECTIVE DATES: This closure is effective March 3, 2000 and shall remain in effect until revised, revoked or amended.

ADDRESSES: Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Associate Field Office Manager or James R. Cunio, Forester.

SUPPLEMENTARY INFORMATION: The public lands affected by this temporary closure are identified as follows:

Chaffee County, Colorado, Sixth Principal

Meridian: Cache Creek Area, located immediately west of Granite, Colorado; south of the Lake and Chaffee County boundary, north of Chaffee County Road 390 and west of U.S. Highway 24.

T.11S., R.79W. All public lands in that part of Section 31 lying west of the right-of-way of U.S. Highway 24.

T.11S., R.80W. All of the following described public lands lying south of the Chaffee and Lake County boundary, but not including those lands within the right of way for Chaffee County Roads 398, 398A, 398B, 398C or 398D.

Section 34 NE¼
Section 35 All
Section 36 All except the Granite Cemetary

T.12S., R.79W. All of the following described public lands lying west of the right-of-way of U.S. Highway 24 and north of Chaffee County Road 390.

Section 5 SW¼ except MS117
Section 6 All
Section 7 N½N½
Section 8 N½NW¼

T.12S., R.80W.

Section 1 All
Section 2 All except MS3615

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine of up to $100,000 and/or imprisonment for up to one year as defined in 18 U.S.C. 3571. Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office.

Donnie Sparks,

Royal Gorge Field Office Manager.

[FR Doc. 00–7143 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1430–ET; CACA 7820]

Public Land Order No. 7435; Revocation of Public Land Order No. 460; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in its entirety as to the remaining 80 acres of land withdrawn in contemplation of inclusion into Naval Petroleum Reserve No. 1. The land is no longer needed for the purpose for which it was withdrawn. This action will open the 80 acres to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 460, which withdrew public land in contemplation of inclusion into Naval Petroleum Reserve No. 1, is hereby revoked in its entirety as it affects the following described land:

Mount Diablo Meridian

T. 31 S., R. 24 E.,
Sec. 14, N½W¼.

The area described contains 80 acres in Kern County.

2. At 10 a.m. on April 24, 2000, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on April 24, 2000, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7213 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–00–1420–BJ]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 28, 2000.

New Mexico Principal Meridian, New Mexico

Cieneguilla Grant, approved February 10, 2000, for Group 970 NM.

A person or party who wishes to protest against this survey must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plat represents original surveys.

This plat will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: March 14, 2000.

James D. Claflin,

Acting Chief Cadastral, Surveyor for New Mexico.

[FR Doc. 00–7215 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that meeting of the Na Hoapili o Kaloko-Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 7:00 p.m. to 9:00 p.m., May 5, 2000, at the King Kamehameha's Kona Beach Hotel, Kulana Hulihonua Room, Kailua-Kona, Hawaii.

The agenda will include the following: Status of vacancies and Commissioners' terms of appointments,

budget update, and cultural center development. The Superintendent's and committee reports will also be presented.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after May 31, 2000. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: March 15, 2000.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 00–7171 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Development of a Groundwater Replenishment System

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a Final Environmental Impact Report/ Environmental Impact Statement (FEIR/ EIS) FES 00–10.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation), Orange County Water District, and Orange County Sanitation District have prepared a FEIR/EIS on potential impacts from the development of a Groundwater Replenishment System in Orange County, California. Reclamation's involvement stems from the possibility of the agency funding some of the project.

ADDRESSES: Copies of the FEIR/EIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 208–4662.

Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303)236–6963.

Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470: telephone: (702) 293–8698.

Orange County Water District, P.O. Box 8300, Fountain Valley, CA; telephone: (714) 378–3200.

FOR FURTHER INFORMATION CONTACT: Mr. Del Kidd, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8698, or Ms. Debbie Burris, Orange County Water District, P.O. Box 8300, Fountain Valley, CA 92728–8300; telephone (714) 378–3200 ext. 4423.

SUPPLEMENTARY INFORMATION: The Groundwater Replenishment System is a proposal to take secondary, treated wastewater from the Orange County Sanitation District treatment plant in Fountain Valley, California, and further process this water to drinking water standards. The processed water will be used for groundwater recharge, for injection into a seawater intrusion barrier, and for landscape irrigation and industrial process water. Otherwise, the water would be discharged into the Pacific Ocean. The Groundwater Replenishment System would supplement existing water supplies. The System would provide a new, cost-effective and reliable source of water to recharge the Orange County Groundwater Basin, protect the Basin from further degradation due to seawater intrusion, and augment the supply of reclaimed water for irrigation and industrial use.

Review of the Draft EIR/EIS led to some modifications of the proposed project. These modifications do not substantially change the nature and significance of impacts of the proposal, nor do they substantially change the construction disturbances or project operations. They do require that all (100%) of the secondary effluent treated by the Groundwater Replenishment System treatment facilities would be routed through the micro filtration and reverse osmosis filtration process. (Under the original proposal there was to be blending of some of the water.)

This additional processing will improve the water quality to beyond Environmental Protection Agency's Drinking Water Standards and the processed water will be better than any other water used for replenishment in the Orange County Groundwater Basin today. The comment on the Draft also lead the Districts to commit to study expansion of the injection well system. In addition, the Districts committed to conducting a risk assessment.

The Draft EIR/EIS was issued on December 3, 1998. Comments received from interested organizations and individuals on the Draft EIR/EIS were addressed in the Final EIR/EIS. No decision will be made on the proposal until 30 days after the release of the Final EIR/EIS. After the 30 day waiting period, Reclamation will complete a Record of Decision. This document will present the action that will be implemented and will discuss all factors leading to the decision.

Dated: March 7, 2000.

William J. Leibhauser,

Manager, Environmental Compliance and Realty Group.

[FR Doc. 00–7210 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 29, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: None.

2. Minutes.

3. Ratification List.

4. Inv. Nos. 701–TA–269–270 and 731–TA–311–317 and 379–380 (Review) (Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 12, 2000.)

5. Inv. Nos. 731–TA–367–370 (Review)(Color Picture Tubes from Canada, Japan, Korea, and Singapore)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 13, 2000.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 17, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7255 Filed 3–20–00; 4:12 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS crime analysis units survey.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1110 Vermont Ave., NW, Washington, DC 20530–0001; attn: Karen Beckman.

Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, attn: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suit 1220, 1331 Pennsylvania Avenue NW, Washington, DC, 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component'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.

The proposed collection is listed below:

COPS Crime Analysis Units Survey

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* COPS Crime Analysis Units Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: COPS 034/01; Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Representatives from police agencies with over 100 sworn personnel will be asked to respond (approximately 800). The COPS Crime Analysis Units Survey will collect basic information about the nature, extent, and quality of recipient's crime analysis capabilities.

The COPS office will use the information collected to assess whether crime analysis units provide analytic support systems that efficiently and accurately process data that define problems and help promote solutions. Data from the surveys will be used to produce a final technical report assessing the nature of crime analysis units, a summary of the findings and an easy-to-read guidebook to aid in the development and enhancement of crime analysis units.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by mail to approximately 800 law enforcement agencies with sworn forces over 100. Administrative preparation and survey completion will take approximately 0.75 hours per respondent (including record keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 600 hours.

Public comment on this proposed information collection is strongly encouraged. If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Pace, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 16, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–7044 Filed 3–22–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–0227(2000)]

Trucks Used Underground to Transport Explosives—Inspection Record; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Trucks Used Underground to Transport Explosives (29 CFR 1926.903(e))—Inspection Certification.

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 22, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0227(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Trucks used Underground to

Transport Explosives—Inspection Certification is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR on Trucks used Underground to Transport Explosives—Inspection Certification, contact OSHA on the Internet at *http://www.osha–slc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents properly assessed. The Occupational Safety and Health Act of 1 970 (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).

II. Proposed Action

The inspection certification required in 29 CFR 1926.903(e) is necessary to assure compliance with the requirement for inspection of the electrical system in trucks used for the underground transportation of explosives. The inspection assures that the truck have a weekly maintenance check of the electrical system to detect any failures which may constitute an electrical hazard. Employers must prepare and retain a certification record of the inspection.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Truck used Underground to Transport Explosives—Inspection Certification (29 CFR 1926.903(e)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Trucks used Underground to Transport Explosives—Inspection Certification (29 CFR 1926.903(e)).

OMB Number: 1218–0227.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 1.

Frequency: Weekly.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 9 hours.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 17th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7137 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–0217(2000)]

Construction Records for Blasting Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(i)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 22, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0217(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Construction Records for Blasting Operations is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR Construction Records For Blasting Operations, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments is clearly understood, and the impact of information collection requirements on respondents can be properly assessed. 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).

II. Proposed Actions

This provision requires employers to post a sign warning against the use of mobile radio transmitters on all roads within 1000 feet of blasting operations. When this requirement creates an ''operational handicap'', the employer must develop and implement an alternative method that will prevent the premature detonation of electronic blasting caps. The alternative method must be in writing, and a competent person must certify its adequacy.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Records for Blasting Operations.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(i)).

OMB Number: 1218–0217.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 160 work sites.

Frequency: Once per 160 work sites.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 1,280.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 17th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7138 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–023–0231(2000)]

Construction Records for Tests and Inspections of Personnel Hoists; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Construction Records for Test and Inspections of Personnel Hoists (29 CFR 1926.552(c)(15)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 22, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0231(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Construction Records for Tests and Inspections of Personnel Hoists is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR on Construction Records for Test and Inspection for Personnel Hoists, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents properly assessed. 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).

II. Proposed Actions

The certification record required in 29 CFR 1926.552(c)(15) is necessary to assure compliance with the requirement for personnel hoists. It assures that the hoists have initial, periodic, and regular maintenance checks. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Records for Test and Inspections of Personnel Hoists (29 CFR 1926.552(c)(15)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Test and Inspections of Personal Hoists (29 CFR 1926.552(c)(15)).

OMB Number: 1218–0231.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 14,400.

Frequency: Every 3 months.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 15,840.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, D.C., this 17th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7139 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 97–41

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 97–41. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before May 22, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits an employee benefit plan to purchase shares of one or more open-end management investment companies (Mutual Fund) registered under the Investment Advisers Act of 1940, and which also serves as a fiduciary of the plan, in exchange for plan assets transferred in-kind to the Mutual Fund from a collective investment fund (CIF) maintained by the bank or plan adviser, where the bank or plan adviser is both the investment adviser to the Mutual Fund and a fiduciary of the plan. The transfer and purchase must be in connection with a complete withdrawal of a plan's assets from the CIF. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the bank or plan adviser and the registered investment company.

In order to ensure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department requires the bank to give the independent fiduciary notice of the in-kind transfer and full written disclosure of information concerning the registered investment company. Further , the bank or plan adviser must provide the independent fiduciary with certain ongoing disclosures.

II. Desired Focus of Comments

The Department is particularly interest in comment that:

- 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.

III. Current Action

This existing information collection should be continued because without this exemption, plans would be unable to engage in transactions with banks and advisers of registered investment companies who maintain CIFs. For the Department to grant an exemption, however, it must ensure the participants and beneficiaries are protected. It, therefore, included certain conditions and disclosures to ensure that the independent fiduciary will have the information necessary to effectively monitor the registered investment company investments made by the plan.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Prohibited Transaction Class Exemption 97–41.

OMB Number: 1210–0104.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 1,767.

Respondents: 75.

Frequency of Response: On occasion.

Responses: 75.

Total Burden Cost (Operating and Maintenance): $119,250.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–7246 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–29–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 16, 2000.

TIME AND DATE: 2 p.m., Wednesday, March 15, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. Secretary of Labor on behalf of Stahl v. A&K Earth Movers, Inc., Docket No. WEST 2000–145–DM.

No earlier announcement of the meeting was possible.

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–7254 Filed 3–20–00; 4:13 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (115).

Date and Time: April 4, 2000; 8:30 am to 5:00 pm, April 5, 2000; 8:30 am to 2:00 pm.

Place: Radisson Barcelo Hotel, Washington, DC.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Day 1—Discussion of Information Technology Research and CISE FY 2001 Budget. Day 2—Report from the Assistant Director and complete writing assignments on recommendations to the Director and Assistant Director.

Dated: March 20, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–7185 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: April 6–7, 2000; 8:00 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd, Room 770, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Richard A. Behnke, Section Head, Upper Atmospheric Research Section, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1518.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Space Weather proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–7188 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: May 9–11, 2000, 8:00 am–5:00 pm.

Place: California Institute of Technology, Pasadena, CA.

Type of Meeting: Closed.

Contact Person: David Berley, Program Manager, Laser Interferometer Gravitational-Wave Observatory (LIGO), Physics Division, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To review progress on the LIGO project.

Agenda: Review the installation and commissioning of LIGO. Review the Data Analysis Acquisition Plan.

Reason for Closing: The LIGO II plans include information of a proprietary or confidential nature, including technical information, information on personnel and data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–7186 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: April 12, 13, 14, 2000, 8:30 am–5:00 pm.

Place: NSF, Room 340, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: John A. Byers, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1419.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 14th, 2000, 9:00 am to 10:00 am. Discussion on research trends, opportunities and assessment procedures in Physiology and Ethology.

Closed Session: April 14th, 2000, 8:30 am–5:00 pm; April 13th, 8:30 am to 6:00 pm; April 14th, 8:30 am–9:00 am and 10:00 am–5:00 pm. To review and evaluate the Animal Behavior proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–7187 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Unit 1); Exemption

I

Carolina Power & Light Company (CP&L or the licensee) is the holder of Facility Operating License No. NPF–63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP) at power levels not to exceed 2775 megawatts thermal. The facility consists of one pressurized-water reactor located at the licensee's site in Wake and Chatham Counties, North Carolina. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

II

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the full-participation biennial exercise required by paragraph 2.c. Paragraph 2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full-participation exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. CP&L successfully conducted a full-participation exercise for HNP during the week of October 7, 1997. By letter dated December 7, 1999, the licensee requested an exemption from Sections IV.F.2.b and c of Appendix E regarding the conduct of a full-participation exercise originally scheduled for September 21, 1999. Specifically, the licensee proposed rescheduling the exercise originally scheduled for September 21, 1999, and completing the onsite and offsite exercise requirements in two parts. The licensee would use the onsite exercise conducted on January 11, 2000, without the participation of the State of North Carolina and local government response agencies, to meet the onsite requirement. The offsite portion of the exercise would be conducted on June 27, 2000, with the participation of the State of North Carolina and local government response agencies.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

III

The licensee requests a one-time change in the schedule for the next full-participation exercise for HNP. Subsequent full-participation exercises for HNP would be scheduled at no greater than 2-year intervals in accordance with 10 CFR Part 50, Appendix E, Section IV.F.2.c. Accordingly, the exemption would provide only temporary relief from that regulation.

As indicated in the licensee's request for an exemption of December 7, 1999, the licensee had originally scheduled a full-participation exercise for September 21, 1999. As further set forth in that letter, however, due to the significant impact and damage from hurricane ''Floyd,'' the State of North Carolina and the local emergency response agencies were occupied with responding to the natural disaster and were unable to participate in and could not support the exercise. In discussions on September 14, 1999, the NRC and FEMA indicated concurrence with rescheduling the exercise due to preparations and response to hurricane ''Floyd.'' In a letter dated January 19, 2000, FEMA documented its support for rescheduling the exercise. Accordingly, the licensee made a good faith effort to comply with the schedule requirements of Appendix E for full-participation exercises.

The staff completed its evaluation of the licensee's request for an exemption. The staff, having considered the schedule and resource issues resulting from responding to hurricane ''Floyd'' and the subsequent flooding, and the fact that the licensee conducted the onsite portion of the exercise on January 11, 2000, only 3 months beyond the required interval, finds the request acceptable.

IV

The Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the exemption from Section IV.F.2.b and c of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 14322).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7238 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and Midamerican Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (ComEd, or the licensee) to withdraw its August 31, 1998, application for proposed amendments to Facility Operating Licenses Nos. DPR–29 and DPR–30 for the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would have revised the maximum allowable Main Steam Isolation Valve leakage from 11.5 standard cubic feet per hour

(scfh) to 30.0 scfh when tested at 25 psig, in accordance with Technical Specification Surveillance Requirement 4.7.D.6.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 23, 1998 (63 FR 50935). However, by letter dated December 17, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 31, 1998, and the licensee's letter dated December 17, 1999, which withdrew the application for license amendment. The above documents are 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 17th day of March 2000.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7240 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company (Davis-Besse Nuclear Power Station); Exemption

I

The FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station (DBNPS). The license provides, among other things, that the license is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site in Ottawa County, Ohio.

II

Section 50.44 of Title 10 of the Code of Federal Regulations, ''Standard for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of that section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA) by—(1) Metal-water reaction involving the fuel cladding and the reactor coolant, (2) Radiolytic decomposition of the reactor coolant, and (3) Corrosion of metals.

Section 50.46 of Title 10 of the Code of Federal Regulations, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,'' requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated LOCAs conform to the criteria set forth in paragraph (b) of that section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated.

Appendix K to Part 50 of Title 10 of the Code of Federal Regulations, ''ECCS Evaluation Models,'' requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation.

10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than Zircaloy or ZIRLO. The licensee has requested the use of Framatome Cogema Fuels (FCF) ''M5'' advanced alloy for fuel rod cladding for the DBNPS operating Cycle 13. The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation induced growth relative to both standard Zircaloy (1.7% tin) and low-tin Zircaloy (1.2% tin). The addition of niobium increases ductility which is desirable to avoid brittle failures. Since the chemical composition of the M5 alloy differs from the specifications for Zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 alloy as a cladding material at the DBNPS.

Section 50.12 of Title 10 of the Code of Federal Regulations, ''Specific Exemptions,'' states, among other items, that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for ECCS. In its topical report BAW–10227P, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' Framatome Cogema Fuels (FCF) demonstrated that the effectiveness of the ECCS will not be affected by a change from Zircaloy fuel rod cladding to M5 fuel rod cladding. Analysis described in the topical report also demonstrates that the ECCS acceptance criteria applied to reactors fueled with Zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding.

The underlying purposes of 10 CFR 50.44 and 10 CFR part 50, Appendix K, paragraph I.A.5, are to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Specifically, Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In their topical report, FCF demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material, and that the amount of hydrogen generated in an M5-clad core during a LOCA will remain within the DBNPS design basis.

The staff has reviewed the FCF's advanced cladding and structural material, M5, for pressurized water reactor fuel mechanical designs as described in BAW–10227P. In a Safety Evaluation dated February 4, 2000, the staff concluded that, to the extent and limitations specified in the staff's evaluation, the M5 properties and mechanical design methodology are acceptable for referencing in fuel reload

licensing applications. Therefore, since the underlying purposes of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K, paragraph I.A.5 are achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of exemptions to 10 CFR 50.44 and 10 CFR part 50, Appendix K, paragraph I.A.5 exist.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants FENOC an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (65 FR 794).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of March 2000.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7241 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, et al., Maine Yankee Atomic Power Station; Notice of Receipt and Availability for Comment of License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the License Termination Plan (LTP) for the Maine Yankee Atomic Power Station (MYAPS) located in Lincoln County, Maine.

Maine Yankee Atomic Power Company (MYAPC, or the licensee) announced permanent cessation of power operations of MYAPS on August 7, 1997. In accordance with NRC regulations, MYAPC submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for MYAPS to the NRC on August 27, 1997. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. MYAPC submitted the proposed LTP for MYAPS by application dated January 13, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the MYAPS LTP, and will accept comments from affected parties. In accordance with 10 CFR 50.82(a)(9)(iii), the NRC is also providing notice that the NRC staff will conduct a meeting to discuss the MYAPS LTP on Monday, May 15, 2000, at 7:00 p.m. at Wiscasset High School, Wiscasset, Maine.

The MYAPS LTP is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W, Washington, DC 20037. An electronic version of the LTP may be viewed through the NRC ADAMS system, accession number ML003676560 or the Maine Yankee Atomic Power Company web site, www.maineyankee.com.

Comments regarding the MYAPS LTP may be submitted in writing and addressed to Mr. Michael Webb, Mail Stop O–11–D19, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1347 or e-mail mkw@nrc.gov.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of March 2000.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7242 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–354]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License No. NPF–57, 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. NPF–57 issued to Public Service Electric and Gas Company (the licensee) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would change Technical Specification definition 1.7, CORE ALTERATION. The definition would be revised to be similar to the definition of CORE ALTERATION that is documented in NUREG–1433, Revision 1, ''Standard Technical Specifications, General Electric Plants, BWR/4.''

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:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC) and there is no direct effect on plant operation. The proposed changes do not affect any accident initiators or precursors and do not change or alter the design assumptions for systems or components used to mitigate the

consequences of an accident. The proposed changes do not impact the requirements for refueling evolutions associated with the shutdown margin, core monitoring and reactor protection system operability. There are no changes to parameters governing plant operation and no different or new types of equipment will be installed. These changes do not impact any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). Therefore, no increases in the probability of an accident or consequences will result due to this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. There are no changes to the parameters governing plant operation and no different or new type of equipment will be installed. There is no change in any method by which a safety related system performs its function. No new type of equipment is being introduced and installed equipment is not being operated in a new or different manner. There are no setpoints affected by the proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. As such, no new failure modes are being introduced. There are no changes to assumptions in the accident analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The initial conditions and methodologies used in the accident analyses remain unchanged. Therefore, accident analyses results are not impacted. There are no resulting effects on plant safety parameters or setpoints. The proposal does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings, or a significant relaxation of the bases for the limiting conditions for operations. Therefore, these proposed changes do not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 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 April 24, 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 close of business on 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 Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 15, 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 16th day of March 2000.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7244 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NOS. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K to the Duke Energy Corporation (the licensee/Duke) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, respectively, located in Oconee County, Seneca, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50 to allow the use of Framatome Cogema Fuels (FCF) ''M5'' advanced alloy as a fuel rod cladding material.

The proposed action is in accordance with the licensee's application for an exemption dated September 15, 1999.

The Need for the Proposed Action

The proposed action is needed to allow the use of Framatome Cogema Fuels (FCF) ''M5'' advanced alloy as a fuel rod cladding material. The exemption is necessary since the chemical composition of M5 differs from the Zircaloy and ZIRLO cladding material specified in the regulations. The M5 alloy is a proprietary zirconium-based alloy, composed primarily of zirconium and niobium, that has demonstrated superior corrosion resistance and reduced irradiation growth relative to both standard and low-tin Zircaloy. Since the chemical composition of the M5 alloy differs from the specifications for Zircaloy or ZIRLO, an exemption is required for the use of the M5 alloy as a fuel cladding material at Oconee. The regulations set forth in 10 CFR 50.44, 10 CFR 50.46 and Appendix K to 10 CFR Part 50 contain acceptance and analytical criteria regarding the light water nuclear reactor system performance during and following a postulated loss-of-coolant accident. These regulations specify the use of only two types of fuel cladding material, Zircaloy and ZIRLO.

Environmental Impacts of the Proposed Action

The proposed action to implement the exemption described above is designed to enhance fuel rod performance characteristics over that of Zircaloy or ZIRLO clad fuel rods. The proposed action does not exempt the licensee from complying with the acceptance and analytical criteria of 10 CFR 50.44, 10 CFR 50.46 and Appendix K to 10 CFR Part 50 applicable to the M5 alloy cladding. The exemption solely allows the criteria set forth in these regulations to apply to the M5 cladding material. The staff has concluded that the proposed action will not significantly increase the probability or consequences of accidents, there are no changes being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because this exemption will not change the criteria set forth in the present regulations, since the M5-clad fuel has been shown by the licensee to be capable of meeting this criteria. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on March 14, 2000, the staff consulted with the South Carolina State official, Mr. Virgil L. Autry of the Division of Radiological Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 15, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of March 2000.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Section Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7237 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–13]

Entergy Operations, Inc., Arkansas Nuclear One Power Plant; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2) and 72.214 to Entergy Operations, Inc. (Entergy). The exemption would allow Entergy to store burnable poison rod assemblies (BPRAs) in Ventilated Storage Cask–24 (VSC–24) systems at the Arkansas Nuclear One (ANO) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated February 3, 2000, Entergy requested an extension to a previous exemption granted to Entergy by NRC on April 9, 1999, from the requirements of 10 CFR 72.12(a)(2) and 72.214 to store BPRAs in VSC–24s at the ANO ISFSI. NRC published an Environmental Assessment and Finding Of No Significant Impact for the previous exemption request in the **Federal Register** (64 FR 13611, March 19, 1999). The April 9, 1999, NRC letter placed conditions on the exemption, including that no more than four VSC–24s containing BPRAs could be loaded and the loading of these four VSC–24s would need to be accomplished prior to September 1999. These conditions were based on (1) ANO's request to load four casks prior to the September refuel outage to regain full core offload reserves in the Unit 1 spent fuel pool and (2) NRC's expectation of completion of a rulemaking, under 10 CFR 72.214 before the next ANO refueling outage, which would amend the Certificate of Compliance (CoC) for the VSC–24 cask to permit storage of spent fuel containing BPRAs (64 FR 51187, September 22, 1999).

The 10 CFR 72.124 rulemaking is not completed and the ANO, Unit 1, spent fuel pool has again lost full core offload reserves. ANO must load three VSC–24s with fuel containing BPRAs to regain full core offload reserves prior to the next refueling outage, scheduled for Spring 2000.

ANO is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K. ANO is using the VSC–24 design approved by NRC under CoC No. 1007 to store spent fuel at the ISFSI. However, CoC No. 1007 does not authorize the storage of BPRAs.

The ISFSI is located 6 miles west-northwest of Russellville, Arkansas, on the ANO Power Plant site. The ANO ISFSI is an existing facility constructed for interim dry storage of spent ANO nuclear fuel.

By exempting ANO from 10 CFR 72.212(a)(2) and 72.214, ANO will be authorized to use its general license to store spent fuel with BPRAs in casks approved under part 72, as exempted, until the 10 CFR 72.214 rulemaking is complete. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On December 30, 1998, the cask designer, Sierra Nuclear Corporation (SNC), submitted a Certificate of Compliance amendment request to NRC to address the storage of Babcock and Wilcox (B&W) 15x15 fuel with BPRAs. The NRC staff has reviewed the application and determined that storing B&W 15x15 fuel with BPRAs in the VSC–24 would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

ANO has lost full core offload reserves in the Unit 1 spent fuel pool and Unit 1 is scheduled for a refueling outage in Spring 2000. ANO must load three VSC–24s with fuel containing BPRAs to regain full core offload reserves.

Environmental Impacts of the Proposed Action

The potential environmental impact of using the VSC–24 system was initially presented in the EA for the Final Rule to add the VSC–24 to the list of approved spent fuel storage casks in 10 CFR 72.214 (58 FR 17948 (1993)). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2)(iii). This section requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation].''

VSC–24s are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural

phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightening effects, fire, explosions, and other incidents.

Special cask design features include a double-closure welded steel multi-assembly sealed basket (MSB) made from SA–516 Gr 70 pressure vessel steel to contain the spent fuel. This MSB is up to 181-inches long, 62.5 inches in diameter, with 1.0-inch thick walls. The MSB is placed inside of a ventilated Concrete Cask (VCC) and positioned for storage on the concrete ISFSI pad. The VCC is up to 213-inches long, 132 inches in diameter, and 31.75-inches thick. The VCC wall consists of a 1.75-inch thick steel inner liner surrounded by reinforced concrete and steel ducts for a passive ventilation system.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

Storage of B&W 15x15 fuel containing BPRAs would increase the maximum potential cask does rates by no or than 13 percent at any location on a loaded VSC–24 system. For a VSC–24 loaded with fuel containing BPRAs, the highest dose would be found at the top center of the cask. This dose was calculated to increase from 30 mrem/hr without BPRAs to 32.2 mrem/hr with BPRAs. The occupational exposure is not significantly increased and off-site dose rates remain well within the 10 CFR Part 20 limits. Therefore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (58 FR 17948).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of storing B&W 15×15 fuel with BPRAs in the VSC–24 system.

Alternative to the Proposed Action

The staff evaluated other alternatives involving removal of the BPRAs from the fuel assemblies and found that these alternatives produced a greater occupational exposure and an increased environmental impact as a result of handling the BPRAs separately as low-level waste. The alternative to the proposed action would be to deny approval of the exemption and, therefore, require ANO to disassemble and store the BPRAs as low-level waste in separate containers.

Agencies and Persons Consulted

On February 11, 2000, Bernard Bevill from the Division of Radiation Control and Emergency Management, Arkansas Department of Health, was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2) and 72.214 so that ANO may store B&W 15x15 fuel containing BPRAs in VSC–24s will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the Entergy exemption request dated February 3, 2000, which is docketed under 10 CFR part 72, Docket No. 72–13. The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, 20555 and accessible electronically through the ''ADAMS'' Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov/nrc/reference.html).

Dated at Rockville, Maryland, this 13th day of May 2000.

For the Nuclear Regulatory Commission.

E. Willliam Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–7243 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5, issued to Southern Nuclear Operating Company, Inc., *et al.* (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow an increase in the storage capacity of Unit 1's spent fuel pool (SFP) from 3181 to 3349 and of Unit 2's SFP from 2845 to 2933. This will be accomplished by placing a single high density storage rack containing 168 storage spaces in an 8 by 21 array in the Contaminated Equipment Storage Area (CESA) of each unit's pool where currently no racks exist. Accordingly, the Hatch 1 SFP licensed storage capacity will increase to a total of 3349 (3181 + 168) fuel assemblies. However, the Hatch 2 SFP licensed storage capacity will only increase to a total of 2933 (2845 + 88) fuel assemblies because the new Holtec rack will ''replace'' the four original standard type storage racks capable of storing 80 assemblies that were planned for installation in the Unit 2 CESA but they were, in fact, never installed.

The proposed action is in accordance with the licensee's application for amendment dated April 6, 1999.

The Need for the Proposed Action

Long term plans for spent fuel storage at Hatch include utilization of dry cask storage at a separate facility located on the plant site. However, due to uncertainties in cask fabrication and procurement and cask loading, the licensee is proposing to increase the storage capacity of the SFPs. The increased storage capacity of one SFP will allow a full core discharge from one unit after the next refueling outage. The increased storage capacity of the second SFP will allow a full core discharge of the second unit after its next refueling outage.

Environmental Impacts of the Proposed Action

Solid Radioactive Wastes

The necessity for pool filtration resin replacement is determined by the requirement for water clarity, and the resin is normally expected to be changed about once a year. The licensee does not expect the resin change-out frequency of the SFP purification system to be permanently increased as a result of the expanded storage capacity. Overall, the licensee concludes that the additional fuel storage made available by the increased storage capacity will not result in a significant change in the generation of solid radioactive waste.

Occupational Radiation Exposure

The licensee plans to utilize the Contaminated Equipment Storage Area in each unit's SFP where racks do not

currently exist. The licensee estimates that the collective dose associated with the proposed fuel rack installation is in the range of 2 to 4 person-rem. All of the operations involved in racking will utilize detailed procedures with the full consideration of ALARA (as low as reasonably achievable) principles. The Radiation Protection Department will prepare Radiation Work Permits (RWPs) for the various jobs associated with the SFP rack installation operation. These RWPs will instruct the project personnel in the areas of protective clothing, general dose rates, contamination levels and dosimetry requirements. Personnel will wear protective clothing and will be required to wear personnel monitoring equipment including alarming dosimeters.

Since the proposed license amendments do not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to utilize divers to remove any interference which may impede the installation of the new spent fuel racks, the licensee will equip each diver with the appropriate monitoring equipment. The licensee will monitor and control work, personnel traffic, and equipment movement in the SFP area to minimize contamination and to assure that exposure is maintained ALARA.

Therefore, the staff concludes that the SFP capacity can be increased in a manner that will ensure that doses to workers will be maintained ALARA.

Gaseous Radioactive Wastes

The storage of additional spent fuel assemblies in the pools is not expected to affect the releases of radioactive gases from the spent fuel pools. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies that are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the pools and are subsequently released into the air. Since the frequency of refueling (and, therefore, the number of freshly offloaded spent fuel assemblies stored in the pools at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased pool fuel storage capacity.

The increased heat load on the pools from the storage of additional spent fuel assemblies will potentially result in an increase in the pools' evaporation rate. However, this increased evaporation rate is not expected to result in an increase in the amount of gaseous tritium released from the pool. The overall release of radioactive gases from the Edwin I. Hatch Nuclear Plant will remain a small fraction of the limits of 10 CFR 20.1301.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the pool water. When the resins are replaced, the small amount of resin sluice water that is released is processed by the radwaste systems. As previously stated, the frequency of resin replacement may increase slightly during the installation of the new racks. However, the increase the amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Accident Considerations

Because of the similarity between the new racks and the existing ones, and the small increase in the spent fuel capacity of the new racks, the major parameters and assumptions used in the fuel handling accident analysis are not changed and remain bounding. Therefore, staff concludes that the increases in the capacity of the SFPs will not be accompanied by an associated increase in the radiological consequences of fuel handling accidents.

Summary

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Hatch Units 1 and 2 is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, as the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium, reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility or Another Site in the Licensee's System

The shipment of fuel to another utility or transferring fuel to another of the licensee's facilities would provide short-term relief. The Nuclear Waste Policy Act of 1982, Subtitle B, Section 13(a)(1), however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from Hatch to other sites would create storage capacity problems at those locations. The shipment of spent fuel to another site or transferring it to another Southern Nuclear site is not an acceptable alternative because no additional storage capacity would be created.

Alternative Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling

the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the need for special security provisions and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing new spent fuel pools is not practical for Hatch because such an effort would require about 10 years to complete and would be an expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and, thus, increase the amount of time before the maximum storage capabilities of the SFPs are reached. However, operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

The NRC staff also considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Edwin I. Hatch Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on March 1, 2000, the staff consulted with the Georgia State official, Mr. James Setser of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 6, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of March 2000.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7239 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to performance review boards for senior executive service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level Service members:

Patricia G. Norry, Deputy Executive Director for Management Services
Stephen G. Burns, Deputy General Counsel, Office of the General Counsel
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
Margaret V. Federline, Deputy Director, Office of Nuclear Regulatory Research
Jesse L. Funches, Chief Financial Officer
Jon R. Johnson, Associate Director for Inspection and Programs, Office of Nuclear Reactor Regulation
William F. Kane, Director, Office of Nuclear Material Safety and Safeguards
Arnold E. Levin, Director, Applications Development Division, Office of the Chief Information Officer
Paul H. Lohaus, Director, Office of State Programs
Hubert J. Miller, Regional Administrator, Region I
Carl J. Paperiello, Deputy Executive Director for Materials, Research and State Programs, Office of the Executive Director for Operations

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, General Counsel, Office of the General Counsel

Frank J. Miraglia, Jr., Deputy Executive Director for Regulatory Programs

Ashok C. Thadani, Director, Office of Nuclear Regulatory Research

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7530.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of March 2000.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. 00–7245 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Director Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on February 15, 2000 (65 FR 7577). Individual authorities established or revoked under Schedules A and B and established under Schedule C between January 1, 2000, and January 31, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during January 2000.

Schedule B

No Schedule B authorities were established or revoked during January 2000.

Schedule C

The following Schedule C authorities were established during January 2000.

Consumer Product Safety Commission

Supervisory Public Affairs Specialist to the Executive Director. Effective January 21, 2000.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective January 7, 2000.

Staff Assistant to the Director, Office of Communications. Effective January 13, 2000.

Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective January 13, 2000.

Special Assistant to the Chief, Natural Resources Conservation Service. Effective January 14, 2000.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective January 21, 2000.

Confidential Assistant to the Administrator, Risk Management Agency. Effective January 27, 2000.

Department of the Army (DOD)

Speechwriter to the Secretary of the Army. Effective January 3, 2000.

Department of Commerce

Special Assistant to the Under Secretary of Commerce for Technology. Effective January 3, 2000.

Deputy Director to the Director, Office of External Affairs. Effective January 7, 2000.

Deputy Director for External Affairs and Director of Scheduling to the Director, Office of External Affairs. Effective January 7, 2000.

Deputy Director, Office of Business Liaison to the Director, Office of Business Liaision. Effective January 10, 2000.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense. Effective January 27, 2000.

Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective January 28, 2000.

Department of Energy

Special Assistant to the Director, Office of Public Affairs. Effective January 6, 2000.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective January 10, 2000.

Special Assistant to the Chief Financial Officer. Effective January 14, 2000.

Executive Officer to the Assistant Secretary, Office of Fossil Energy. Effective January 21, 2000.

Special Assistant to the Assistant Secretary for Defense Program. Effective January 21, 2000.

Special Assistant to the Director, Office of Science. Effective January 27, 2000.

Special Assistant for Regulatory Compliance to the Assistant Secretary for Enviromental Management. Effective January 27, 2000.

Department of Housing and Urban Development

Staff Assistant to the Advisor for Management Reform and Operation. Effective January 10, 2000.

Deputy Assistant Secretary for Community Empowerment to the Assistant Secretary for Community Planning and Development. Effective January 21, 2000.

Department of Justice

Special Assistant to the Director, Bureau of Justice Assistance, Office of Justice Programs. Effective January 3, 2000.

Department of Labor

Special Assistant to the Director of the Womens's Bureau. Effective January 13, 2000.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective January 31, 2000.

Special Assistant for Public Affairs to the Assistant Secretary, Employment Standards Administration. Effective January 31, 2000.

Department of State

Legislative Management Officer to the Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective January 27, 2000.

Department of Transportation

Senior Advisor to the Administrator, Research and Special Programs Administration, Office of the Administrator. Effective January 24, 2000.

Department of the Treasury

Senior Advisor to the Under Secretary (Enforcement). Effective January 12, 2000.

Special Assistant to the Assistant Secretary Legislative Affairs and Public Liaison. Effective January 19, 2000.

Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective January 19, 2000.

Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective January 21, 2000.

Export-Import Bank of the United States

Administrative Assistant to the Director, a Member of the Bank Board of Directors. Effective January 7, 2000.

Farm Credit Administration

Special Assistant to the Member, Farm Credit Administration. Effective January 13, 2000.

Federal Maritime Commission

Counsel to the Commissioner. Effective January 14, 2000.

Counsel to the Commissioner. Effective January 14, 2000.

Federal Trade Commission

Director, Congressional Relations to the Chairman. Effective January 14, 2000.

Office of National Drug Control Policy

Staff Assistant (Scheduler) to the Director, Office of National Drug Control Policy. Effective January 7, 2000.

Special Assistant to the Chief of Staff. Effective January 7, 2000.

President's Commission on White House Fellowships

Special Assistant to the Director, Presidential Commission on White House Fellowships. Effective January 7, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–7142 Filed 3–22–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24341; 812–12028]

Bankers Trust Company, et al.; Notice of Application

March 17, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application to amend a prior order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from section 12(d)(1) of the Act, sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) and 17(c) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits certain registered management investment companies to participate in a securities lending program and to pay, and Bankers Trust Company (''Bankers Trust'') as lending agent to accept, fees based on a share of the revenue generated from the securities lending transactions (''Pror Order'').[1] The amended order (''Amended Order'') would permit Deutsche Bank, A.G., and any person controlling, controlled by, or under common control with Deutsche Bank, A.G. (''Deutsche Bank'') to rely on the Prior Order. The Amended Order also would modify a condition of the Prior Order.

Applicants: Bankers Trust, Deutsche Bank, BT Investment Portfolios and each of its subsequently created series (each a ''Portfolio''), and BT Institutional Funds (the ''Trust'') and each of its subsequently created series. The Trust, with respect to the Institutional Daily Assets Fund (the ''Money Fund''), a series of the Trust, and any subsequently established series of the Trust or other registered open-end management investment companies advised or sub-advised by a BT Entity (as defined below) established in connection with the investment of cash collateral from securities lending transactions are referred to as the ''Investment Funds.'' All applicants, except Deutsche Bank, are the ''Original Applicants.''

Filing Dates: The application was filed on March 14, 2000.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on April 11, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549–0609; Applicants: Deutsche Bank, 31 West 52nd Street, New York, New York 10019; Original Applicants, c/o Bankers Trust, 130 Liberty Street, New York, New York 1006.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

[1] *Bankers Trust Company*, Investment Company Act Release Nos. 23370 (July 31, 1998) (notice) and 23401 (Aug. 26, 1998) (order).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Bankers Trust, a New York banking corporation, serves as investment adviser to investment companies registered under the Act. Bankers Trust also operates one of the largest securities lending programs (''Program'') in conjunction with providing institutional custody services. Deutsche Bank is a banking company organized under the laws of the Federal Republic of Germany. On June 4, 1999, Deutsche Bank acquired Bankers Trust. Deutsche Bank serves as securities lending agent to a wide variety of institutional clients.

2. On August 26, 1998, the SEC issued the Prior Order to the Original Applicants under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) and 17(e) of the Act, under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act, and permitting, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 under the Act. The Prior Order permits: (a) any registered investment company advised or sub-advised, or that invests substantially all of its assets in a registered investment company advised or sub-advised by Bankers Trust or an entity controlling, controlled by or under common control with Bankers Trust (a ''BT Entity'') (''Affiliated Lending Fund'') and (b) each other registered management investment company or series thereof that may participate from time to time as a lender in the Program (''Other Lending Fund'' and, together with Affiliated Lending Fund, ''Lending Funds'') to pay, and Bankers Trust to accept, fees based on a share of the revenue generated from securities lending transactions. The Prior Order also permits the Lending Funds to purchase and redeem from the Trust, and the Trust to sell to and to redeem for the Lending Funds, shares in the Investment Funds (''Shares'') in connection with the investment of cash collateral from securities lending transactions. Lastly, the Prior Order permits Bankers Trust or any BT Entity to receive fees or commissions from the Other Lending Funds for acting as broker or agent in connection with the purchase or sale of securities for the Other Lending Funds.

3. Deutsche Bank seeks to extend the exemptive relief granted under the Prior

Order to permit it to serve as lending agent for Affiliated Lending Funds and as sub-lending agent for Other Lending Funds. Deutsche Bank states that its personnel providing day-to-day lending agency services to Affiliated Lending Funds do not provide investment advisory services to those Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of those Funds.

4. Applicants represent that each Affiliated Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with Bankers Trust and Deutsche Bank, as lending agents, will be fair:

(a) In connection with the approval of Bankers Trust or Deutsche Bank as lending agent for an Affiliated Lending Fund and implementation of the proposed fee arrangement, a majority of the board of trustees of the Affiliated Lending Fund (''Board of Trustees'') (including a majority of the trustees who are not ''interested persons'' of the Affiliated Lending Fund within the meaning of the Act (the ''Independent Trustees'')) will determine that: (i) The contract with Bankers Trust or Deutsche Bank is in the best interests of the Affiliated Lending Fund and its shareholders; (ii) the services to be performed by Bankers Trust or Deutsche Bank are appropriate for the Affiliated Lending Fund; (iii) the nature and quality of the services provided by Bankers Trust or Deutsche Bank are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for Bankers Trust's or Deutsche Bank's services are within the range of, but in any event no higher than, the fees charged by Bankers Trust or Deutsche Bank for services of the same nature and quality provided to unaffiliated parties.

(b) Each Affiliated Lending Fund's contract with Bankers Trust or Deutsche Bank for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board of Trustees (including a majority of the Independent Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby Bankers Trust or Deutsche Bank will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program, the Board of Trustees shall secure a certificate from Bankers Trust or Deutsche Bank attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board of Trustees will request and evaluate, and Bankers Trust or Deutsche Bank shall furnish, such information and materials as the Trustees, with and upon the advice of agents, consultants or counsel, determine to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by Bankers Trust or Deutsche Bank to other institutional investors for providing similar services.

(d) The Board of Trustees, including a majority of the Independent Trustees, will (i) at each regular quarterly meeting determine, on the basis of reports submitted by Bankers Trust or Deutsche Bank, that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth herein and (ii) will review no less frequently than annually the conditions and procedures set forth herein for continuing appropriateness.

(e) Each Affiliated Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described herein or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identify of the person on the other side of the loan transaction, and the terms of the loan transaction. In addition, each Affiliated Lending Fund will maintain all information or materials upon which a determination was made in accordance with the procedures set forth above and the conditions to the application.

5. Deutsche Bank consents to the conditions set forth below and agrees to be bound by the terms and provisions of the Prior Order to the same extent as the Original Applicants.

6. Condition 7 in the Prior Order provides that an Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants seek to modify condition 7 to permit an Investment Fund to be structured as a feeder fund in a master-feeder arrangement, so that an Investment Fund would acquire shares of a registered open-end management investment company advised by a BT entity in excess of the limits contained in section 12(d)(1)(A) of the Act, but only to the extent permitted by section 12(d)(1)(E) of the Act. Applicants represent that an Investment Fund organized in a master-feeder structure will comply with all of the provisions of section 12(d)(1)(E).

Applicants' Conditions

Applicant(s) agree that the order granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Lending Fund will comply with present and future applicable SEC and staff positions regarding securities lending arrangements.

2. The approval of the Affiliated Lending Fund's Board of Trustees, including a majority of the Independent Trustees, shall be required for the initial and subsequent approvals of Bankers Trust's or Deutsche Bank's service as lending agent for the Affiliated Lending Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Affiliated Lending Fund, and for any periodic review of loan transactions for which Bankers Trust or Deutsche Bank acted as lending agent pursuant to the Program.

3. A majority of the Board of Trustees of each Affiliated Lending Fund (including a majority of the Independent Trustees of such Affiliated Lending Fund) will initially and at least annually thereunder determine that the investment of securities lending cash collateral in Shares of the Trust is in the best interest of the shareholders of the Lending Fund.

4. Investment in Shares of an Investment Fund by a particular Lending Fund will be consistent with such Lending Fund's objectives and policies. A Lending Fund that complies with rule 2a–7 under the Act will not invest in its cash collateral in an Investment Fund that does not comply with rule 2a–7.

5. Investment in Shares of an Investment Fund by a particular Lending Fund will be in accordance with the guidelines regarding the investment of securities lending cash collateral specified by the Lending Fund in the securities lending agreement. A Lending Fund's cash collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Lending Fund and if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its cash collateral.

6. The Shares of an Investment Fund and any investment company in which an Investment Fund may invest pursuant to condition 7 below will not be subject to a sales load, redemption fee, any asset-based sales charge, or

service fee (as defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

7. An Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except securities of a registered open-end management company advised by a BT Entity to the extent otherwise permitted by section 12(d)(1)(E) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7198 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24340; 813–246]

Morgan Stanley Capital Investors, L.P. and Morgan Stanley Dean Witter & Co.; Notice of Application

March 17, 2000.

AGENCY: Securities and Exchange Commission (''Commisson'')

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and limited liability companies (''Partnerships'') formed for the benefit of key employees of Morgan Stanley Dean Witter & Co. (''MSDW & Co.'') and certain of its affiliates from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act. The requested order would supersede an existing order.[1]

APPLICANTS: Morgan Stanley Capital Investors, L.P. (the ''Initial Partnership'') and MSDW & Co., on behalf of other Partnerships that have been or may in the future be formed under the terms and conditions of the application.

FILING DATE: The application was filed on March 10, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 11, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 1221 Avenue of the Americas, New York, NY 10020.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. MSDW & Co. is a diversified financial services company engaged in three primary business—securities, asset management, and credit cards. Morgan Stanley & Co. Incorporated, a wholly-owned subsidiary of MSDW & Co., is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). MSDW & Co. and any entity controlling, controlled by, or under common control with MSDW & Co. are referred to herein collectively as ''MSDW'' and individually as an ''MSDW entity.''

2. MSDW offers various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships, or as separate plans within a Partnership. Each Partnership will be a limited partnership or limited liability company formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate a closed-end, non-diversified, management investment company.[2] The Partnerships will be established primarily for the benefit of highly compensated employees of MSDW as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. MSCP III, L.P., a Delaware limited partnership, will act as the general partner of the Initial Partnership (together with any other MSDW entity that acts as a Partnership's general partner, the ''General Partner''). Any MSDW entity that acts as the investment adviser to a Partnership will be registered as an investment adviser under the Advisers Act. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner will be authorized to delegate management responsibility to MSDW or to a committee of MSDW employees.

4. Limited partner interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or similar exemption and will be sold only to ''Eligible Employees'' and ''Qualified Participants'' (collectively,

[1] Morgan Stanley Capital Investors, L.P. and Morgan Stanley, Dean Witter, Discover & Co., Investment Company Act Release No. 23111 (April 14, 1998).

[2] Applicants also may implement a pretax plan arrangement (''Pretax Plan''). In this case, no investment vehicle will be formed with respect to such Pretax Plan. Pursuant to a Pretax Plan, MSDW will enter into arrangements with certain Eligible Employees, as later defined, of MSDW, which will generally provide that (a) an Eligible Employee will defer a portion of his or her compensation payable by MSDW; (b) such deferred compensation will be treated as having been notionally invested in investments designated for these purposes pursuant to the specific compensation plan; and (c) an Eligible Employee will be entitled to receive cash, securities, or other property at the times and in the amounts set forth in the specific compensation plan, where the aggregate amount received by such Eligible Employee would be based upon the investment performance of the investments designated for these purposes pursuant to such compensation plan. The Pretax Plan will not actually purchase or sell any securities. MSDW expects to offer, through Pretax Plans, economic benefits comparable to what would have been offered in an arrangement where an investment vehicle is formed. For purposes of the application, a Partnership will be deemed to be formed with respect to each Pretax Plan and each reference to ''Partnership,'' ''capital contribution,'' ''General Partner,'' ''Limited Partner,'' ''loans,'' and ''Interest'' in the application will be deemed to refer to the Pretax Plan, the notional capital contribution to the Pretax Plan, MSDW, a participant of the Pretax Plan, national loans and participation rights in the Pretax Plan, respectively.

''Participants'').[3] Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that an Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (a) an individual who is a current or former employee, officer, director, or ''Consultant'' of MSDW and, except for certain individuals who manage the day-to-day affairs of the Partnership in question (''Managing Employees''), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D (''Regulation D'') under the Securities Act, or (b) an entity that is a current or former ''Consultant'' of MSDW and meets the standards of an accredited investor under rule 501(a) of Regulation D.[4] Eligible Employees will be experienced professionals in the investment banking and securities, investment management or credit card businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the limited partners of the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with, and knowledgeable with respect to, the Partnership's affairs and the status of the Partnership's investments, (b) be an officer or employee of MSDW, and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the employee invests in a Partnership.

6. A Qualified Participant (a) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee,[5] or (c) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year.[6] In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner.[7] No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or an MSDW entity. No sales load will be charged in connection with the sale of a limited partnership interest.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if (a) the Eligible Employee's relationship with MSDW is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of MSDW; or (c) the Eligible Employee voluntarily resigns from employment with MSDW. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), or (b) the fair market value of the Interest as determined at the time of repurchase by the General partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable limited partnership agreement, a Partnership will be permitted to enter into transactions involving (a) an MSDW entity; (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with MSDW and over which an MSDW entity will exercise investment discretion (a ''Third Party Fund''), or (e) any partner or other investor of a Third Party Fund that is not affiliated with MSDW (a ''Third Party Investor''). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any MSDW entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An MSDW entity (including the General Partner) acting as agent or

[3] If applicants implement a Pretax Plan, participation rights in the Pretax Plan will only be offered to Eligible Employees who are current employees or Consultants, as later defined, of MSDW.

[4] A ''Consultant'' is a person or entity whom MSDW has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with MSDW and MSDW employees.

[5] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Entities'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between MSDW and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under rule 501(a)(6) of Regulation D and who will have access to the General Partner or MSDW.

[6] If applicants implement a Pretax Plan, Eligible Employees participating in such Pretax Plan will be furnished with a copy of the Pretax Plan, which will set forth at a minimum the same terms of the proposed investment program as those that would have been set forth in a limited partnership agreement for a Partnership. MSDW will prepare an audited informational statement with respect to the investments deemed to be made by such Pretax Plan, including, with respect to each investment, the name of the portfolio company and the amount deemed invested by such Pretax Plan in the portfolio company. MSDW will send each participant of such Pretax Plan a statement prepared based on the audited informational statement within 120 days after the end of the fiscal year of MSDW.

[7] If applicants implement a Pretax Plan, an Eligible Employee's participation rights in such plan may not be transferred, other than to a Qualified Participant in the event of the Eligible Employee's death.

broker may receive placement fees, advisory fees, or other compensation from a Partnership or portfolio company in connection with a Partnership's purchases or sale of securities, provided the placement fees, advisory fees, or other compensation are ''usual or customary.'' Fees or other compensation will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds; (b) the fees or other compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. MSDW entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit 9(a) an MSDW entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any MSDW entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any MSDW entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any MSDW entity or third Party Fund will become affiliated; and (c) a third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with MSDW. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and MSDW will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with MSDW or MSDW's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participant in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with MSDW and for the generation and a maintenance of goodwill. Applicants believe that, if co-investments with MSDW are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of MSDW enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate; (b) investments made by MSDW will not be generally available to investors even of the financial status of the Eligible Employees; and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by MSDW and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the community of interest among MSDW and the Participants, and the fact that senior officers and directors of MSDW entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a

Participant or other affiliated person of the Partnership (or any affiliate of such person) made a similar investment. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, an MSDW entity.

8. Co-investments with Third Party Funds, or by an MSDW entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that MSDW invest its own capital in Third Party Fund investments, and that the MSDW investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnerships's relationship to MSDW. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by MSDW in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-a-vis* a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit an MSDW entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed ''usual and customary. Applicants state that for the purposes of the application, fees or other compensation that is charge or received by an MSDW entity will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds; (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because MSDW does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to an MSDW entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit MSDW to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between MSDW and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requiries that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnerships' directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful or certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership

and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transaction'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Participants on the part of any person concerned: and (b) the transaction is consistent with the interests of the Participants in the Partnership, and the Partnership's organizational documents and reports to its Participants. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the Commission and its staff.[8]

2. In connection with the Section 17 Transactions, the General Partner of each partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the Transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) MSDW; (c) an officer or director of MSDW; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition; however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (e) when the investment is comprised of securities that are listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, at for the life of the Partnership and a least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the Commission and its staff.[9]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended. Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by an MSDW director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[8] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

[9] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42539; File No. SR–Amex–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending Certain Listing Standards

March 17, 2000.

On September 28, 1999, the American Stock Exchange LLC (''Exchange'' or ''Amex'' 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 thereunder,[2] a proposed rule change amending certain of the Exchange's listing standards. The Exchange filed Amendments No. 1,[3] 2,[4] and 3 [4] to the proposed rule change on December 14, 1999, January 4, 2000, and January 19, 2000, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 10, 2000.[6] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

Due to the merger between the National Association of Securities Dealers (''NASD'') and the Amex, the qualification functions for the Nasdaq Stock Market (''Nasdaq'') and the Amex have been centralized in the Nasdaq-Amex Listing Qualifications Department (''Listing Qualifications''). As a result of this centralization, a number of Exchange rules have been reviewed with the goal of modernizing the Exchange's initial and continued listing process, creating consistent rules and processes across all the NASD's marketplaces, and reflecting the current business practices and procedures used by Listing Qualifications. This filing addresses those goals and makes other non-substantive changes to reflect changed job titles [7] and responsibilities following the merger, and clarifies the application of certain Exchange rules.

Application Process

Currently, Exchange rules encourage issuers to obtain an informal opinion from Amex staff, known as the Preliminary Listing Eligibility Opinion (''PLEO''), as to whether the issuer is eligible to list before formally applying to the Exchange. Because of the time involved for the issuer to prepare for this extra review and for staff to conduct this extra review, the PLEO process causes a delay in the time it takes for a final determination to be made on an issuer's application for listing on the Exchange. This process is also inconsistent with the Nasdaq process in which an application is filed at the outset of the process. As a result, when a issuer initially pursues listing on both markets, the issuer faces a delay in its ability to make a decision as to where to list. In order to streamline the application process, the Exchange proposes to eliminate the PLEO process. Accordingly, the Exchange proposes to delete sections 202 and 203 of the Listing Standards, Policies and Requirements and modify sections 101, 130, 201 and 211 to eliminate references to the PLEO process. Under the proposed revision, issuers will only file their completed listing application with the Exchange's staff.

In addition, Exchange rules currently require a number of documents to be submitted with an original listing application. The Exchange proposes to eliminate certain requirements, including the Exchange's Listing Form 2 (Certificate of Distribution), Charter, By-Laws, Specimen Certificates, Trustee Certificates, Form for Indenture, Board Resolutions and certain contracts. Many of these documents are electronically available through an Issuer's public filings, or they are generally available to Listing Qualifications through other means (or upon request by Exchange staff from the issuer). Therefore, the Exchange proposes to remove these general requirements and instead request specific documents as necessary.[8] Specifically, the Exchange proposes to modify sections 213, 216, 218, 305, 306, and 702 to reflect these changes.

Similarly, the Exchange proposes that issuers no longer be required to obtain an opinion of counsel which, among other things, relates to the legality of the organization and existence of the issuer and the validity of the securities to be listed. These rules were originally enacted to prevent unauthorized securities from entering into the market and to protect the Exchange from legal liability, which might arise from the listing and trading of such securities. Today, however, such concerns are addressed through other means. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit and, generally, legal comfort is provided to market participants with respect to most securities issuances, including public offerings. Furthermore, the Exchange is largely protected from legal claims against it by its status as a self-regulatory organization. Accordingly, the Exchange proposes to delete requirements related to opinions of counsel in sections 213, 216, 218, and 306 of the Listing Standards.[9]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Jack P. Drogin, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 13, 1999 (''Amendment No. 1''). Amendment No. 1 revises section 1101 of the *Amex Company Guide* to add references to forms filed with the Commission by unit investment trusts and open-end management investment companies.

[4] Letter from Michael J. Ryan, Jr. Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated December 31, 1999 (''Amendment No. 2''). As originally filed, the proposed rule change eliminated the requirement to submit with an original listing application certain corporate documents and an opinion of counsel regarding the legality of the organization, existence of the issuer, and the validity of the securities to be issued. Amendment No. 2 reinstates the requirement to submit these documents. Amendment No. 2 also makes certain technical changes to the proposed rule change.

[5] Letter from Michael J. Ryan, Jr., Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated January 18, 2000 (''Amendment No. 3''). Amendment No. 3 eliminates the requirements to file certain documents with an original listing application, including an issuer's charter and by-laws, as well as an opinion of counsel. In lieu of requiring these documents, Amendment No. 3 states that the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. In addition, Amendment No. 3 states that the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Finally, Amendment No. 3 reinstates Section 125 of the *Amex Company Guide,* relating to remedies available to bondholders upon default.

[6] Securities Exchange Act Release No. 42378 (Feb. 2, 2000), 65 FR 6647.

[7] Changes to Part 4 of the Listing Standards reflect the elimination of the Corporate Relations Manager job function and the division of the responsibilities of the former Corporate Relations Manager among the Listing Qualifications, Stock Watch, and Issuer Service Department.

[8] In the standard comment letter that the Exchange sends issuers after Exchange staff has reviewed the issuer's listing application the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

[9] Through its standard comment letter, the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

The Exchange currently requires an application to be submitted by an issuer whenever a shareholder rights plan is established and the underlying rights are registered with the Commission. These rights, commonly known as ''poison pills,'' technically constitute a separate security but trade in tandem with and as part of the issuer's common stock. Upon the occurrence of a ''triggering event'' such as the announcement of a hostile takeover or the acquisition of a specified percentage of the company's outstanding common stock, the rights would be detached from the common stock and become freely tradable as separate securities. At that point, under Exchange rules, the issuer is required to file a listing application with respect to those new securities. Given the listing application requirement upon the occurrence of a triggering event and the fact that until that time the securities are not traded as separate securities, the Exchange believes the requirements of section 343 are not necessary.

Criteria for Original Listing

Sections 104 and 105 of the Listing Standards allow the listing of debt and warrants on the Amex, but only if the issuer is listed on the Amex or the New York Stock Exchange (''NYSE''). The exclusion of Nasdaq National market securities from this standard is no longer necessary or appropriate, given the level of the listing standards on the Nasdaq National Market in comparison to those of the Amex and the NYSE. The Exchange therefore proposes to expand the issues which may be listed on Amex to include debt and warrants of issuers listed on the Nasdaq National Market.

Sections 112, 115, and 116 of the Listing Requirements impose more stringent standards on specific types of issuers: exploration and development companies, member corporations, and companies engaged in gaming operations. These rules arose when such companies generally remained private and the listing of companies in such sectors was fairly unusual. The Exchange proposes to eliminate these sector-specific sections because the listing of securities of issuers in these sectors is now fairly common across all markets and issuers in these sectors now operate in highly regulated environments. Specifically, with respect to exploration and development companies, the Exchange notes that detailed disclosures about the issuer's stage of development and prospects are provided to potential investors in required, publicly filed reports. Accordingly, the Exchange does not believe it is appropriate to discriminate against such exploration stage companies seeking to raise capital on the Exchange. With respect to member corporations, the Exchange notes that these issuers are regulated by both the Commission and the membership organization to which the issuer belongs. Finally, with respect to companies engaged in gaming operations, the Exchange notes that these issuers operate in a highly regulated environment and are subject to substantial state and/or federal regulation. Furthermore, the Exchange notes that under its discretionary authority over all issuers, pursuant to section 101, it has authority to deny listing to issuers based on sector-specific issues in appropriate situations. Accordingly, the Exchange does not believe that the specific rules relating to issuers in these sectors are necessary or appropriate.

The Exchange also proposes to clarify that the alternate listing guidelines contained in section 101 of the Listing Standards are not limited to issuers in certain sectors. The alternate guidelines were first adopted in 1977 and then modified in 1986 to allow a broader range of companies to qualify. The guidelines referenced as examples companies that were unable to satisfy the basic criteria due to significant research and development or other similar business development costs. The Exchange proposes changes to section 101 to clarify that the numerical aspects of the alternate guidelines apply to all issuers, regardless of industry. This change would be consistent with the approach used on Nasdaq, the Nasdaq SmallCap Market, and the NYSE, where alternative listing requirements are available to all issuers that meet the quantitative requirements.

Fees

Section 144 of the Listing Standards currently imposes a $250 non-refundable service charge that is subtracted from any refund otherwise due an issuer that is not approved for listing or that withdraws after completing the application process. Given the cost incurred by the Exchange in reviewing an application, the Exchange proposes to raise the non-refundable portion of the initial inclusion fee from $250 to $1,000 and to require the payment of this amount in advance of processing the application, in order to timely recoup such costs, especially in situations where these costs are incurred by the Exchange and the application is then withdrawn. The Exchange notes that this proposed change will not affect the listing fees paid by issuers who ultimately list on the Exchange and that this practice is consistent with that followed by Nasdaq. In addition, the Exchange notes that if an issuer applies for listing on both the Exchange and on Nasdaq, only a single $1,000 non-refundable fee would be collected for review of both applications.

The Exchange also proposes to modify the treatment of treasury shares for fee purposes Under existing section 141, Amex listing fees are based on all shares outstanding, including treasury shares. The Exchange proposes to modify section 141 to exclude treasury shares when calculating shares outstanding for fee purposes [10] and to clarify that annual fees billed based on shares outstanding information refers to information available on Exchange records as of December 31, and not shares outstanding information sent to the Exchange by issuers in February. This proposed rule change will result in a decrease in fees for issuers with treasury shares and will not affect other issuers.

Finally, as discussed above, because the Exchange proposes to eliminate section 343, requiring the submission of an application upon the creation of a shareholder rights plan, the Exchange also proposes to modify section 140, to eliminate the $1,000 fee associated with the shareholder rights plan application.

Schedule for Dividends

The Exchange proposes to eliminate several rules that require additional time between the declaration and dividend date for dividends of issuers that do not have transfer facilities in the New York City area. Given the current state of communication networks and electronic interaction between issuers, transfer agents and investors, these additional time periods are no longer necessary. Accordingly, the Exchange proposes to modify sections 502, 512, and 521 and to eliminate section 520 to implement this proposed change.

Transfer Facilities

Likewise, the Exchange proposes to remove a variety of rules concerning the qualification of Transfer Agents, Registrars, and Bond Trustees presently contained in sections 801–811. The Commission regulates the transfer agent industry and, since 1976, has imposed a series of rules over the industry [11] that make many of the Exchange's rules unnecessary. Other Exchange rules relating to transfer agents (as well as

[10] This is consistent with the approach taken on the Nasdaq, resulting in identical application across all of the NASD's marketplaces.

[11] *See* Exchange Act Rules 17Ad–1 through 17Ad–21T, 17 CFR 240.17Ad–1 through 17 CFR 240.17AD–21T.

Agents for Payment) are inappropriate, as they limit the ability of agents with physical locations outside of New York to perform these functions. The Exchange also proposes to eliminate the requirements relating to Trustees for Bond Issues in section 811. The Exchange has never experienced a problem with respect to the qualification of a Bond Trustee and believes that these matters are better left to the individual issuers and applicable state law. Accordingly, the Exchange proposes to delete section 801–811 and to make conforming change to other sections that refer to those sections.

Certificate Requirements

The Exchange also proposes to remove requirements relating to the form of securities and lost security holders. The rules relating to the form of securities are antiquated and may impede the use of innovations in this area, such as Depository Trust Corporation holdings and book entry methods. Furthermore, the Exchange notes that there are no comparable rules on Nasdaq. Accordingly, the Exchange proposed to delete existing sections 820 through 830, inclusive, and section 841 of the Listing Standards. Likewise, the Exchange rules governing the replacement of lost certificates in section 840 are no longer necessary in light of current practices followed by issuers and transfer agents.

Treasury Shares

Existing Exchange rules require an issuer to report changes in the number of treasury shares. Given the changes proposes to the fee calculation for issuers, resulting in the exclusion of treasury shares from the fee base, the Exchange no longer needs this information. Accordingly, the Exchange proposes to eliminate section 901 of the Listing Standards. Furthermore, section 903, on repurchases of listed company securities, is unnecessary because it does not impose any Exchange requirements, but merely refers issuers to federal securities laws. Finally, the Exchange notes that section 902 allows an issuer to redeem securities only in pro rata fashion or by lot. The Exchange notes that issuers are governed by state law requirements in the redemption of securities and that as a practical matter, one of these methods is invariably applied. Therefore, the Exchange believes that section 902 is unnecessary and proposes its deletion and conforming amendments to sections 103(d), 104, and 105(b).

Other Changes to the Exchange's Listing Requirements

The Exchange proposes certain changes to the listing requirements for issuers listed on the Amex. The Exchange proposes to change the definition of ''public distribution'' and ''public shareholders'' as defined in section 102. Currently, in determining the number of shares in the public, Exchange rules exclude concentrated holdings of 5% or greater. The comparable rules on Nasdaq, as well as the NYSE, only exclude holdings of 10% or greater. The Exchange believes that it is appropriate to exclude holdings of between 5% and 10% from the definition of public distribution and accordingly, proposes to modify section 102.

Next, the Exchange proposes to modify section 120, relating to conflicts of interest. The existing Exchange rule states that the Exchange will consider conflicts situations in connection with the original listing of an issuer. The Exchange believes that a broader, ongoing review of related party transactions is appropriate and that the issuer's Audit Committee (or a comparable body) is an appropriate body for conducting such a review. Furthermore, the Exchange notes that under the proposed change, as in all cases, it may review a transaction using the Exchange's general discretionary authority if a transaction involved a conflict that raised public interest concerns. Accordingly, the Exchange proposes to adopt this revised listing requirement to better protect investors.[12]

The Exchange also proposes to amend its rules relating to shareholder approval contained in section 713 to clarify that shareholder approval is required prior to issuance of a security that has the *potential* to result in the issuance of 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock. While the present language of the rule does not include the word potential, it is fairly implied and Exchange staff has consistently applied the rule to require approval in cases where an issuance may potentially exceed the stated threshold. Accordingly, the Exchange proposes to modify the existing rule to clarify that an issuance is not permissible without shareholder approval when there is the potential to issue more than 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock.

Emerging Company Marketplace

In May 1995, the Exchange determined to discontinue the listing of new companies on the Emerging Company Marketplace and subsequently received Commission approval.[13] Accordingly, the Exchange proposes to delete from the Supplement to the *Amex Company Guide* the criteria for new listing on the Emerging Company Marketplace. Furthermore, the Exchange proposes to delete from the Supplement the continued listing criteria with respect to all issues other than common stock because no existing issuers rely on these provisions and no new issuers can be listed that would rely on these provisions. This conforming change is consistent with the Commission's order approving the elimination of the Emerging Company Marketplace.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[15] The Commission believes that the Exchange has adequately addressed the concerns that arise from eliminating the requirement to file certain corporate documents and an opinion of counsel with an original listing application. In both instances, the Exchange will obtain the most pertinent information that was provided in the required documents directly from issuers. For example, the Exchange will obtain information regarding the issuer's quorum requirements, notice of record dates to shareholders, and closing of transfer books— previously available in the corporate documents filed by the issuer—via the Exchange's standard comment letter sent to issuers. With respect to the opinion of counsel previously required, the Exchange has similarly proposed procedures for

[12] The Exchange notes that this proposed change is consistent with the rules relating to conflicts of interest that apply to Nasdaq issuers and NYSE issuers. *See* NASD Rules 4310(c)(25)(G) and 4460(h) and NYSE Listed Company Manual Section 307.00.

[13] *See* Securities Exchange Act Release No. 36079 (Aug. 9, 1995), 60 FR 42926 (Aug. 17, 1995) (SR–Amex–95–23). Companies that were listed at the time the Emerging Company Marketplace was discontinued were permitted to continue their listing, subject to all the rules applicable to issuers on that Emerging Company Marketplace.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3 of the Act. 15 U.S.C. 78c(f).

eliciting the pertinent information regarding the legal status of the issuer and the validity of the securities to be listed. By instituting these alternative procedures, the Commission believes that eliminating the filing of certain corporate documents and an opinion of counsel is reasonable and will allow issuers to list their securities on the Exchange more quickly and less expensively. Additionally, the Commission notes that electronic access to many of the corporate documents previously required provides an additional safeguard and source of information for the Exchange and the public.

The Commission also believes that the proposed rule change will facilitate securities transactions and benefit investors by modernizing, simplifying, and conforming the Exchange's listing procedures to current business practices. For example, the Commission believes that the Exchange rules relating to the form of securities and lost security holders, limitations on transfer agents located outside of New York, and sector-specific listing requirements are no longer necessary, given technological advances and general developments in the capital markets. Similarly, eliminating the PLEO process simplifies the listing process significantly for issuers. Finally, changes to the rules relating to shareholder approval for the issuance of a security in certain circumstances (*e.g.,*Exchange Rule 713), conforms the Exchange's listing standards to common business practice.

Lastly, the Commission believes that the proposed rule change will facilitate securities transactions by creating consistent rules and processes governing the listing of securities on both Nasdaq and Amex. Because the listing qualifications of both Nasdaq and Amex are now handled by the Nasdaq-Amex Listing Qualifications Department, the Commission believes that consistent rules and practices between both marketplaces will enable issuers to list securities on the Exchange much more quickly and will enable the Exchange to more efficiently review and process listing applications.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR-Amex–99–39), as amended, is approved.

[16] 15 U.S.C. 78s(b)(2)

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7200 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42538; File No. SR–MSRB–00–01]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Supervision of Correspondence With the Public

March 16, 2000.

I. Introduction

On January 7, 2000, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') 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 thereunder,[2] a proposed rule change amending MSRB Rules G–8, G–9, and G–27. The proposed rule change was published for comment in the **Federal Register** on February 10, 2000.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Board has filed proposed amendments to MSRB Rules G–8, on books and records, G–9, on record retention, and G–27, on supervision. The proposed rule change will revise the Board's supervision and record retention rules to provide dealers with flexibility in developing reasonable procedures for the review of correspondence with the public. The amendments also accommodate the growing use of correspondence sent and received in electronic format while still providing for effective supervision. The Board has also filed with the Commission a draft notice that will provide guidance to dealers on how to implement these rule changes. The proposed rule change and accompanying notice are modeled after and designed to conform to the rules and guidance of the National Association of Securities Dealers (''NASD'').[4]

The Board has determined to adopt rules changes substantially similar to those of the NASD. The Board believes that conforming its rule language to the language in the NASD rules will help ensure a coordinated regulatory approach to the supervision of correspondence. In addition, in connection with Commission approval of the proposed rule change, the Board will issue a notice to provide guidance to dealers on implementing the proposed rule change. This guidance has been modeled after NASD Notices to Members 98–11 and 99–03 and is described below.

Supervision of Municipal Securities Representatives

The proposed amendments to MSRB Rule G–27(d), provide, among other things, that a dealer must establish procedures for the review by a designated principal of each municipal securities representative's incoming and outgoing written (*i.e.,* non-electronic) and electronic correspondence with the public relating to the municipal securities activities of such dealer. The procedures must be designed to provide reasonable supervision of each municipal securities representative and must be described in the dealer's written supervisory procedures. Implementation and execution of these procedures must be clearly evidenced, and the evidence must be maintained and be made available upon request to a registered securities association or the appropriate regulatory agency as defined in Section 3(a)(34) [5] of the Act.

Procedures for Review of Correspondence

Currently, MSRB Rule G–27(c)(vii)(C) requires each dealer to establish procedures for the review and written approval by a designated principal of all correspondence pertaining to the solicitation or execution of transactions in municipal securities. Under proposed Rule G–27(d)(ii), a review of each item of correspondence will no longer be required. Dealers will be given flexibility to develop procedures for the review of correspondence relating to the dealer's municipal securities activities—both incoming and outgoing, written or electronic—tailored to the nature and size of the dealer's business and customers.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42385 (Feb. 3, 2000), 65 FR 6669.

[4] *See* Securities Exchange Act Release No. 39510 (Dec. 31, 1997), 63 FR 1131 (Jan. 8, 1998); NASD Rule 3010; and NASD Notices to Members 98–11 and 99–03.

[5] 15 U.S.C. 78c(a)(34).

With respect to incoming written (*i.e.,* non-electronic) correspondence directed to municipal securities representatives and related to the municipal securities activities of the dealer, the proposal would require review of the correspondence to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. The proposed rule change does not require review of all correspondence prior to use or distribution. However, any dealer that does not conduct electronic or manual pre-use review of each item of correspondence will be required to regularly educate and train its associated persons as to the dealer's procedures governing review of correspondence, document such education and training, and monitor to ensure compliance with such procedures.

Retention of Correspondence

The proposed rule change includes amendments to MSRB Rules G–8(a)(xx), G–9(b)(viii) and (xiv), and G–27(d)(i), (ii), and (iii) requiring each dealer to preserve correspondence of municipal securities representatives relating to municipal securities activities and maintain the records of written supervisory procedures, education and training required under Rule G–27(c) and (d) for three years. The proposed rule change also requires the names of the persons who prepared and reviewed correspondence to be ascertainable from the retained records and the records must be made available, upon request, to the appropriate enforcement agency (*i.e.,* NASD or federal bank regulatory agency).

Draft Notice-Guidelines for Supervision and Review

The notice to dealers (''Notice to Dealers'') will provide guidance on how to implement the proposed rule change. In particular, the Notice to Dealers states that in adopting review procedures pursuant to Rule G–27(d)(i), dealers must:

- Specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence;
- Identify how supervisory reviews will be conducted and documented;
- Identify what types of correspondence will be pre- or post-reviewed;
- Identify the organizational position(s) responsible for conducting review of the different types of correspondence;
- Specify the minimum frequency of the reviews for each type of correspondence;
- Monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and
- Periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The Notice to Dealers also states that in conducting reviews, dealers may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the dealer's municipal securities activities may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public pursuant to Rule G–27(d)(ii), the Notice to Dealers states that each dealer must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform firm-wide procedures or tailored procedures (*i.e.,* by specific function, office/location, individual, or group of persons).

The Notice to Dealers also provides guidance on adopting review procedures pursuant to Rule G–27(d)(ii), and states that dealers must, at a minimum:

- Specify procedures for reviewing municipal securities representatives, recommendations to customers;
- Require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers;
- Consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
- Consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

In addition, the Notice to Dealers provides that supervisory policy and procedures must also:

- Provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained;
- Describe any dealer standards for the content of different types of correspondence; and
- Prohibit municipal securities representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the dealer. For example, the Board would expect dealers to prohibit correspondence with customers from employees' home computers or through third party systems unless the dealer is capable of monitoring such communications.

The Notice to Dealers also states that the method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the dealer's office structure. Where the office structure permits review of all correspondence, dealers should designate a municipal securities representative or other appropriate person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the municipal securities representative whose correspondence is opened and review. Unregistered persons who have received sufficient training to enable them to identify complaints and funds would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence [6] prior to use or distribution, appropriate procedures that could be adopted include the following:

- Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis;
- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis;
- Communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

[6] Amended language per telephone conversation between Carolyn Walsh, Assistant General Counsel, MSRB, and Ira L. Brandriss, Staff Attorney, Commission, on February 3, 2000.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requiremenets of the Act and the rules and regulations thereunder.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)[8] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will provide dealers with flexibility in adopting procedures for reviewing municipal securities representatives' public correspondence while establishing minimum requirements, guidelines, and standards governing the supervisory procedures dealers may adopt. The Commission also believes that the proposal is consistent with the Act in allowing dealers to use new technology, such as e-mail and the internet, while still providing for appropriate supervision and review. Moreover, the Commission believes that the proposal will protect existing and prospective customers by ensuring that customer complaints, funds, and securities are handled properly.

a. New Rule G–27(d)(i)

New Rule G–27(d)(i) requires dealers to establish procedures for the review by a designated principal of the incoming and outgoing written and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of the dealer. The Commission believes that new Rule G–27(d)(i) will protect investors and the public interest by requiring designated principals to review some of each municipal securities representative's correspondence, regardless of the method used for the review of correspondence pursuant to new Rule G–27(d)(ii). In this regard, the Commission notes the proposal requires dealers to adopt procedures designed to reasonably supervise each municipal securities representative. The Commission believes this requirement should ensure that appropriate persons within the firm will undertake to supervise the activities of the firm's municipal securities representatives.

In addition, the Notice of Dealers provides guidance on adopting review procedures pursuant to Rule G–27(d)(i) and, at a minimum, requires dealers to: (i) specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence; (ii) identify how supervisory reviews will be conducted and documented; (iii) identify what types of correspondence will be pre- or post-reviewed; (iv) identify the organizational position(s) responsible for conducting review of the different types of correspondence; (v) specify the minimum frequency of the reviews for each type of correspondence; (vi) monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and (vii) periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The Commission believes that these requirements will provide guidance to dealers in developing policies for supervising public correspondence and to municipal securities representatives in complying with the dealer's policies. The requirements should help to ensure that dealers carefully consider the supervisory procedures appropriate for different types of communications, closely monitor compliance with the dealer's policies, and periodically reevaluate their policies and procedures. The Commission expects dealers to monitor the effectiveness of their supervisory policies and procedures and to promptly make any necessary revisions.

b. New Rule G–27(d)(ii)

New Rule G–27(d)(ii) will require dealers to develop written policies and procedures that are appropriate for the dealer's business, size, structure, and customers for the review of all municipal securities representatives' incoming and outgoing written and electronic correspondence with the public relating to its business. The proposal also requires dealers to adopt review procedures specifically designed to identify and handle customer complaints and to ensure that customer funds and securities are handled properly. The Commission believes the proposal will provide dealers with flexibility in adopting and implementing supervisory procedures while establishing minimum requirements, guidelines, and standards governing the supervisory procedures a dealer may adopt.

The Commission believes that whenever practicable, prior review of incoming written correspondence to identify customer complaints, funds and securities should be mandated, to protect customer interests and possibly reduce dealers' potential liability. In some cases, however, prior review of incoming correspondence is not feasible. In such cases, the Commission believes that requiring dealers to employ alternative procedures reasonably designed to assure adequate handling of customer complaints, funds and securities is reasonable. The Commission believes that dealers that do not require prior review of all written correspondence should require, at a minimum, some combination of those alternatives provided by the MSRB as an example in the Notice to Dealers, or similar procedures, rather than relying on one alternative procedure. The Commission notes that under MSRB Rule G–27(d)(ii), a dealer that chooses not to require review of public correspondence prior to use or distribution must educate employees about the dealer's current correspondence procedures, document the employees' education and training, and ensure that the dealer's policies are implemented and followed.

The Notice to Dealers provides guidance on adopting review procedures pursuant to Rule G–27(d)(ii) and, at a minimum, requires dealers to: (i) Specify procedures for reviewing municipal securities representatives' recommendations to customers; (ii) require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers; (iii) consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients; (iv) consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media); (v) provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained; and (vi) describe any dealer standards for the content of different types of correspondence.

As discussed above, the Notice to Dealers also provides alternative review

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–4(b)(2)(C).

procedures to identify customer complaints and funds. These procedures include: (i) Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis; (ii) maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis; (iii) communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and (iv) branch examination verification that the procedures are being followed.

The Commission believes that the standards and guidelines set forth in new Rule G–27(d)(ii) and the Notice to Dealers will help to ensure that dealers continue to provide appropriate supervision of the public correspondence of their municipal securities representatives and that customer complaints, funds, and securities are properly handled. For example, considering the complaint and the municipal securities representative's overall disciplinary history will help to ensure that dealers implement supervisory procedures appropriate for each representative. In this regard, the Commission would expect a dealer to consider providing heightened supervision for a representative with a history or pattern of customer complaints, disciplinary action, or arbitrations. Moreover, the Commission notes that the requirements in MSRB Rule G–27 and the Notice to Dealers are minimum requirements. The Commission expects each dealer to implement any additional procedures the dealer believes are necessary to provide appropriate supervision of all its municipal securities representatives and employees.

c. Electronic Correspondence

The Commission believes that the requirements specific to electronic communications both accommodate the growing use of correspondence sent and received in electronic format and help to ensure that dealers adopt appropriate supervisory procedures. In this regard, the Commission notes that the Notice to Dealers provides that a dealer's policies and procedures must prohibit municipal securities representatives' and other employees' use of electronic communications to the public unless those communications are subject to supervisory and review procedures developed by the dealer. The Notice to Dealers also states that the MSRB expects dealers to prohibit communications with the public from employees' home computers or through third party computer systems unless the dealer is capable of monitoring the communications.

d. Books and Records

The Commission believes that it is reasonable for the MSRB to amend MSRB Rules G–8 and G–9 to require firms to maintain and preserve for three years (i) all written and electronic communications received and sent relating to the dealer's conduct with respect to municipal securities and (ii) records of compliance with MSRB Rule G–27(c) and (d). The Commission believes that requiring dealers to maintain and make available to the appropriate regulatory agency evidence that supervisory procedures have been implemented and carried out will help to ensure that dealers comply with the new requirements of Rule G–27. Moreover, the Commission believes that requiring the names of the persons who prepared and reviewed the correspondence to be ascertainable from the retained records will help to ensure that only appropriate persons prepare and supervise public correspondence.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[9] of the Act, that the proposed rule change (SR–MSRB–00–01) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7202 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42537; File No. SR–NASD–99–77]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Mutual Fund Quotation Service

March 16, 2000.

I. Introduction

On January 4, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to change the annual listing fees for the Mutual Fund Quotation Service (''MFQS'' or ''Service'').

The proposed rule change was published for comment in the **Federal Register** on February 9, 2000.;[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

In its proposed rule change, Nasdaq proposed amendments to Rule 7090 to change the annual listing fees for the MFQS, which collects and disseminates data pertaining to the value of open-end and closed-end funds. The MFQS disseminates the valuation data for over 11,000 funds. The Service facilities this process by providing for the automated entry, through a browser-based application, of pricing data by a fund and a fund's pricing agent.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[4] The MFQS has two ''listss'' in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements.[5] If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in newspaper fund tables and is also eligible for dissemination over Nasdaq's Level 1 service,[6] which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42376 (February 2, 2000), 65 FR 6340.

[4] *See* NASD Rule 6800.

[5] *Id.*

[6] Nasdaq Level 1 Service is a subscription-based data service that ''includes the following data: (1) inside bid/ask quotations calculated for securities listed in the Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.'' NASD Rule 7010(a).

inclusion in the Service.[7] At the time of this proposed rule change, funds included in the News Media List paid an annual fee of $275, and funds included in the Supplemental List paid an annual fee of $200.

According to Nasdaq, the original MFQS was built as a DOS-based application, but in recent years technology has progressed, and thus user needs for the MFQS have increased. Responding to requests made by users of the MFQS, the mutual fund industry, and the Investment Company Institute (''ICI''), Nasdaq performed market research to determine which enhancements MFQS users would prefer in a redesigned Service. In its proposal, Nasdaq represents that since the last fee increase in 1996,[8] the MFQS software application has been rewritten, and notable technology enhancements have been implemented to support the Service's functionality.

Specifically, in 1998, Nasdaq took the list of enhancements requested by MFQS users and developed and implemented an entirely new MFQS application that uses browser-based technology. The MFQS now permits funds included in the Service (or pricing agents designated by such funds) to use the browser-based technology to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price. Nasdaq has incorporated 20 of the approximately 27 enhancements suggested by the mutual fund industry into the new MFQS application, and two more are scheduled for implementation in early 2000.

The browser-based MFQS upgrade became fully-operational in May 1999. In its proposal Nasdaq represents that, due to the significant costs for development, maintenance, and support of the new MFQS product, additional revenue was needed to (1) sustain the quality of the MFQS; and (2) make future product enhancements to the MFQS, to improve efficiency and accuracy of price reporting. In addition, the MFQS is operating at a yearly loss in light of the recent technology enhancements to the Service. Accordingly, Nasdaq proposes to increase its fees for the Supplemental List from $200 to $275 and for the News Media List from $275 to $400.

[7] *See* NASD Rule 7090.

[8] *See* Securities Exchange Act Release No. 37014 (March 22, 1996), 61 FR 14182 (March 29, 1996) (File No. SR–NASD–96–05).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and in particular, with the requirements of Section 15A of the Act.[9] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(5)[10] of the Act.

Section 15A(b)(5)[11] of the Act requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission believes that Nasdaq's proposed increase its user fees is a fair means of recovering the cost related to the development and maintenance of the enhanced MFQS. Moreover, the Commission believes that the increase in fees will support future improvements to the System that will improve efficiency and accuracy in the collection of pricing information. The Commission finds that the proposal is consistent with Section 15A(b)(5)[12] insofar as the fees will be imposed directly and only on those who requested and benefit from recent enhancements to the MFQS—users of the Service and the ICI. Consequently, the increased fees are reasonable and consistent with Section 15A(b)(5)[13] of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–99–77) be and hereby is approved.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7201 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3261]

Bureau of Educational and Cultural Affairs; Notice: Extension of Deadline for South Pacific Scholarship Program RFP

SUMMARY: The deadline for the South Pacific Scholarship RFP has been extended from April 7, 2000 to April 24, 2000. The RFP was originally published as Public Notice 3242 in the **Federal Register** on March 9, 2000 (65 FR 12609).

For further information, please contact Marianne Craven at mcraven@usia.gov 202/619–6409 (tel), or 202/205–2452 (fax).

Dated: March 15, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–7106 Filed 3–22–00; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the April 4, 2000, meeting of the Trade and Environment Policy Advisory Committee will be held from 8:30 am to 12:00 noon. The meeting will be closed to the public from 8:30 am to 11:30 am and open to the public from 11:30 am to 12:00 noon.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on April 4, 2000 from 8:30 am to 12:00 noon. The meeting will be closed to the public from 8:30 am to 11:30 am. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11:30 am to 12:00 noon, when trade policy issues

will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATE: The meeting is scheduled for April 4, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christina Sevilla, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–7140 Filed 3–22–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7081]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, April 20, 2000, from 9:00 a.m. to 3:00 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 6, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 6, 2000.

ADDRESSES: NOSAC will meet in rooms 6200–6204, of the NASSIF Building, 400 7th Street, SW, Washington, DC. Send written material and requests to make oral presentations to Captain P.A. Richardson, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain P.A. Richardson, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee (NOSAC). The agenda includes the following:

(1) Report on development and implementation of STCW Convention for OSVs.

(2) Progress report from the Prevention Through People Subcommittee.

(3) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization (ISO).

(4) Status report from Incident Reporting Subcommittee.

(5) Report from Platform/Ship Collision Avoidance Subcommittee.

(6) Progress report from the Subcommittee on Pipeline-Free Anchorages for Mobile Offshore Drilling Units, Liftboats and Vessels.

(7) Status reports on revision of 33 CFR Subchapter ''N'', Outer Continental Shelf Regulations, and new regulations for large offshore supply vessels and crewboats, (46 CFR Subchapter ''L'').

(8) Report on the USCG/MMS Memorandum of Understanding.

(9) Establish Subcommittee on Risk Assessment of Deepwater Activities.

(10) New Discussion items will include: 12-hour manning rule as it applies to OSVs; training of licensed OSV engineers; and, manning and fatigue issues on OSVs.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than April 6, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than April 6, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than April 6, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 17, 2000.

P. A. Richardson,

Captain, Coast Guard, Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–7247 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–12]

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 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 April 12, 2000.

ADDRESSES: Send comments on any petition in triplicates to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Charie 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).

Dated: Issued in Washington, D.C., on March 17, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26183.

Petitioner: Air Transport Association of America.

Section of the FAR Affected: 14 CFR appendix H to part 121.

Description of Relief Sought/ Disposition: To permit member airlines of the ATA and other similarly situated part 121 certificate holders to continue to use Level C simulators for pilot-in-command initial and upgrade training and checking. *Grant, 01/31/2000, Exemption No. 5400D.*

Docket No.: 27202.

Petitioner: Skydrive Arizona, Inc.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To permit SAI to allow nonstudent foreign nationals to participate in SAI-sponsored parachute jumping events without complying with the parachute equipment and packing requirements of § 105.43(a). *Grant, 01/21/2000, Exemption No. 7106.*

Docket No.: 29076.

Petitioner: RR Investments, Inc., d.b.a. Million Air Dallas.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Million Air Dallas to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft. *Grant, 01/28/2000, Exemption No. 6718A.*

Docket No.: 29776.

Petitioner: Pomona Valley Pilots Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit the PVPA to conduct local sightseeing flights for the 25th annual Pomona Valley Air Fair at Cable Airport, Upland, California, on January 8 and 9, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 01/05/2000, Exemption No. 7094.*

Docket No.: 29795.

Petitioner: Western North Carolina Pilots Association, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit the WNCPA to conduct local sightseeing flights at the Asheville Regional Airport for fall scenic rides on October 23 and 24, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/22/1999, Exemption No. 7049.*

Docket No.: 29846.

Petitioner: Air Cargo Carriers, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Air Cargo to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft. *Grant, 01/11/2000, Exemption No. 7124.*

Docket No.: 29879.

Petitioner: Santoku Aviation Electric, Inc.

Section of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit SAE to substitute the calibration standards of the National Research Laboratory of Metrology and the Electrotechnical Laboratory, Japan's national standards organizations, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment. *Grant, 01/14/2000, Exemption No. 7105.*

[FR Doc. 00–7197 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–03–C–00–AOO to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Altonna-Blair County Airport, Martinsburg, PA

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 Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 24, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles E. Pillar, Jr., Airport Manager of the Blair County Airport Authority at the following address: Blair County Airport Authority, 2 Airport Drive, Martinsburg, PA 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blair County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Roxane Wren, Program Specialist, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011, 717–730–2830. 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 Altoona-Blair County 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 24, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Blair County Airport Authority was substantially complete within the requirements of 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 25, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–03–C–00–A00.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2003.

Proposed charge expiration date: August 1, 2003.

Total estimated PFC revenue: $240,239.00.

Brief description of proposed project(s):

—PFC Application Development
—Runway 12–30 and Taxiway D Lighting
—Security Fencing
—Avigation Easement Acquisition and Obstruction Removal

—Master Plan Update
—Land Acquisition
—Snow Removal Equipment
—Improve ARFF/SRE Building
—Runway 12–30 Rehabilitation
—Land Acquisition for Runway 12–30 Extension

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** and at the FAA regional airports office located at: Fitzgeral Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Blair County Airport Authority.

Issued in Camp Hill, PA on March 6, 2000.

Sharon A. Daboin,

Manager, Harrisburg ADO Eastern Region.

[FR Doc. 00–7196 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of Transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 24, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (see Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 17, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affedted	Nature of exemption thereof
12431–N	RSPA–2000–7049	TITEQ Corp., Palmdale, CA.	49 CFR 173.201, 173.202, 173.302, 173.304, 173.323, 175.3, 178.51.	To authorize the manufacture, marking, and sale of a reusable non-DOT specification, welded stainless steel cylinder for use in transportation of certain Division 2.2 materials. (Modes 1, 2, 4, 5.)
12432–N	RSPA–2000–7048	Toxco Inc., Anaheim, CA.	49 CFR 171.14(a)(1)	To authorize the transportation in commerce of Class 8 material in non-UN packaging after October 1, 2001 that was filled prior to October 1, 1991. (Mode 1.)
12433–N	RSPA–2000–7047	The Lighter Company, Inc., Miami, FL.	49 CFR 173.308(b)	To authorize the transportation and reclassification of lighters in limited quantities to be transported as ORM–D. (Mode 1.)
12434–N	RSPA–2000–7046	Salmon Air, Salmon, ID	49 CFR 172.101, 175.320.	To authorize the transportation of various hazardous materials to remote locations be excepted from certain regulations contained in the Hazardous Materials Regulations. (Mode 4.)
12437–N	RSPA–2000–7086	Stericycle, Inc., Atlanta, GA.	49 CFR 171.8, 172.101, 173.197.	To authorize the transportation in commerce of non-DOT specification steel roll-off containers as outer packagings for use in transporting medical waste in dual packaging. (Mode 1.)

Note: Correction to FR Vol. 65, No. 40, Monday, February 29, 2000, Page 10852 ''List of Applications for Exemptions'' Med-Flex, Inc. Docket No. should have read ''RSPA–2000–6913'' instead of ''RSPA–2000–6813''.

[FR Doc. 00–7189 Filed 3–22–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 7, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of application for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 17, 2000.

J. Suzanne, Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8723–M		Austin Powder Company, Cleveland, OH (See Footnote 1)	8723
11691–M		Caribbean Refrescos, Inc., Cidra, PR (See footnote 2)	11691
11725–M		Swales Aerospace, Inc., Beltsville, MD (See Footnote 3)	11725
11749–M		Union Tank Car Company, E. Chicago, IN (See Footnote 4)	11749
11761–M		Westvaco Corporation, Richmond, VA (See Footnote 5)	11761
11798–M		Anderson Development Company, Adrian, MI (See Footnote 6)	11798
11827–M		Moses Lake Industries, Inc., Moses Lake, WA (See Footnote 7)	11827
12274–M	RSPA–1999–5707	SNOW PEAK USA, INC., Lake Oswego, OR (See Footnote 8)	12274

(1) To modify the exemption to allow for an additional tote bin packaging for the transportation in commerce of bulk shipments of certain blasting agents.
(2) To modify the exemption to allow for the transportation of an additional Class 3 material exempt from segregation requirements during vessel stowage.
(3) To modify the exemption to allow for the transportation of an additional Division 2.2 material, for domestic transport, in non-DOT specification containers.
(4) To modify the exemption to allow for the use acoustic emission for specific areas of a tank car in conjunction with other non-destructive test methods for structural integrity inspections.
(5) To modify the exemption to allow for the transportation of additional Class 8 materials in certain DOT specification and AAR specification tank cars; to allow relief from the marking requirements.
(6) To modify the exemption to allow for cargo aircraft only as an authorized mode of transportation for the transportation of Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA cylinders; addition of a new provision to paragraph 8 of the exemption.
(7) To modify the exemption to allow for an additional Class 8 material in a DOT Specification IM 101 portable tank.
(8) To modify the exemption to allow for a reclassification of liquefied petroleum gas in certain metal receptacles to be shipped as an ORM–D GROUND.

[FR Doc. 00–7190 Filed 3–22–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 17, 2000.

The Department of the 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, N.W., Washington, D.C. 20220.

DATES: Written comments should be received on or before April 24, 2000, to be assured of consideration.

Bureau of Engraving and Printing (BEP)

OMB Number: 1520–0003.

Form Number: BEP 5284.

Type of Review: Extension.

Title: Mutilated Currency Redemption Customer Service Survey.

Description: The Bureau of Engraving and Printing, Office of Currency Standards, conduct surveys to ascertain overall customer satisfaction with procedures employed and services rendered in the redemption of mutilated currency submitted by the public.

Respondents: Individuals or households, business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 15 hours.

OMB Number: 1520–0004.

Form Number: BEP 1882–1.
Type of Review: Extension.
Title: Survey Card.
Description: The Bureau of Engraving and Printing solicits voluntary comments from the general public regarding displays at numismatic and philatelic shows and events at which it participates to receive feedback on content and quality for future improvement.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Recordkeepers: 100.
Estimated Burden Hours Per Recordkeeper: Varies.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 100 hours.

OMB Number: 1520–0005.
Form Number: BEP 1882–2.
Type of Review: Extension.
Title: Public Tour Survey Card.
Description: The Bureau of Engraving and Printing uses the information, suggestions and concerns from the cards to make changes to and adjustments of out free public tour.
Respondents: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Response: Varies.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4 hours.
Clearance Officer: Pam Corsini, (202) 874–2647, Bureau of Engraving and Printing, Room 3.2.C, Engraving and Printing Annex, 14th and C Streets, SW., Washington, DC 20228.
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. 00–7220 Filed 3–22–00; 8:45 am]
BILLING CODE 4840–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 14, 2000.

The Department of the 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 April 24, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0132.
Form Number: IRS Form 1120X.
Type of Review: Extension.
Title: Amended U.S. Corporation Income Tax Return.
Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 16,699.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—12 hr., 26 min.
Learning about the law or the form—1 hr., 26 min.
Preparing the form—3 hr., 34 min.
Copying, assembling, and sending the form to the IRS—32 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 300,081 hours.

OMB Number: 1545–1053.
Form Number: IRS Form 8709.
Type of Review: Extension.
Title: Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.
Description: This form is used by foreign governments and international organizations, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Code section 892. The withholding agent uses the information to determine the appropriate withholding, if any.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 3,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 min.
Learning about the law or the form—25 min.
Preparing the form—26 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 42,600 hours.

OMB Number: 1545–1516.
Form Number: IRS Form 8832.
Type of Review: Extension.
Title: Entity Classification Election.
Description: An eligible entity that chooses not to be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect the classification.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 20 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—17 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 16,500 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–7221 Filed 3–22–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 14, 2000.

The Department of the 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 April 24, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0260.
Form Number: IRS Form 706–CE.
Type of Review: Extension.
Title: Certificate of Payment of Foreign Death Tax.

Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit by Internal Revenue Code (IRC) section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,250.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—46 min.

Learning about the law or the form—5 min.

Preparing the form—25 min.

Copying, assembling, and sending the form to the IRS 8—2 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 3,893 hours.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75 Final.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Description: The regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trusts, estates, and operator to provide information necessary to certain persons to compute depletion with respect to oil and gas.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1233.

Regulation Project Number: IA–14–91 Final.

Type of Review: Extension.

Title: Adjusted Current Earnings.

Description: This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1(r) of the regulation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once only).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7222 Filed 3–22–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on International Child Labor Enforcement

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the fourth meeting of the first term of the Committee and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on International Child Labor Enforcement will be held on Friday April 7, 2000, at 9:30 a.m. in the State Room of the Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036. Tel.: (202) 296–2100 or 800–821–4367. The duration of the meeting will be approximately three and a half hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Tel.:(202) 622–0220. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the above number one week prior to the meeting date.

SUPPLEMENTARY INFORMATION:

Agenda

At the April 7, 2000 session, the Committee is expected to pursue the following agenda. This provisional agenda may be modified prior to the meeting.

1. Welcome and introductory remarks: Chairperson Elisabeth A. Bresee, Assistant Secretary (Enforcement), Raymond W. Kelly, Commissioner of Customs

2. Secretary's remarks: The Honorable Lawrence H. Summers, Secretary of the Treasury

3. White House perspective and review of budget initiatives

4. U.S. Customs Service Update

5. Business Outreach Subcommittee: status report and discussion of forced and indentured child labor ''red flags''

6. Industry code briefing: Fair Labor Association

7. The role of verification firms

The meting is open to the public; however, participation in the Committee's deliberations is limited to private sector and ex officio Committee members, invited speakers, and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than March 31, 2000.

Dated: March 17, 2000.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 00–7135 Filed 3–22–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–19]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a previously published list of revoked Customs brokers licenses in the **Federal Register**.

Port	Name	License No.
Miami	Joseph Charlton.	11009

License 11009 is valid.

Dated: March 9, 2000.

Raymond W. Kelly,

Commissioner.

[FR Doc. 00–7132 Filed 3–22–00; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 65, No. 57

Thursday, March 23, 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.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–18]

Geographic Boundaries of Customs Brokerage, Cartage, and Lighterage Districts

Correction

In notice document 00–6263 beginning on page 14011 in the issue of Wednesday, March 15, 2000, make the following correction:

Due to several typesetting errors, page 14012 is being reprinted in its entirety.

Service ports	Ports of entry
Tucson.	
California	
Los Angeles	Los Angeles-Long Beach.
	LAX.
	Las Vegas, NV.
	Port Hueneme.
	Port San Luis.
San Diego	Andrade.
	Calexico.
	Tecate.
San Francisco	Eureka.
	Fresno.
	Reno, NV.
	San Francisco-Oakland.
District of Columbia	
Dulles	Alexandria, VA.
	Dulles, VA.
Florida	
Miami	Key West.
	Miami.
	Port Everglades.
	West Palm Beach.
Tampa	Boca Grande.
	Fernandina Beach.
	Jacksonville.
	Orlando.
	Panama City.
	Pensacola.
	Port Canaveral.
	Port Manatee.
	St. Petersburg.
	Tampa.
Georgia	
Savannah	Atlanta.
	Brunswick.
	Savannah.
Hawaii	
Honolulu	Hilo.
	Honolulu.
	Kahului
	Nawilliwili-Port Allen.
Illinois	
Chicago	Chicago.
	Davenport, IA-Moline and Rock Island.
	Des Moines, IA.
	Omaha NE.
	Peoria.
	Rockford.
Louisiana	
New Orleans	Baton Rouge.
	Chattanooga, TN.
	Gramercy.
	Greenville, MS.
	Knoxville, TN.
	Lake Charles.
	Little Rock-North Little Rock, AR.
	Memphis, TN.
	Morgan City.
	Nashville, TN.
	New Orleans.
	Shreveport-Bossier City.
	Vicksburg, MS.
Maine	
Portland	Bangor.
	Bar Harbor.
	Bath.
	Belfast.
	Bridgewater.
	Calais.
	Eastport.
	Fort Fairfield.
	Fort Kent.
	Houlton.
	Jackman.
	Jonesport.
	Limestone.
	Madawaska.
	Portland.
	Portsmouth, NH.
	Rockland.
	Van Buren.
	Vanceboro.
Maryland	
Baltimore	Annapolis.
	Baltimore.
	Cambridge.
Massachusetts	
Boston	Boston.
	Bridgeport, CT.
	Fall River.
	Gloucester.
	Hartford, CT.
	Lawrence.
	New Bedford.
	New Haven, CT.
	New London, CT.
	Plymouth.
	Salem.
	Springfield.
	Worcester.
Michigan	
Detroit	Battle Creek.
	Detroit.
	Grand Rapids.
	Muskegon.
	Port Huron.
	Saginaw-Bay City-Flint.
	Sault Ste. Marie.
Minnesota	
Duluth	Ashland, WI.
	Duluth and Superior, WI.
	Grand Portage.
	International Falls-Ranier.
Minneapolis	Minneapolis-St. Paul.
Missouri	
St. Louis	Kansas City
	Springfield.
	St. Joseph.
	St. Louis.
	St. Wichita.
Montana	
Great Falls	Butte.
	Del Bonita.
	Denver, CO.
	Eastport, ID.
	Great Falls.
	Morgan.
	Opheim.
	Piegan.
	Porthill, ID.
	Raymond.
	Roosville.
	Salt Lake City, UT.
	Scobey.
	Sweetgrass.
	Turner.
	Whitetail.
	Whitlash.
New York	
Buffalo	Buffalo-Niagara Falls.
	Oswego.
	Rochester.
	Sodus Point.
	Syracuse.
	Utica.
Champlain	Alexandria Bay.
	Cape Vincent.
	Champlain-Rouses Point.
	Clayton.
	Massena.
	Ogdensburg.
	Trout River.
JFK/New York/Newark.	Albany.
	New York/Newark, NJ.
	JFK.
	Perth Amboy, NJ.
North Carolina	
Charlotte	Beaufort-Morehead City.

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BILLING CODE 1505–01–D

Federal Register

Thursday,
March 23, 2000

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6513–8]

RIN 2060–AE77

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at secondary aluminum production facilities. Hazardous air pollutants (HAPs) emitted by the facilities that would be regulated by this final rule include organic HAPs, inorganic gaseous HAPs (hydrogen chloride, hydrogen fluoride, and chlorine), and particulate HAP metals. Some of these pollutants, including 2,3,7,8-tetrachlorodibenzo-p-dioxin, are known or suspected carcinogens and all can cause toxic effects in humans following sufficient exposure. Emissions of other pollutants include particulate matter and volatile organic compounds.

These standards implement section 112(d) of the Clean Air Act (CAA) and are based on the Administrator's determination that secondary aluminum production facilities are major sources of HAP emissions and emit several of the HAPs listed in section 112(b) of the CAA from the various process operations found within the industry. The final rule will provide protection to the public health by requiring secondary aluminum production facilities to meet emission standards reflecting application of the maximum achievable control technology (MACT). Secondary aluminum production facilities that are area sources would be subject to limitations on emissions of dioxins and furans (D/F) only. Implementation of this rule will reduce emissions of all identified pollutants by about 14,200 megagrams per year (Mg/yr) (15,600 tons per year (tpy)) and HAP emissions would be reduced by about 11,300 Mg/yr (12,400 tpy).

EFFECTIVE DATE: This regulation is effective March 23, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 23, 2000.

ADDRESSES: Docket. Docket No. A–92–61, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in the Supplementary Information section of this preamble. For information concerning the analyses performed in developing this rule, contact Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1084, facsimile number (919) 541–5600, electronic mail address ''santiago.juan@epamail.epa.gov.''

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are secondary aluminum production facilities using clean charge, post-consumer scrap, aluminum scrap, ingots, foundry returns, dross, or molten metal as the raw material, and performing one or more of the following processes: aluminum scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.,* melting, holding, refining, fluxing, or alloying), in-line fluxing, or dross cooling. The EPA identified an estimated 3,000 facilities potentially affected by the rule (including sweat furnaces, die casting facilities, and foundries) which include one or more of the designated affected sources, 86 of which are estimated to be major sources. Most establishments are included in NAICS 331314 (Secondary Smelting and Alloying of Aluminum), although others may fall in NAICS 331315 (Aluminum Sheet, Plate, and Foil Manufacturing), NAICS 331316 (Aluminum Extruded Product Manufacturing), NAICS 331319 (Other Aluminum Rolling and Drawing), NAICS 331521 (Aluminum Die-Castings), and NAICS 331524 (Aluminum Foundries). Affected sources at facilities that are major sources of HAPs are regulated under the final rule. In addition, emissions of dioxins and furans (D/F) from affected sources at facilities that are area sources of HAPs are also regulated.

The final rule does not apply to manufacturers of aluminum die castings, aluminum foundries, or aluminum extruders that melt no materials other than clean charge and materials generated within the facility and that also do not operate a thermal chip dryer, sweat furnace or scrap dryer/delacquering kiln/decoating kiln. Secondary aluminum production facilities that are collocated with primary aluminum production are regulated under today's final rule.

Regulated categories and entities include:

Category	NAICS code	SIC code	Examples of regulated entities
Industry	331314	3341	Secondary smelting and alloying of aluminum facilities.
			Secondary aluminum production facility affected sources that are collocated at:
	331312	3334	Primary aluminum production facilities.
	331315	3353	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	3354	Aluminum extruded product manufacturing facilities.
	331319	3355	Other aluminum rolling and drawing facilities.
	331521	3363	Aluminum die casting facilities.
	331524	3365	Aluminum foundry facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be

regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1500 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate EPA Regional Office representative:

Region I—Janet Bowen, Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3595.

Region II—Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000.

Region III—Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III (3AT10), 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2110.

Region IV—Lee Page, Air Enforcement Branch, U.S. EPA, Region IV, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, (404) 562–9131.

Region V—George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V (5AE–26), 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088.

Region VI—John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220.

Region VII—Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446.

Region VIII—Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432.

Region IX—Barbara Gross, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1138.

Region X—Dan Meyer, Air and Radiation Branch Chief, U.S. EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4150.

Judicial Review

The NESHAP for secondary aluminum production was proposed on February 11, 1999 (63 FR 6946). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Only those objections to this rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Technology Transfer Network (TTN)

In addition to being available in the docket, following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). The TTN provides information from EPA in various areas of air pollution technology or policy. If more information on the TTN is needed, call the TTN help line at (919)541–5384.

Outline

The following outline is provided to aid in reading this preamble to the final rule.

I. Background and Public Participation
II. Summary of Final Rule
  A. Applicability and Definitions
  B. Emission Limits and Requirements
  C. Operating and Monitoring Requirements
  D. Reconsideration of Standard for Die Casters and Foundries
III. Summary of Responses to Major Comments
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  B. Emission Standards and Operating Requirements
  C. Monitoring Requirements
  D. Impacts
IV. Summary of Changes Since Proposal
V. Summary of Impacts
  A. Air Quality Impacts
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  C. Non-Air Health and Environmental Impacts
  D. Energy Impacts
VI. Administrative Requirements
  A. Congressional Review Act
  B. Executive Order 12866—Regulatory Planning and Review
  C. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
  D. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
  E. Executive Order 13132—Federalism
  F. Unfunded Mandates Reform Act
  G. Regulatory Flexibility Act
  H. Paperwork Reduction Act
  I. National Technology Transfer and Advancement Act

I. Background and Public Participation

The CAA (section 101(b)(1)) was created in part ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' Section 112(b), as revised in 61 FR 30816 (June 18, 1996), lists 188 HAPs believed to cause adverse health or environmental effects. Section 112(d) requires that emission standards be promulgated for all categories and subcategories of ''major'' sources of these HAP and for ''area'' sources listed for regulation, pursuant to section 112(c). Major sources are defined as those that emit or have the potential to emit (from all emission points in all source categories within the facility) at least 10 tpy of any single HAP or 25 tpy of any combination of HAPs. Area sources are stationary sources of HAPs that are not major sources.

The CAA requires the EPA to promulgate national emission standards for sources of HAPs. Section 112(d) provides that these standards must reflect:

> * * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies (42 U.S.C. § 7412(d)(2)).

This level of control is referred to as MACT. For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources for sources or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources.

On July 16, 1992 (57 FR 31576), the EPA published a list of categories of sources slated for regulation under section 112(c). This list included the secondary aluminum production source category regulated by the standards being promulgated today. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On June 4, 1996, the EPA published a schedule for promulgating these standards (61 FR 28197). Standards for the secondary aluminum production source category covered by this rule were proposed on February 11, 1999 (63 FR 6946).

As in the proposal, the final standards give existing sources 3 years from the date of promulgation to comply. New sources that begin construction or reconstruction after February 11, 1999 must comply with the standards by the date of promulgation or upon startup,

whichever is later. The EPA believes these standards to be achievable by affected sources within the time provided.

Emission limits, operating limits, methods for determining initial compliance, as well as monitoring, recordkeeping, and reporting requirements are included in the final rule. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested individuals the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing; therefore, one was not held. The public comment period was from February 11, 1999 to April 12, 1999. A total of 36 comment letters were received. Commenters included industry representatives, State and local agencies, and environmental groups. Today's final rule reflects the EPA's full consideration of all of the comments. Major public comments on the proposed rule along with the EPA's responses to these comments are summarized in this preamble. A more detailed discussion of public comments and the EPA's responses can be found in the Response to Comment Document (Docket No. A–92–61).

II. Summary of Final Rule

A. Applicability and Definitions

The rule applies to the following affected sources at secondary aluminum production facilities: each new, existing or reconstructed aluminum scrap shredder, thermal chip dryer, scrap dryer/delacquering kiln/decoating kiln, group 2 (*i.e.,* processing clean charge only and no reactive fluxing) furnace, sweat furnace, dross-only furnace, and rotary dross cooler; each existing secondary aluminum processing unit (composed of all existing group 1 (*i.e.,* processing other than clean charge and/or performing reactive fluxing) furnace emission units and all existing in-line fluxer emission units); and each new or reconstructed secondary aluminum processing unit (composed of all new or reconstructed group 1 furnace emission units and all new or reconstructed in-line fluxer emission units which are simultaneously constructed or reconstructed after February 11, 1999) located at a secondary aluminum production facility that is a major source of HAP. The rule also limits emissions of D/F from each new, existing or reconstructed thermal chip dryer, scrap dryer/delacquering kiln/decoating kiln, and sweat furnace; and from each new, existing or reconstructed secondary aluminum processing unit that contains one or more group 1 furnace(s) not processing clean charge, and that is located at a secondary aluminum production facility that is an area source. The rule also applies to secondary aluminum production processes designated as affected sources if they are collocated at a primary aluminum production facility.

The rule does not apply to facilities that are aluminum extruding, aluminum die casting, and aluminum foundry facilities that (1) only process clean charge and material generated within the facility, and (2) do not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln. Those aluminum extruding, die casting, and foundry facilities that purchase or otherwise obtain materials other than ''clean charge'' and operate a group 1 furnace or operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln are considered secondary aluminum production facilities under this rule and as such are subject to the requirements of this rule.

The EPA categorized process furnaces into two classes. A group 1 furnace includes any furnace that melts, holds, or processes aluminum containing paint, lubricants, coatings, or other foreign materials with or without reactive fluxing, or processes clean charge with reactive fluxing. Reactive fluxing means the use of any gas, liquid, or solid flux, other than cover flux, (including but not limited to chlorine gas and magnesium chloride) that results in a HAP emission.

A group 2 (clean charge) furnace processes only molten aluminum, T-bar, sow, ingot, billet, pig, alloying elements; thermally dried unpainted aluminum chips, aluminum scrap dried at 343 °C (650 °F) or higher or delacquered/decoated at 482 °C (900 °F); oil- and lubricant-free unpainted/uncoated gates and risers; and oil- and lubricant-free unpainted/uncoated scrap, shapes, or products (*e.g.,* pistons) that have not undergone any process (*e.g.,* machining, coating, painting, etc.) that would cause contamination of the aluminum (with coatings, oils, lubricants, or paints); and internal runaround. A group 2 furnace performs no fluxing or performs fluxing using only nonreactive, non-HAP-containing/non-HAP-generating gases (such as argon and nitrogen) or agents.

This rule allows permitting authorities the discretion to defer Clean Air Act (CAA) title V operating permitting requirements until December 9, 2004, for area sources of air pollution subject to this NESHAP. This deferral is an option at the permitting authority's discretion under EPA-approved part 70 permit programs and not an automatic deferral that the source can invoke. Thus, Part 70 permitting authorities are free to require area sources subject to this NESHAP to obtain title V permits. In areas where no approved part 70 program is in effect, and the part 71 permitting program is administered by EPA, we will defer the requirement for title V permitting for these area sources until December 9, 2004. In a separate action, the Agency proposed final amendments on August 18, 1999 to extend title V operating permit deferrals for area sources in five source categories (64 FR 45116).

B. Emission Limits and Requirements

The rule applies to major sources. In addition, the following emission sources located at secondary aluminum production facilities that are area sources of HAPs are regulated for emissions of D/F: new and existing thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, sweat furnaces, and secondary aluminum processing units containing group 1 furnaces that process other than clean charge. The emission limits for these units are summarized in Table 1 to subpart RRR in the final rule.

The particulate matter (PM) emission limits apply to new, reconstructed and existing aluminum scrap shredders, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, rotary dross coolers, and secondary aluminum processing units at secondary aluminum production facilities that are major sources. Controlling PM emissions also controls emissions of HAP metals. A surrogate approach to emission limits is used to allow easier and less expensive measurement and monitoring requirements.

The rule limits total hydrocarbon (THC) emissions from new and existing thermal chip dryers and from new and existing scrap dryers/delacquering kilns/decoating kilns at secondary aluminum production facilities that are major sources. The THC represents emissions of HAP organics. Hydrogen chloride (HCl) emission limits apply to new, reconstructed and existing scrap dryers/delacquering kilns/decoating kilns, and secondary aluminum processing units at secondary aluminum

production facilities that are major sources. The HCl is itself a HAP, and it also serves as a surrogate measure of HAP inorganics including hydrogen fluoride (HF) and chlorine (Cl_2) emissions. The rule limits emissions of D/F from new, reconstructed and existing thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns and sweat furnaces, and secondary aluminum processing units at secondary aluminum production facilities that are major or area sources. The D/F emission limit does not apply to facilities that are primarily die casting, extruding, or foundry facilities provided that they do not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln, and do not process materials other than materials generated within the facility unless it is ''clean charge'' (defined in the rule). No surrogate is used for D/F emissions.

C. Operating and Monitoring Requirements

The rule includes operating and monitoring requirements for each affected source and emission unit within a secondary aluminum processing unit to ensure continuous compliance with the emissions standards. The rule incorporates all requirements of the NESHAP general provisions (40 CFR part 63, subpart A) except as provided in the appendix to the rule (Appendix A to subpart RRR). The operating and monitoring requirements are summarized in Table 2 to subpart RRR in the final rule.

D. Reconsideration of Standard for Die Casters and Foundries

EPA has based its MACT standard for aluminum die casting and aluminum foundries, as well as its assessment of the economic impacts on small businesses in these industries, on information on representative facility practices provided to EPA by these industries to date. However, affected facilities in these industries have expressed concern that the information and assumptions upon which EPA has relied may be incomplete or may not adequately represent the processes and emissions at such facilities. Accordingly, EPA has decided that it would be prudent to gather further information concerning facilities in the aluminum die casting and aluminum foundry industries and then to reevaluate MACT requirements and the economic impact on small businesses in these industries in light of this information.

Accordingly, EPA will issue within three months a proposed rule to remove the aluminum die casting and aluminum foundry industries from the present secondary aluminum standard, and a proposed rule to stay the applicability of the present standard to the aluminum die casting and aluminum foundry industries while EPA reevaluates the MACT requirements applicable to such facilities. EPA intends to take final action concerning the proposed stay as soon thereafter as practicable. EPA will also initiate a formal process to collect further information from the facilities in these industries on the activities in which they engage and the potential of these activities to contribute to HAP emissions. After evaluating this information, EPA will make a new determination concerning MACT requirements for both major facilities and area sources in these industries. EPA expects to adopt any alternative MACT standard applicable to these industries, and to take final action to remove the aluminum die casting and aluminum foundry industries from the current standard, within two years. Any alternative MACT standard adopted for these industries will provide three years from the date of promulgation for affected facilities to achieve compliance.

III. Summary of Responses to Major Comments

This section presents a summary of responses to selected comments. A more comprehensive comment summary and responses can be found in Docket No. A–92–61.

A. Applicability

Comment: Several commenters wanted to exempt unvented in-line flux boxes from testing and monitoring requirements and suggested regulating them via work practices based on the following statements:

- Emissions do not have the potential to exceed the emission limit because small amounts (< 0.2 lbs/ton) of chlorine gas flux are used;
- There is no acceptable method for sampling their fugitive emissions, so exclusion from testing and monitoring would improve the SAPU concept and substantially reduce costs; and
- Unvented in-line flux boxes are a pollution prevention design that operate within allowable OSHA limits and should be considered representative of the MACT floor when properly installed.

Response: Unvented in-line fluxers are capable of using and emitting chlorine and HCl in excess of the HCl emission standard for in-line fluxers, 0.04 lb/ton. One manufacturer of unvented in-line fluxers specifies a flux rate of 0.92 pounds chlorine per ton aluminum. The Agency has no reason to believe that fluxing at 0.2 to 0.9 lb/ton in an ''unvented'' in-line fluxer will meet the MACT floor level of emissions. Owner/operators can meet the emission limit by capturing and venting emissions to add-on controls or limiting the chlorine flux input to the fluxer. Limiting chlorine flux input to levels below the emission limit and monitoring flux addition is a work practice that would avoid the need for testing to demonstrate compliance. If testing is necessary, testing costs may be reduced through like-for-like testing allowed in the final rule, *i.e.,* with multiple uncontrolled flux boxes of same design and same operating practice, only one needs to be tested to demonstrate compliance.

The commenter's claim that such units cannot be tested is not valid. One unvented flux box at a facility that will be subject to this rule has been tested since proposal, and the results reported to the Agency. This particular unit was tested by measuring emissions at the point where fluxed metal exits the flux box. Another method of testing is to construct a temporary enclosure around the fluxer for the short duration of performance tests to capture fugitive emissions for measurement purposes (see Docket Item IV–A–1). Following the performance tests, flux usage must be monitored, and the flux box operating procedures must be maintained to ensure continuous compliance with the HCl standard.

With regard to ''unvented'' fluxers being a pollution prevention design that should be considered a MACT floor, commenters have referred to perceived lower emissions that presumably are achieved by lower and more efficient use of fluxing agents. The MACT floor technology for control of in-line flux boxes upon which the emission limit is based is a lime-injected fabric filter; this technology can achieve an emission limit of 0.04 lb/ton HCl. No data were provided by the commenters to demonstrate equal or lower emissions from ''unvented'' fluxers over the full range of input flux as compared to vented fluxers with the floor technology.

Comment: Several commenters opposed regulation of area manufacturing sources of D/F emissions, such as extrusion, die casting, and foundry facilities. Another commenter asserted that the EPA assumed area and major source D/F emitting processes emit at about equal rates per ton of feed, but data available to EPA for side-charge and roll top melters processing clean charge show those furnaces are not significant

sources of D/F as compared to furnaces charging dirty scrap. This commenter also contended the EPA assumption that 55 percent of all delacquering furnaces are located at area sources was the basis for regulating area sources. In comments on the Integrated Urban Air Toxics strategy, the commenter claimed there were inappropriate assumptions and errors in the inventories for sections 112(c)(6) and 112(k).

Response: The EPA acknowledges the error regarding delacquering furnaces in the inventory for the Integrated Urban Air Toxics strategy. The EPA recognizes that emissions of D/F from affected sources in secondary aluminum processing facilities are site-specific and depend on the type of materials (scrap) fed to the process, flux type, flux rate, and flux practices among other variables. For both major and area sources, the materials fed to the furnace and combustion processes contain varying amounts of oil (hydrocarbons) and coatings (hydrocarbons and chlorides). These compounds found in scrap containing oils and coatings, as well as some fluxes, are D/F precursors. Processes located at facilities that are area sources and using the same feed and flux materials as are used at major sources will emit D/F at levels equal to the same processes at major source facilities.

The EPA is not claiming that the total D/F emissions from affected sources located at facilities that are area sources are equal to the total D/F emissions from facilities that are major sources. However, there were also other commenters who mentioned large numbers of sweat furnaces in their States whose emissions were not counted, suggesting there are additional D/F emissions beyond those estimated in the national impacts at proposal. The EPA has developed an estimate of D/F emissions from sweat furnaces located at facilities that are area sources. That estimate is now included in the national impact calculations.

Comment: Numerous commenters representing aluminum extruders, aluminum die casters, and aluminum foundries stated that their facilities should not be regulated because they differ fundamentally from large secondary aluminum production facilities in emission potential, particularly D/F emissions. The commenters raised the following issues:

• Extruders encompass a broad spectrum of facilities and appear to fall within the broad definition of secondary aluminum production facilities, which range from relatively small facilities owned by large companies to facilities owned by independent business people, many of which the commenter claimed are small businesses.

• Some extruders, die casters, and foundries use no purchased scrap but do use internally generated scrap, while other facilities use small amounts of ''clean'' purchased scrap. Some are concerned that regulation may interfere with the effort to recycle at the plant, while others who purchase scrap see the regulation as creating a disincentive to recycle from outside the plant.

• Impurities in scrap are a principal source of D/F precursors. The commenters stated that extruders, die casters, and foundries cannot be large contributors to D/F emissions because they use or process only small amounts of higher quality scrap and do limited fluxing. One commenter argued that EPA should exclude extruders as small contributors to D/F emissions as in *Alabama Power* vs. *Costle,* 636 F.2d 323 (D.C. Cir. 1980) using the de minimis exception articulated in that case.

• Previous EPA publications support the distinction between die casters and secondary aluminum production facilities:

•• The Documentation for Developing the Initial Source Category List defines secondary aluminum production as facilities that smelt, and not including die casters;

•• An EPA new source review guidance memo (Treatment of Aluminum Die Casting Operations for the Purposes of New Source Review Applicability from, Thomas Curran, Director, Information Transfer and Program Integration Division, December 4, 1998) states ''die casting facilities typically need not be considered secondary metal production plants'' (the commenters argued that this memo acknowledges that die casters could engage in in-house recycling of castings and not be considered a secondary aluminum production facility); and

•• The Secondary Brass and Bronze New Source Performance Standard (NSPS) distinguishes between facilities that reclaim brass and bronze and those that create a finished product.

Applying the D/F standard to affected sources located at facilities that are area sources will subject facilities such as extruders, die casters, and foundries to the burden of title V permitting and MACT monitoring and reporting. One of these commenters stated that no environmental benefit will be gained from regulating area source aluminum production facilities since they already meet the emission limitation.

Response: The EPA has considered these issues and responds as follows to the points raised:

• With respect to the first issue, the EPA agrees that based on the definition of secondary aluminum production facility and current operations of some facilities that are extruders, those extruders would be subject to this rule. Numerous comments on the applicability section and definitions in the proposed rule were received and after consideration of those comments, the EPA has revised those sections of the final rule. As part of the revisions, the EPA has concluded that aluminum extruding, aluminum die casting, and aluminum foundry facilities that process no materials other than materials generated within the facility and ''clean charge'' (defined in the rule), and that do not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln are not secondary aluminum production facilities and, therefore, are not subject to the requirements of the rule. Based on comments and information received in response to the proposal and subsequent meetings with the sources, the Agency believes that most small businesses will not fall under the definition of secondary aluminum production facility. Those aluminum extruding, die casting, and foundry facilities that do purchase or otherwise obtain materials other than ''clean charge'' and/or operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln are secondary aluminum production facilities and are subject to this rule.

The commenter's reference to some small facilities being owned by large companies is consistent with the EPA's knowledge that large companies in the secondary aluminum production industry engage in extruding operations. The commenter also claimed that some extruders are owned by independent businesses, many of which are small, however no specific quantitative data were provided to assist the Agency in assessing potential impacts.

• With regard to the second issue, the regulation discouraging recycling within the plant, the final rule does not prevent facilities that are area sources from using internally-generated scrap as charge to their group 1 furnaces. Regarding purchased scrap, although some extruders, die casters, and foundries use only small amounts of purchased scrap in their operations, other information provided to the EPA since proposal indicates that some of this type facility use more than half scrap (purchased and internally generated) as feed/charge in their operations (see Docket Item IV–E–2).

The issue with purchased scrap is the level of contamination with D/F

emission precursors. The EPA worked with industry representatives during the regulatory development phase to establish definitions and specifications for purchased scrap that would yield lower HAP emissions. Data collected indicated that the percentage of oil and coatings in scrap (hydrocarbon and chloride content) varies over a large range. No concurrence was achieved on the levels of scrap oil and coatings content that would reliably limit the processing of D/F precursors from affected sources, nor was concurrence achieved on a way to measure these levels of oil and coatings. Further, a similar discussion with industry representatives failed to reach a consensus on how to define limited reactive fluxing, the other important aspect of D/F emission potential. The EPA has concluded that facilities in which aluminum scrap is processed, whether purchased or otherwise acquired from outside the facility, fall within the secondary aluminum production source category.

• With regard to the third issue, these commenters assert that these facilities are not large contributors to D/F emissions because they purchase only small amounts of scrap or ''clean'' scrap, thus limiting the availability of D/F precursors in the affected sources. However, three factors (the total quantity of scrap fed to processes, the percentage of oil and coatings contamination of the scrap, and the flux rate) are significant variables that affect generation of D/F precursors. As mentioned above, some facilities use significant amounts of purchased scrap.

Regarding the comment citing *Alabama Power* vs. *Costle,* 636 F.2d 323 (D.C. Cir. 1980), and requesting de minimis exemption for extruders, EPA notes that CAA Section 112(c)(6) requires EPA to regulate sources accounting in the aggregate for more than 90 percent of certain dioxin and furan emissions, and that EPA cannot use a de minimis rationale to exclude area sources from regulation if this would be inconsistent with this statutory mandate.

• With regard to the fourth issue, documentation for the Source Category Listing states that the secondary aluminum production source category includes ''any facility engaged in the cleaning, melting, refining, alloying, and pouring of aluminum recovered from scrap, foundry returns, and dross, to form aluminum products such as alloy ingots, billets, notched bars, shot, hot metals, and hardeners.'' The documentation also states that the category includes pretreatment processes which include drying, burning, and sweating, among others. Although there can be differences in operations and products between secondary aluminum production facilities and those facilities that are primarily die casting, foundry, and extrusion facilities, for the purposes of this NESHAP, the Agency considers the die casting, foundry, and extrusion facilities that use aluminum scrap and other coated/painted aluminum bearing materials obtained from outside their facilities to be engaging in secondary aluminum production operations.

The EPA new source review guidance memo referenced by the commenter has, in addition to the commenter's quote, an extensive discussion of the fact that some facilities whose primary activity is die casting also perform secondary metals production from post-consumer scrap or unspecified aluminum scrap. This type of facility was identified in the memo as a ''nested'' secondary aluminum support facility. Such facilities also use processing equipment that is defined as an affected source under this rule. It is the acquisition of aluminum-bearing materials from outside the facility that are not ''clean charge,'' and the presence of affected sources that subject the facility to this rule. The difference in products is not the determining factor.

The final rule clarifies that aluminum die casting, aluminum foundry, and aluminum extrusion facilities that process only clean charge (as distinct from scrap) are not secondary aluminum production facilities (regardless of the remelting of internally generated scrap), provided they do not operate thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, or sweat furnaces. Aluminum die casting, extruding, and foundry facilities that process aluminum scrap, etc., in the furnaces (i.e., materials that are not clean charge) from outside the facility are secondary aluminum production facilities and subject to the final rule.

• Regarding the fifth issue, the burden of title V permitting, monitoring, and reporting for area sources, the final rule has been changed to allow permitting authorities the discretion to defer the title V permitting requirements for secondary aluminum production area source facilities that are not otherwise subject to title V permitting requirements under other regulatory actions. A further change that will reduce the burden for area sources is that they will only be required to conduct an initial performance test to demonstrate compliance. The requirement to repeat the performance test every 5 years has been eliminated for area sources.

Facilities that use add-on controls will be required to monitor parameters in accordance with their approved site-specific OM&M plan. Facilities that are area sources which use purchased scrap, but meet the D/F emission limit without add-on controls, i.e., use work practices, will also be required to monitor in accordance with their site-specific OM&M plan. Their monitoring provisions will include a calculation method for determination of scrap contamination levels, or a scrap inspection program to demonstrate they are not exceeding the scrap quantity and oil and coatings contamination levels, and flux rate established during the initial performance test.

The environmental benefit of controlling D/F from these affected sources is reduction of emissions of an environmentally persistent HAP. The benefits of monitoring for those sources who meet the limit without add-on controls is continuing evidence that the operating practices used during the compliance tests are maintained and emissions remain at a level below the limit.

Comment: Commenters desired to allow new or reconstructed units into the SAPU and encourage EPA to do it with a discount applied to the new unit's allowed emissions. The commenters stated that:

• It will allow sources to take advantage of the more efficient fluxing achievable in new flux boxes, in particular the ''unvented'' flux boxes.

• It promotes pollution prevention and is consistent with common sense initiatives and project XL innovations that allow plantwide applicability limits.

• It is not standard avoidance, but a more effective way of complying.

Response: To allow new or reconstructed units into a SAPU consisting of existing units would involve averaging the emission reductions achieved by new and existing affected sources. Since new and existing sources are subject to separate standards and must individually demonstrate compliance, creation of a source which has both new and existing emission units is not permitted by the CAA. Therefore, EPA will not allow new units to become part of a SAPU comprised of existing units. In order for new units to have the same benefits available to existing emission units, the Agency has revised the rule to allow for a new SAPU, that is composed entirely of simultaneously constructed new sources and/or simultaneously reconstructed sources, in addition to the SAPU for existing emission units.

Comment: In comments on combining and treating emissions from existing sources with those from new sources in a single control system:

• One commenter asked to group an existing or new furnace with a new in-line fluxer as a separate affected source (outside the SAPU). The combined unit would have the same limits as the furnace by itself for PM, HCl, and D/F (*i.e.,* no emission increment for the new fluxer). The industry claimed a significant improvement in fluxing efficiency with much lower emissions is associated with moving fluxing from the furnace to in-line fluxers.

• Another commenter requested that the rule be expanded to affirm that new emission units may be ducted to existing control systems if capacity is available or can be expanded to accommodate the new source.

Response: The problem with combining a new affected source with an existing affected source is that the new source is required to meet the specified emission limits, but once combined, the new source emissions are not measurable separately from the emissions from the existing source. As noted in the response to the previous comment, there is no legal construct under the CAA that permits combining control requirements for existing and new sources, therefore, the combination of an existing furnace and new in-line fluxer is not permitted.

The revisions to the final rule do provide for the establishment of a SAPU composed entirely of simultaneously constructed new emission units. This will allow the combination of a new furnace and new in-line fluxer as a SAPU, but not allow combining a new furnace or in-line fluxer with an existing SAPU.

Comment: Several commenters were concerned about the applicability of the rule to sweat furnaces:

• One commenter, a manufacturer of sweat furnaces, expressed concern about economic impacts on small aluminum reclamation operators. This commenter estimated that there are at least several hundred sweat furnaces manufactured by them currently being used nationally with capacities considerably less than the model sweat furnace used in EPA's analysis of impacts (5,000 tons/year). All of their furnaces are equipped with integral afterburners. This commenter also submitted an afterburner performance test report showing 97.8 percent removal of PM by the afterburner and claimed, but did not have measurements, that D/F removal should be similar. The commenter stated that the preamble did not show D/F results upstream of the afterburners or what destruction efficiency was achieved.

• Another commenter attached a brochure from a manufacturer claiming to have distributed over 2,000 small sweat furnaces. This commenter states that the proposal underestimated the number of these sources. The commenter believes that testing and control costs will eliminate small businesses from the market and suggested that regulations for area sources be withdrawn until small business, health, and environmental impacts have been reassessed. Another manufacturer of sweat furnaces suggested a technology-based standard for area source sweat furnaces with no testing required.

Response: The EPA has no test data to support a comparison between PM and D/F removal efficiencies. The D/F emission limit in the proposed and final rules has been proven to be achievable with MACT floor technology.

Based on the information contained in these comments, the EPA requested additional information and data from sweat furnace manufacturers to further assess impacts of regulating D/F emissions from the furnaces. The large number of units reported to be manufactured suggested large numbers of these affected sources are currently in operation. The EPA's further investigation found that although one manufacturer who commented only sells sweat furnaces with integral afterburners for emission control; that is not the case for all domestic manufacturers.

Due to the large number of these sources and the types of scrap materials processed, their D/F emission potential is significant both individually and in the aggregate. Recognizing this, the EPA considered additional regulatory strategies for sweat furnaces and performed an economic analysis to examine the impacts of those strategies. The conclusion from this analysis is that the cost of measuring D/F emissions from sweat furnaces through a performance test is significant in comparison to the cost of the furnace and afterburner. Based on this analysis the EPA has revised the rule to add an alternative means of compliance. Owner/operators electing to install and operate an afterburner meeting the design criteria of operating temperature of at least 1600 °F and a 2 second residence time will not have to conduct performance tests. The final rule retains the numerical standard so that owner/operators with control equipment that does not meet the design criteria have the option to test to show that the D/F emissions are below the limit. These revisions to the proposed rule, combined with many anticipated State permitting authority decisions to exercise their discretion to defer the requirement for title V permits, will significantly reduce the burden for both large and small businesses operating sweat furnaces. The economic impact analysis conducted for this regulation reports minimal economic impacts to owners and operators of sweat furnaces.

B. Definitions

Comment: Numerous comments were received on the definition of ''clean charge.''

• One commenter stated that the definition should include as clean charge, outside runaround that is contractually ensured to be clean.

• Other commenters stated that they support inclusion of ''non-coated runaround'' scrap in the definition, which may have small amounts of lubricant, and that some runaround is returned from customers. These commenters stated that the rule should allow external, preconsumer, and non-coated runaround scrap in group 2 furnaces.

• Several commenters requested that EPA define non-coated runaround scrap or redefine clean charge to allow scrap covered with lubricants or substances low in materials that could generate D/F. Many die casters use scrap generated on-site (miscast material, defective parts, and cutoffs of excess aluminum) that may have inorganic agents (clay or talc) or die release agents (heavy waxes or high molecular weight oils) that do not generate D/F when burned.

• Commenters representing extruders also wanted to revise the definition to include purchased scrap low in materials that contribute to D/F generation.

• Other commenters noted the proposed definition of clean charge allows only pure aluminum (pure aluminum is an incorrect term) that cannot be cast in a die casting machine. They stated that the definition of clean charge also restricts the use of chips that have not been processed in a chip dryer and this is a disincentive for exploration of new technology (presses, centrifuges, and washers) alternatives to chip drying. Some facilities that do dry chips do not heat to 343 °C because it may oxidize the metal. The temperature to which chips must be heated to qualify as clean charge is arbitrary and was not considered with any input from foundries and die casters.

Response: In regard to the first four comments on ''clean charge,'' EPA has reviewed and reconsidered the definition of clean charge. The

definition of clean charge at proposal erroneously included non-coated runaround scrap which commenters wanted clarified to include runaround from outside the facility (*i.e.,* external, relatively ''clean,'' preconsumer, non-coated runaround). The commenters acknowledged that the runaround may have ''small'' amounts of lubricant and coatings. Lubricants, oils, and coatings are D/F precursors. As explained in a previous response, the EPA worked with industry representatives during the regulatory development phase to establish definitions and specifications for purchased scrap that would yield consistently lower HAP emissions when charged to furnaces. Data collected indicated that the percentage of oil and coatings in scrap (hydrocarbon and chloride content) varies over a large range. No concurrence was achieved on the levels of scrap oil and coatings content, or a universal method of measuring the scrap content of oils/coatings, that would reliably limit the processing of D/F precursors from affected sources. Group 2 and those group 1 furnaces that are ''clean charge'' furnaces have no D/F emission limit. It is not consistent with the concept of clean charge furnaces to allow oil- and lubricant-bearing scrap purchased or otherwise obtained from outside the facility to be charged as clean charge. For this reason, the Agency has clarified that the definition of clean charge includes internally generated runaround. Internal runaround is defined in the final rule as scrap material generated on-site by aluminum extruding, rolling, scalping, forging, forming/stamping, cutting, and trimming operations that do not contain paint or solid coatings. Aluminum chips generated by turning, boring, milling, and similar machining operations that have not been dried at 343 °C (650 °F) or higher, or by an equivalent non-thermal drying process, are not considered internal runaround. Clean charge also does not include ''runaround'' scrap that is purchased or otherwise obtained from outside the facility.

Secondary aluminum production facilities may use painted and/or purchased runaround in group 2 furnaces by drying or delacquering it to meet the definition of clean charge, so as to eliminate the possibility of D/F formation in the furnace. Owner/operators may also charge painted and/or purchased runaround scrap to uncontrolled group 1 furnaces in a SAPU, provided they achieve an initial compliance demonstration and operate according to an OM&M plan approved by the permitting authority. For group 1 furnaces operated without add-on controls, the plan would likely include a site-specific scrap inspection or certification program of some type to indicate the contamination level and to define the percentage of scrap in the total furnace charge.

As noted in a response to a previous comment, facilities that are primarily aluminum die casters, foundries, and extruders that process only on-site materials or clean charge, and that do not operate a thermal chip dryer, scrap dryer/delacquering kiln/decoating kiln, or sweat furnace are not secondary aluminum production facilities and are not subject to this rule.

• With regard to the fifth comment, relating to the use of the term ''pure aluminum'' in the definition of ''clean charge'' in the proposed rule, the definition has been revised for the final rule to eliminate the word ''pure'' as a modifier of aluminum and instead describe it as oil- and lubricant-free uncoated/unpainted aluminum.

With respect to the issue of chip drying and the potential for oxidation of the aluminum, the final rule does not contain a minimum temperature requirement for thermal chip drying to make the chips ''clean charge.'' With regard to other chip processing, the Agency is not precluding new technology such as presses, centrifuges, and washers that may be capable of producing chips with no oily residue, thus qualifying those processed chips as clean charge.

C. Emission Standards and Operating Requirements

Comment: One commenter urged EPA to review the application of fluoride and chlorine fluxes in the secondary aluminum industry and to verify the appropriateness of HCl as a surrogate.

Response: Emission limits for HCl were proposed because test data indicate that HCl is emitted when chlorine and reactive chloride fluxes are used, and the technology representing the MACT floor for HCl removal, which was determined to be lime injected fabric filters, also achieves MACT floor level removal of chlorine and HF. Although some fluoride fluxes are used by the industry, differences in flux properties, cost relative to chlorine/chloride fluxes, and occupational health considerations related to in-plant particulate levels limit the amounts used, thus limiting the potential for HF emissions.

Comment: One commenter stated that emission limits do not reflect limits achievable using currently available technology, and that neither the limits nor the selected MACT accurately reflect MACT. The commenter stated that the MACT floor emission levels violate section 112 of the CAA in that they are not based on the best-controlled sources for new sources and are not at least as stringent as the best performing 12 percent for existing sources. According to the commenter, EPA should consider, but did not, emission limits more stringent than the floor. In a related comment, another commenter disagrees with the dioxin emission standards and states that they are unsupported by emissions data. According to the commenter, the method of developing the limit is inconsistent with the CAA and fails to recognize the law of averages and, in the case of SAPUs, is illegal because it permits individual group 1 furnaces to emit dioxin at levels in excess of the MACT floor.

Response: The commenters argued that EPA did not properly consider the available emissions data in establishing the MACT floor emissions limits. In the case, *Sierra Club* v. *EPA* (March 2, 1999), the DC Circuit held that because MACT standards must be achievable in practice, EPA must assure that the standards are achievable ''under most adverse circumstances which can reasonably be expected to recur'' (assuming proper design and operation of control technology). The court further held that EPA can reasonably interpret the MACT floor methodology language so long as the Agency's methodology in a particular rule allows it to ''make a reasonable estimate of the performance of the top 12 percent of units,'' that evaluating how a given MACT technology performs is a permissible means of estimating this performance, and that new source standards need not be based on performance of a single source. The court's decisions give EPA latitude in determining the MACT floor and the MACT floor emission limits. The EPA determined the MACT floor based on information available for each affected source and emission unit. At proposal, the EPA selected emission limits at the floor level of control, and the commenters provided no additional emissions data for any pollutant for EPA to consider. The emission standards are based on the emissions levels achieved through the application of MACT floor technologies and account for variation in the process and in the air pollution control device effectiveness.

Comment: Several commenters did not want an exceedance of an operating parameter to be a violation of an operating requirement. According to the commenters:

• The rule is not clear as to what constitutes a violation of the operating requirements.

• Operating parameters are only indicators of process and control performance, not a direct measure of excess emissions.

• An exceedance should not to be a violation until six exceedances occur in a 6-month period.

• No more than one violation should be counted per 24 hour period for any one parameter.

• The rule is not clear on whether a failure to take corrective action in response to an exceedance is a violation of the standard.

• A failure to initiate corrective action within 1 hour should constitute a violation.

• The rule should specify that if corrective action is begun within 1 hour and completed in accordance with the startup, shutdown, malfunction (SSM) plan, no violation has occurred.

Response: The EPA has considered the issue of a deviation being a violation and addresses the commenters' points as follows:

• With regard to the commenters' first point, the language in the final rule has been written to make clear that a deviation of an operating parameter is a violation of the operating standard. Each major source facility owner/operator is required to define the compliance parameters to be monitored in their OM&M plan. Then, during the initial performance tests, they are required to monitor and establish the value or range of the parameters. These values must be reported in the results of the test and notification of compliance status to the permitting authority and must be approved by the permitting authority. During subsequent operations, if the monitored parameters exceed the values or fall outside the range determined during the initial performance test, it is a violation of the operating requirements of the standard, unless it is the result of a malfunction to which the facility responds to in accordance with the SSM plan.

• Regarding the second point, the owner/operator may use continuous emission monitors (CEMs) as a direct measure of the emissions rather than using operating parameters if such CEMs can be demonstrated to the satisfaction of the permitting agency to reliably measure emissions.

• Regarding the third point, the EPA has no basis for allowing six deviations before considering the facility to be in violation. The owner/operator has ample opportunity to establish a range for the operating parameters and must thereafter operate within that range.

• Regarding the fourth point, any deviation of an operating parameter limit is a violation of the operating standard, regardless of when it occurs, unless it is the result of a malfunction to which the owner or operator responds in accordance with the SSM plan.

• Regarding the fifth and sixth points, the rule requires corrective action as a result of an operating parameter deviation or bag leak detector alarm. Corrective action must be conducted in accordance with the operations, maintenance and monitoring plan. Failure to take corrective action and to complete corrective action as expeditiously as practicable is a violation of the operating standard.

• Regarding the seventh point, a deviation that is the result of a malfunction, to which the facility responds in accordance to its SSM plan, is excluded as a violation.

Comment: Several commenters disagreed with the requirement that capture and collection systems meet the criteria established by the American Conference of Governmental Industrial Hygienists (ACGIH) for hooding and ventilation systems. The commenters claimed EPA has not shown that MACT floor facilities' hooding and ventilation systems met ACGIH criteria so that the requirement is arbitrary; EPA should show that the facilities met the ACGIH criteria. Several commenters stated that because EPA has no data to support the requirement for ACGIH criteria for capture and collection equipment for existing sources, they recommended the requirement apply only to new sources. Other commenters stated that although currently protecting work space air quality, most existing systems would not meet ACGIH criteria, meaning significant expenditures to upgrade those systems. The EPA likely did not account for these costs in their economic analysis; they agree with the commenters who stated that the requirement should be limited to new or modified sources.

Response: For affected sources and emission units that require an air pollution control device, a capture and control system meeting ACGIH criteria is necessary for occupational safety and to meet the emission standards. The emission standards are based on systems that effectively capture and contain emissions at the source (minimizing fugitives) and convey them to the control device for removal. In addition, a capture and control system meeting ACGIH criteria with good hooding design will result in a lower volume of exhaust air to be treated, and in many cases, a smaller, lower-cost control device. The EPA considers an ACGIH capture and collection system to be part of MACT floor technology for affected sources with add-on controls.

Comment: One commenter supported not counting false alarms of the bag leak detection system in the alarm time. Another commenter stated that the monitoring and reporting requirements are reasonable in order to confirm compliance, with the exception of bag leak detectors. The commenter stated that a facility should not be penalized for rapid response to an alarm and recommends that the actual time be counted and delete the 1-hour minimum alarm time.

Response: The rule has been clarified so that false alarms are not counted and a 1-hour minimum has been retained in the final rule to encourage proactive fabric filter maintenance.

Comment: Several commenters did not want the labeling requirement. They argued that, (1) The inspectors can get this information from the OM&M plan in the office before entering the plant; (2) the labels will be hard to maintain in a plant environment; (3) it creates opportunity for violation with no commensurate benefit and increases/duplicates regulatory paperwork; and (4) the labeling requirement generates safety concerns.

Response: The EPA believes that labeling requirements are necessary for enforcement and operating purposes and should be retained due to the complexity of the industry and the numerous possible facility configurations (and emission units that could be combined within a SAPU). Labeling will help prevent operators from charging the wrong materials or improperly operating the units and will help inspectors in identifying units and determining if the units are being properly operated. However, EPA understands industry's concerns over the implementation of the labeling requirements and has revised the proposed rule to require labeling only at those affected sources and emission units that can be operated in more than one mode and/or which are physically very similar, including group 1 furnaces with and without add-on controls, group 2 furnaces, scrap dryers/delacquering kilns/decoating kilns, and in-line fluxers. In addition, the final rule requires that labels contain only the identification of the unit and the applicable operational standards. These revisions respond to industry's concerns regarding increased regulatory paperwork with no commensurate benefits while maintaining enforceability of the standards since both operators and inspectors will

clearly know the operating standards/requirements of each emission unit.

Comment: Several commenters disagreed with the requirement to maintain the same flux injection schedule as used in performance tests. One commenter stated that they should be given flexibility to develop schedule procedures during performance tests subject to approval by the permitting authority. According to one commenter, the requirement to maintain the same flux injection schedule as used in performance tests, which would be done under worst case conditions, would result in an increase in HCL emissions and cause other negative environmental impacts. Another commenter stated that this requirement will cause increased HCL emissions for uncontrolled group 1 furnaces and will restrict work practices to minimize chlorine use. The commenter suggested a separate provision to maintain the same flux injection schedule for baghouses with semi-continuous lime feed systems.

One commenter wanted flux monitoring on a monthly basis and the schedule requirement eliminated. The rule could be interpreted to preclude a system with computerized monitoring of furnace operations/controls with correlated emissions and online continuous emissions calculations.

Response: Owners or operators are required to conduct performance tests under the highest load or capacity reasonably expected to occur. This is represented by the maximum reactive flux rate. The final rule provides that sources may flux (on a lb per ton of feed/charge basis), up to the limit established during a successful performance test, and does not require maintaining the same schedule. The rule also does not require owners or operators to use more flux than necessary to produce a saleable product. These requirements will not lead to increased HC1 emissions.

The standards for emission units performing reactive fluxing, all of which are included in the SAPU affected source, were developed using emissions data gathered during a complete cycle. Because of the difference in cycle times and schedules, the EPA recognized the need to develop emission limits for SAPUs that would account for overlapping cycles of the emission units included in the emissions calculation and a 3-day, 24-hour rolling average was selected as the maximum averaging time required. Reactive flux monitoring on a monthly basis is not acceptable in that it is inconsistent with the emission standards based on 3-day, 24-hour rolling average and the established monitoring parameter values or ranges derived during the performance test. Monitoring over a period consistent with the basis of the emission standards provides the necessary evidence of continuous compliance.

The issue of flux injection rate and schedule is related to lime injection practice for the fabric filter control systems. The final rule provides operating requirements for the floor technology, which is continuous lime injection systems with lime-injected fabric filters. Owners/operators who want to use intermittent lime feed systems (as opposed to continuous injection) must show compliance with the emission limits and must apply to the permitting authority for approval of an alternative lime addition monitoring procedure. The owners/operators must provide information as necessary to show that the applicable emission limits will be achieved on a continuous basis.

The rule does not preclude the use of computerized systems that correlate controls and operating practices with emissions and calculate emissions on a continuous basis once this approach is approved by the permitting authority and incorporated into the site-specific OM&M plan.

Comment: Several commenters disagreed with the +25 °F associated with the inlet temperature limit for fabric filters established during the initial performance test. According to two commenters, the operating temperature of these fabric filters will vary more than 25 °F due to changes in ambient temperatures. This creates an unnecessary risk of violation and provides no environmental benefit. Another commenter stated that instead of the temperature requirement, electrochemical HCl sensors for automatic lime feed adjustment and other automatic systems should be considered to allow greater operating flexibility. One commenter stated that in-line fluxers are not regulated for dioxin emissions and therefore do not need a temperature limit.

Response: The proposed rule has been changed to eliminate this requirement for fabric filters only controlling in-line fluxers since these units operate at temperatures that are close to ambient temperature. For other affected sources and emission units, or fluxers ducted to a device co-controlling other sources, the +25 °F limit is retained. Operators would be expected to add dilution air or water sprays as required to maintain the fabric filter inlet temperature within the range. Also, performance tests could be conducted at worst case conditions. For example, performance tests could be conducted so that the inlet temperature is much higher than the normal operating inlet temperature (450 °F vs 380 °F, for example, thus providing a larger operating range). Dioxin formation is strongly influenced by the temperature at the fabric filter inlet, and temperature control is the means of preventing D/F formation (and enhancing HCl removal) in the fabric filter. Temperature is also a parameter which is monitored to ensure continuous compliance between periodic performance tests. This is because it is an indicator of control device performance for D/F and HCl emissions.

Comment: According to one commenter, owners and operators could demonstrate compliance with the HCl emission limit by monitoring total chlorine input and showing it to be less than the emission limit.

Response: The EPA agrees that, for in-line fluxers and group 1 furnaces processing only clean charge, operators may demonstrate compliance (in lieu of performance tests) by demonstrating that reactive flux injection is limited to a rate which would not exceed the standard if emitted in its entirety.

D. Monitoring Requirements

Comment: Several comments were received that requested more flexibility in the monitoring requirements aimed at reducing the burden to the industry:

- One commenter stated that the operating and monitoring requirements of §§ 63.1506 and 63.1510 are too prescriptive and not consistent with preamble statements regarding flexibility.
- Several commenters stated that EPA should allow alternative site-specific monitoring and operating plans to improve feasibility and cost effectiveness.
- Another commenter stated that separate provisions should be included in each of §§ 63.1506 and 63.1510 allowing facilities to develop alternative procedures approvable by the applicable permitting agency.
- Two commenters claimed the provisions will result in burdensome, labor-intensive requirements without commensurate benefit to the environment.
- Another commenter with a rolling mill facility claimed their plant is operating at demonstrated low emission levels and seeks monitoring plan flexibility to allow their facility to continue in its present mode. Referring to this plant, another commenter stated that the plant has developed a correlation between opacity and PM which has been used for over a year, in accordance with a regulatory order. This monitoring has been approved by EPA

and the local agency and is federally enforceable.

Response: The final rule has been written to incorporate more flexibility in the monitoring requirements:

• With regard to the commenters' first, second, and third points, the final rule includes explicit provisions for obtaining approval to use alternative monitoring procedures and lists the types of information needed in the application. It includes data or information to justify the request such as technical or economic infeasibility, a description of the proposed alternative monitoring requirements including operating parameters and how the limit for SAPUs (if SAPUs are included in the application) will be calculated, and information as to how the alternative monitoring requirements would provide equivalent or better assurance of compliance with the standards.

In addition, in response to the numerous comments received regarding the proposed monitoring and operating provisions, the final rule has been written to provide more flexibility to individual facilities in developing their OM&M plans and for approval of site-specific monitoring and operating alternatives, within EPA guidelines, by the permitting authority. Additional comment responses below discuss some specific changes made in the final rule.

• Regarding the fourth point, the monitoring requirements are necessary to demonstrate continuous compliance and, as such, are environmentally beneficial. Most, if not all, of the monitoring data collection or logging can be computerized and, therefore, will not be labor intensive.

• Regarding the fifth point, specifically, the final rule allows the owner/operator of a plant to apply to the Administrator for alternative monitoring, if necessary, or document their current procedures in the facility OM&M plan. The OM&M plan is submitted to the permitting authority for review and approval. The final rule gives more flexibility, for example, through guidance for scrap inspections (used in operating limits and monitoring) that is less prescriptive and more options for lime injection monitoring.

Comment: Several commenters stated that the monitoring frequencies and data quality objectives are too restrictive and specific for application across a diverse industry and bear no relevance to the emission standards or ensuring proper operation of emission controls. Another commenter agreed with the selection of the monitoring parameters in the proposed rule, but stated that the monitoring intervals are too frequent.

Response: Monitoring frequency requirements are related to the need for evidence of continuous compliance, and frequent readings are essential to provide the demonstration. However, the final rule changes the frequency of recording monitored parameter values from that proposed. For example, the frequency of recording fluxing rates has been reduced by requiring readings only during periods when flux additions are occurring. Additional options included for monitoring free-flowing lime change those monitoring and frequency requirements and increase the monitoring options. Furthermore, the provisions for site-specific OM&M plans approved by permitting authorities allow opportunity for adjustment of monitoring, within EPA guidelines, to fit site-specific conditions. Comments dealing with data-quality objectives for specific monitored parameters are addressed in more detail below.

Comment: Several commenters argued that the requirements for accuracy of 1 percent when applied to feed/charge weight and flux injection rates are overly stringent and burdensome and create an unnecessary increment for a violation.

Response: The EPA has retained the 1 percent accuracy requirement in the final rule. However, the EPA recognizes there may be situations in which 1 percent accuracy for feed/charge weight and chlorine flux injection rate is not workable. An example of this may be operating at a very low flux injection rate. The final rule has been written to allow the permitting authority to approve alternative accuracy requirements for monitoring equipment, on a site-specific basis, in situations where the 1 percent accuracy requirement is not workable and where the owner/operator provides data/information to substantiate that emission standards will be achieved on a continuous basis.

Comment: In comments on accuracy of performance test measurements and feed/charge weight measurements:

• One commenter stated that the EPA reference methods are not better than 10 percent repeatable, so the requirement for 1 percent accuracy in charge weight is arbitrary and unnecessarily burdensome.

• Another commenter requested less stringency in the accuracy requirement for the sources whose emissions are well under the emission limit, noting that the expected accuracy of Methods 26A and 5 is 10 percent. This commenter suggested that the charge weight monitoring be restricted to only those sources having to comply with a lb/ton emission limit.

• An additional commenter stated that an aggregate accuracy of 5 percent is more representative of reproducible floor practice.

• Another commenter wanted the weight monitoring not to be required for each emission unit, but allowed to be aggregated across emission units.

Response: The EPA considered the measurement accuracy issue raised by the commenters and addresses their points as follows:

• With regard to the commenters' first, second, and third points concerning the test method accuracy, the EPA notes that the variability in the test methods, process, and control equipment is incorporated into the testing results upon which the emission limits are based. The limits have been established to accommodate that variability. Given that the emission limits are on a lb-of-emission/ton-of-feed (or charge) basis, it is also in the owner/operators best interest to make an accurate weight determination because inaccurate measurements could cause them to be out of compliance. As noted in the previous response, the final rule provides additional flexibility with regard to feed/charge measurement in situations where the 1 percent accuracy is not workable.

• Regarding the fourth point, weight monitoring is required because the emission limits are based on lb/ton of feed/charge or product. Under the site-specific OM&M plans, individual emission units of the same type may have different allowable emission rates based on the presence of add-on control devices, fluxing practice, and feed/charge practices. The only way to determine compliance is to monitor weights for individual emission units.

Comment: Commenters wanted the compliance date to be 3 years after promulgation rather than ''on or after the date of the initial performance test.'' They argued that:

• Carrying out performance tests prior to the end of 3 years is essential to completing the monumental job; but they do not like having to comply ''on and after the date of the initial performance test'' which could be the emission test program for the SAPU.

• The submittal deadlines for the OM&M plan, the SAPU emission plan, and the site-specific test plan are inconsistent with each other; they wanted EPA to remove all the interim compliance requirements to give the necessary flexibility to evaluate and agree with the permitting agency on compliance requirements before the 3-year deadline.

Response: A facility must be in compliance on and after the date of the

initial performance test. The date of that initial performance test, for existing sources, may be up to 3 years after the promulgation date of the standard. For existing SAPUs, the initial performance test is considered to be the date of approval of the OM&M plan by the permitting authority.

In response to the comments regarding the inconsistent plan requirements and dates for submittal, the EPA has revised and clarified those requirements. The final rule requires the owner/operator of a SAPU to perform tests that will define the operating modes of the controlled and uncontrolled emission units within the SAPU, and to define which parameters to monitor to demonstrate continuous compliance. These same tests can be used to measure the emission rates from the affected sources and emission units for performance test purposes. A site-specific test plan for this program must be submitted to the permitting authority for review and approval before the tests are conducted. The plan must identify the parameters to be monitored during the tests, the test methods to be used, the units to be tested, and planned operating modes for each unit during the tests. After the test plan has been approved by the permitting authority, the owner/operator is required to notify the Administrator of the test dates.

The results from this test program, including the emission rates measured, values of parameters monitored, monitoring parameters selected by the owner/operator for compliance demonstration, and values of the parameters to be used as operating limits must be submitted to the permitting authority for review and approval. As a result of the review, the permitting authority may request changes to selected monitoring parameters or values of the parameters used for compliance demonstration if it is determined the parameters or values do not provide an adequate means of demonstrating continuous compliance. When all of these elements are approved by the permitting authority, the owner/operator prepares an OM&M plan using the approved monitoring scheme and submits the OM&M plan to the permitting authority for approval. The compliance date is the approval date of the OM&M plan. The approved OM&M plan will be included by reference in the operating permit.

The latest date for an existing facility to achieve compliance is 3 years from the date the standard is promulgated. The OM&M plan must be submitted to the permitting authority for approval no later than 6 months before the planned compliance date. Given these conditions and lead times for preparing plans and conducting tests, it is clear that owner/operators must act expeditiously to develop test plans and execute the test programs.

Facilities that choose to comply by demonstrating that each emission unit in the SAPU meets the emission limit for that unit, and by monitoring the parameters as designated in the rule for each emission unit and control device, are also required to develop a test plan and notify the permitting authority of the test date(s).

Comment: One commenter stated that inspection of lime feed systems once per 8-hour shift and more frequently when found to be plugged may be difficult, arguing that visual inspection at silo and bin tops is dangerous. The commenter suggested alternate language that reduces the required checks from every 4 hours for 3 days, if plugged, to checks for only 2 consecutive 4-hour periods following restoration to free flow. Another commenter also disagreed with the requirement to inspect every 4 hours for 3 days, even if the problem is corrected earlier.

Response: Based on the comments received the final rule has been written to provide other options to demonstrate free-flowing lime. In addition to the option to perform visual checks to verify free-flowing lime, the owner/operator may use devices such as load cells to demonstrate this via weight changes in lime feed bins, use pressure sensors in pneumatic conveying systems to distinguish low or ''no flow'' conditions, continuously monitor lime feed rate, use an HCl monitoring device at the fabric filter outlet, or another method subject to approval by the permitting authority.

Comment: One commenter requested that lime feeder inspection requirements and corrective action requirements demonstrate compliance and that discovery and correction of a blockage or feeder setting drift not be an automatic violation. The commenter suggested that the rule be rewritten to require corrective action when necessary and not to make blockage or feeder setting drift a violation.

Response: As noted in the response to the previous comment, the final rule provides additional options for monitoring the lime system to maintain free-flowing lime. One of those options, the HCl monitor, provides a direct indication of continued effective operation of the control system which is the desired goal of any monitoring option selected. Other options that detect lime feeder blockages are not direct and immediate performance indicators, so the time until remedied is a critical variable. For this reason, EPA requires maintenance of free flowing lime in the feed hopper or silo at all times. Blockages that occur as a result of equipment breakage or failure would potentially fall under the malfunction provision, and if determined to be a malfunction, would be covered by the SSM plan and would not be a violation, if corrected in accordance with the SSM plan. However, continued and frequent blockages indicate a system design and operating problem rather than a malfunction.

Comment: Several commenters objected to the proposed regulatory requirements for scrap inspection programs. They stated that the requirements are too onerous, expensive, complex and overly prescriptive, and further, some provisions are not technically feasible or cannot be reasonably met. Three of the commenters suggested that the broadly stated scrap inspection requirements provided in the preamble to the proposed rule could be acceptable, and that approval of site-specific plans by the permitting authority would be a more acceptable requirement. Two commenters also stated that the scrap should not have to be inspected if the necessary control systems are in place. According to these commenters, inspection is only needed for control by work practices or pollution prevention. They stated that the EPA needs to be clearer as to which sources are covered; the preamble says all furnaces and the rule says uncontrolled group 1 furnaces.

Response: The scrap inspection program requirements apply only to those facilities that elect to use such a program as a monitoring technique to ensure the oil and coatings content of scrap charged to a group 1 furnace stays below levels established during the performance tests. Such a program could apply to facilities that have only uncontrolled group 1 furnaces, or facilities that have both add-on controlled and uncontrolled group 1 furnaces.

As a result of the numerous comments received regarding the scrap inspection program elements, the EPA has modified the proposed rule. The detailed requirements contained in the proposed rule have been deleted and the general scrap inspection guidelines provided in the proposal preamble have been adopted. This change will provide more flexibility to owner/operators to tailor the program to specific conditions for their facility. The scrap inspection program, if selected by the facility, will become part of the site-specific OM&M plan. The specific inspection program elements, which must be consistent

with guidance in the rule, will be approvable by the permitting authority as part of the site-specific OM&M plan and will be enforceable under the facility's permit.

Comment: Several commenters wanted EPA to allow testing one representative unit from a group of similar sources, that is one unit to represent similar furnaces or in-line fluxers, instead of having to test every emission unit. One of the commenters stated that this practice should be allowed for either controlled or uncontrolled units. Several commenters claim this approach is widely used under existing State permits and has been used by EPA in other NESHAPs. Commenters claimed that it would significantly reduce costs, provide flexibility, and provide more cost-effective test programs.

Response: Based on the comments received, the EPA is modifying the testing requirements to allow representative or similar uncontrolled emission units that use like charge and flux materials to be tested, instead of requiring each unit to be tested. Testing of representative or similar units may be used provided approval is obtained from the applicable permitting authority. The representative unit selected for testing must be subject to the same work practices and be of the same design as those emission units it is representing for test purposes. The representative unit must be tested under worst case conditions. It is up to the owner/operator to define the worst case scenario(s) for review and approval by the permitting authority. At least one of each different style unit must be tested. Each add-on control device controlling emissions from an affected source or emission unit must be tested.

E. Impacts

Comment: Several commenters disagreed with the results of EPA's regulatory impact analysis and believed that EPA underestimated the cost of the rule. The commenters identified the following as deficiencies in the impact analysis:

- The EPA underestimated the number of area sources that would be impacted as a result of the area source D/F standard. In particular, owners or operators of sweat furnaces, die casting facilities, foundries, and extruders were identified as potentially affected area sources that were either excluded or not adequately accounted for in the analysis. Furthermore, the commenters claimed that the proposed monitoring, recordkeeping, and reporting, and title V permit requirements would impose a significant burden on area sources.
- The EPA understated the number of small businesses that would be affected by the rule and, as a result, EPA's analysis of impacts on small entities was not adequate. According to several of the commenters, the small business impacts analysis underestimated small business impacts because it did not accurately account for sweat furnaces, die casting facilities, foundries, and extrusion facilities, many of which are small businesses and would be subject to the rule. The commenters also claimed that the proposed monitoring, recordkeeping, reporting, and title V permit requirements would impose significant burdens on these small businesses. They argued that the rule would have a significant impact on a substantial number of small entities and that EPA must, therefore, perform a regulatory flexibility analysis as required by the Regulatory Flexibility Act.
- Commenters took issue with the methods and assumptions used by EPA to estimate the costs and economic impacts of the rule, including failure to adequately account for the large number of affected area sources, title V permitting costs for area sources, and underestimating performance test costs due to the assumption of shared stacks. As a result, the commenters state that EPA's costs and economic impact estimates are too low. They argue that the annualized cost of the rule exceeds $100 million and is, therefore, a significant regulatory action under Executive Order 12866.

Response: Based on the numerous comments received regarding the regulatory impact analysis, the EPA has reviewed, revised, updated, and refined the analysis to address commenters' points:

- With regard to commenters' first point, for the proposed rule, the EPA used the information available on area sources of D/F emissions and requested additional information on the number of area sources, levels of emissions from these sources, the level of control currently employed, and the number of area sources that are also small businesses. In response to the comments on the proposed rule and using the information provided by commenters on sweat furnaces, die casting facilities and foundries, EPA has reassessed the cost of the rule on area sources (see Docket No. A–92–61). In addition, EPA has clarified and, in some cases, revised the proposed rule to address commenter concerns that the proposed rule will be overly burdensome for area sources. These changes include clarifications or revisions in the applicability of the rule, the performance testing requirements, the scrap inspection program, and giving the State permitting authorities the discretion to defer the requirements for a title V permit for area sources. On the basis of the information submitted to EPA during the public comment period and changes made to the proposed rule that narrow the applicability to facilities that are area sources, primarily aluminum extruders, die casters, and foundries, the EPA believes the number of those facilities subject to the rule to be small.
- Regarding the commenters' second point, after reviewing the comments on the small business impacts of the proposed rule and using the information on sweat furnaces, die casting facilities, and foundries provided by commenters, EPA has refined its small business impacts analysis (see Docket No. A–92–61). The analysis shows that the final rule will not have a significant impact on a substantial number of small businesses; therefore, no regulatory flexibility analysis is required. The small business impact analysis shows that the impact to small businesses operating sweat furnaces, and to small firms in the aluminum die casting and aluminum foundry industries is minimal.
- Regarding the commenters' third point, EPA considered the comments objecting to the costing methods and assumptions it used to estimate the impacts of the proposed rule. The EPA has reexamined its cost estimating procedures and believes that overall it has overstated the cost of the proposed rule. However, in view of the changes in the proposed rule and to incorporate revisions in the estimated number of affected area sources, EPA has updated its estimate of the cost of the rule (see Docket No. A–92–61). The revised cost of the rule is below the $100 million per year threshold, therefore, the rule is not a significant regulatory action as defined under Executive Order 12866.

IV. Summary of Changes Since Proposal

In response to comments received on the proposed rule and after further analysis, the following changes have been made:

Applicability. The applicability section has been clarified to distinguish the affected sources at major sources from those at area sources. Chip dryers and scrap shredders have been changed to ''thermal chip dryers'' and ''aluminum scrap shredders'' to more precisely define the type of equipment covered by the rule. A new secondary aluminum processing unit (SAPU) has been added to the list of affected sources; new group 1 furnaces and new

in-line fluxers have been removed from the list of affected sources but are covered as emission units within new SAPUs. This change enables simultaneously constructed new emission units to meet emission standards on an analogous basis to existing SAPUs and does not affect the required level of control or continuous compliance. Subject to certain limitations, manufacturers of aluminum die castings, aluminum foundries, and aluminum extruders have been exempted from the rule. The final rule contains explicit language exempting research and development equipment.

The final rule also gives States the discretion to defer the requirement for secondary aluminum production area sources to obtain a title V permit. This discretion may reduce the burden of the rule on both area sources and States, without decreasing control requirements or increasing emissions.

The EPA's authority for establishing the deferrals is section 502(a) of the CAA, which allows EPA to exempt non-major sources from the permitting requirement if EPA finds that compliance with title V is impracticable, infeasible, or unnecessarily burdensome on the sources. The General Provisions implementing section 112 of the CAA provide that unless EPA explicitly exempts or defers area sources subject to a NESHAP from the title V permitting requirement, they are subject to permitting (40 CFR section 63.1(c)(2)(iii)). As a result, under 40 CFR sections 70.3(b)(2), 71.3(b)(2), and 63.1(c)(2), we are to determine whether area sources will be required to obtain title V permits when we adopt the underlying NESHAP. The EPA has previously allowed permitting authorities to defer permit applications for area sources in a series of rulemakings (60 FR 29484, June 5, 1995; 61 FR 27785, June 3, 1996; and 64 FR 37683, July 13, 1999).

When EPA initially established the ability of permitting authorities to defer area sources from title V, the Agency stated that it would decide whether to adopt permanent exemptions by the time deferrals expired, and that it would continue to evaluate permitting authorities' implementation and enforcement of the NESHAP requirements for area sources not covered by title V permits, the likely benefit of permitting such sources, and the costs and other burdens on such sources associated with obtaining title V permits. Many permitting authorities are struggling to issue in a timely fashion initial title V permits to major sources and other sources that have been subject to the permitting requirements since the beginning of the program, and we are concerned about the impact on permitting authorities of subjecting area sources to the permit application deadlines. Therefore, to be consistent with the previously allowed deferrals of permit applications for area sources by permitting authorities, the most reasonable approach is to defer the requirement for title V permitting for area sources in the secondary aluminum production source category until December 9, 2004.

As a result, today's action defers the requirement for title V permitting for area sources in the secondary aluminum production source category until December 9, 2004. The deferral is not an automatic benefit provided to the sources. Rather, permitting authorities may exercise their discretion to either defer the area sources, or to require them to apply for and obtain part 70 permits. Some permitting authorities may decide that area sources in the subject source category warrant permitting mechanisms (such as the use of general permits or ''permits by rule'') that minimize the burden on both the permitting authoring and the source.

For area sources that are not covered by an effective approved part 70 program and are subject to the EPA-administered part 71 permitting program, today's action also defers those area sources subject to the secondary aluminum production NESHAP from permitting under part 71 until December 9, 2004.

Definitions. The definitions of clean charge, fluxing, reactive fluxing, aluminum scrap shredder, secondary aluminum processing unit, secondary aluminum production facility and thermal chip dryer have been revised and clarified to reflect the meanings intended at proposal. Definitions of internal runaround and cover flux have been added to the final rule.

Emission standards. In response to comments from the regulated community, a standard for new SAPUs has been included in the final rule. Also, for sweat furnace operations, the final rule provides an alternative to the emission standard that does not require emission testing. The alternative is expressed in terms of design and operating parameters of afterburners that ensure the emission limit will be achieved.

Operating requirements. The compliance date for SAPUs has been clarified. Lime addition requirements have been specified only for continuous lime injection systems. Lime addition requirements for intermittent lime addition have been eliminated because the MACT floor control technology, upon which the emission standards are based, includes continuous lime injection. Provisions for obtaining approval for intermittent lime addition and establishing operating requirements have been added to the rule.

Labeling requirements have been redefined to include only the emission unit or affected source identification and the applicable operating requirements and pollution prevention parameters. In addition, the applicability of the labeling requirement has been narrowed to specific affected sources and emission units.

The final rule allows the option to demonstrate compliance for specific affected sources on the basis of aluminum production as opposed to feed/charge. Owners or operators of SAPUs that choose to demonstrate compliance on the basis of aluminum production as opposed to feed/charge must account for aluminum production on an emission unit by emission unit basis. This option will provide additional flexibility for existing measurement equipment and will not increase HAP emissions. The inlet temperature limit has been eliminated for fabric filters that control only in-line fluxers because these fabric filters typically operate at near-ambient temperatures.

Monitoring requirements. The final rule includes options for permitting authority approval of measuring devices of alternative accuracy in cases where the use of devices of specified accuracy is not workable, such as measurement of very low chlorine flow rates. Additional options for ascertaining the free flow of lime, including the use of load cells, flow sensors and HCl concentration sensors, have been added to the final rule. Specific temperature monitoring relative accuracy and calibration drift requirements have been eliminated because they are not necessary. The requirements for scrap inspection plans have been made less prescriptive to allow for a wider range of situations as experienced in the secondary aluminum production industry. Procedures for obtaining approval of alternative site-specific monitoring practices have been included to increase flexibility.

Performance testing. The final rule eliminates the requirement for repeat performance testing at area sources for cost and economic reasons, but maintains the operating, maintenance, and monitoring (OM&M) plan requirement to ensure continuous compliance through monitoring of appropriate parameters. Sweat furnaces equipped with afterburners meeting required design specifications are not

subject to performance testing requirements in the final rule. The rule has also been changed to reduce the cost of performance testing by allowing owners or operators to conduct worst case performance tests on a single affected source or emission unit that is not equipped with an add-on control device to represent the performance of other sources of the same design and operating characteristics.

V. Summary of Impacts

In response to comments that EPA's assessment of impacts was not adequate, and as a result of revisions made to the rule to provide more flexibility to affected sources and to minimize the burden on area sources, EPA reanalyzed the impacts of the rule.

A. Air Quality Impacts

At the current level of control, emissions of HAPs and other pollutants are estimated to be approximately 28,700 Mg/yr (31,600 tpy). Of these emissions, 16,400 Mg/yr (18,100 tpy) are HAPs. The EPA estimates that implementation of the NESHAP will reduce all pollutants by 14,200 Mg/yr (15,600 tpy) and HAP emissions would be reduced by about 11,300 Mg/yr (12,400 tpy). Baseline emissions and emission reductions are summarized by pollutant in Table 1 below.

TABLE 1.—NATIONWIDE ANNUAL BASELINE EMISSIONS AND EMISSIONS REDUCTIONS

Pollutant	Baseline emissions (Mg/yr)	Emissions reduction (Mg/yr)	Baseline emissions (tpy)	Emissions reduction (tpy)
THC [1]	3,782	0	4,169	0
D/F	0.54 kg/yr	0.43 kg/yr	1.19 lb/yr	0.94 lb/yr
HCl	15,365	11,224	16,902	12,372
Cl_2	996	NQ [2]	1,098	NQ
POM	37	9	41	10
HAP Metals	58	36	64	40
PM	8,508	2,889	9,379	3,185
Total:				
HAPs	16,425	11,269	18,106	12,422
PM	8,508	2,889	9,379	3,185
HAPS and other pollutants	28,657	14,158	31,589	15,607

[1] THC is a surrogate for organic HAPs.
[2] NQ Not quantified due to lack of emissions data.

There are no THC emission reductions expected because all sources with a THC emission limit are already equipped with the technology representative of the MACT-level of control.

The estimated emissions reductions represent the minimum that will be achieved by the final rule since they are based on a reduction in baseline emissions to a level equal to the promulgated emission limit. In reality, if emission control equipment is installed to achieve compliance with the rule, emissions will likely be reduced to a level below the emission limit and the actual emissions reductions will be larger than the estimates. In addition, emissions reductions are also expected for other pollutants for which there are no specific emission limits. Although these potential emissions reductions were not quantified, emission controls installed to reduce HCl emissions are likely to also reduce Cl_2 emissions, the lime added or injected to fabric filters would reduce fluoride as well as chloride emissions, and fabric filters installed to meet PM emission limits also would reduce HAP metal and polycyclic organic matter (POM) emissions. For example, emission test data indicate that a fabric filter will reduce HAP metal emissions by approximately the same percentage as PM emissions. If the same reduction (61.4 percent from the baseline, taking into account that some sources already have these controls) is applied to HAP metal emissions, emission reductions of about 39.5 tpy from the estimated baseline level of 64.4 tpy would be achieved.

B. Economic Impacts

EPA revised the economic impact analysis (EIA) to consider revised estimates of costs due to changes in the requirements of the rule between proposal and promulgation as well as additional information received concerning potential impacts of the regulation to owners of sweat furnaces, aluminum die casting facilities, and aluminum foundries. Due to the number of facilities and variety of processes used in the affected industries, model plants were developed to categorize facilities based on possible combinations of processes that are performed. These model plant categories were used to estimate applicable emission control costs, including the costs of monitoring, reporting, and record keeping (MRR). Sixteen model plants were created and annual compliance costs were calculated for each.

Estimates of total capital and total annualized costs for each model plant and nationwide are shown in Table 2. Total nationwide annualized costs for this regulation are estimated at $76.7 million. The model plant (1–8) control cost estimates include control device costs, auxiliary equipment, and direct and indirect installation costs, but do not include monitoring costs. The nationwide annual costs include costs for monitoring, reporting, and record keeping estimated at $9.2 million annually. (All values are shown in 1994 dollars.)

TABLE 2.—ESTIMATED CAPITAL AND ANNUALIZED COSTS BY MODEL PLANT

[Thousands of 1994 dollars]

Model plants	Per facility		Nationwide	
	Capital costs	Annual costs	Capital costs	Annual costs
Model Plant 1	$805	$380	$24,960	$11,766
Model Plant 2	950	362	9,500	3,621
Model Plant 3	1,833	702	12,832	4,911
Model Plant 4	2,944	1,203	26,492	10,829
Model Plant 5	1,441	851	14,409	8,510
Model Plant 6	976	671	6,833	4,696
Model Plant 7	198	134	1,188	807
Model Plant 8	0	0	0	0
MRR for Model Plants 1–8	.....	.....	.....	3,885
Sweat Furnace 1	0	0	0	133
Sweat Furnace 2	0	0	0	299
Sweat Furnace 3	9	24	9,167	23,489
Die Casting 1	0	4	0	46
Die Casting 2	0	4	0	364
Die Casting 3	0	4	0	241
Foundry 1	0	4	0	2,489
Foundry 2	0	4	0	622
Nationwide Total	.....	.....	105,381	76,708

Firms producing products in SIC codes 3341 Secondary Smelting and Refining of Nonferrous Metals, 3353 Aluminum Sheet, Plate, and Foil, 3334 Primary Aluminum Production, 3354 Aluminum Extruded Product Manufacturing, 3363 Aluminum Die-Casting, 3365 Aluminum Foundries, 4953 Refuse Systems, 5093 Scrap and Waste Materials, and 5015 Motor Vehicle Parts—Used may be affected by this regulation.

A market impact analysis was completed for secondary aluminum producing firms. Table 3 presents primary and secondary market impacts estimated for the secondary aluminum market. Primary market impacts include estimated changes in price, domestic production, industry revenues, and potential facility closures. Secondary market impacts relate to potential employment losses, decreases in exports, and increases in imports.

TABLE 3.—SECONDARY ALUMINUM PRODUCTION PRIMARY AND SECONDARY MARKET IMPACTS

	Estimated impacts
Primary Market Impacts:	
Price Increase (Percent)	0.64
Production Decrease (Percent)	[0.40]
Industry Revenues—Increase in Value of Domestic Shipments (Percent)	0.24
Potential Facility Closures	0–1*
Secondary Market Impacts:	
Labor Market	
Potential Employee Reductions:	
Number of workers	94
Percent decrease	[0.40]
International Trade:	
Import increase (Percent)	1.51
Export decrease (Percent)	[0.22]

Decreases are shown in brackets [ ].

*Firm or facility closures are unlikely. However, if one makes a number of worst case assumptions, one facility or firm closure is possible.

In general, the economic impacts of this regulation are expected to be minimal to the secondary aluminum industry with price increases and production decreases of less than one percent. A market price increase of 0.64 percent and domestic production decrease of 0.40 percent are predicted. Revenues or the value of domestic shipments for the industry are expected to increase by 0.24 percent. Individual facilities or firms within the industry may experience revenue increases or decreases, but on average the industry revenues are anticipated to increase slightly with this regulation. Facility or firm closures are unlikely to occur as a result of this regulation. However, if a number of worst case assumptions are made, one could conclude that a single facility may close as a result of the regulation.

Approximately 94 workers may face employment displacement as a result of the regulation. This job loss estimate results from the decrease in production expected to result from the regulation and does not consider any employment increases that may occur relative to emission control. Exports of secondary aluminum products to other countries are expected to decline by 0.22 percent while imports of secondary aluminum are expected to increase 1.51 percent.

Since the impact of the regulation is anticipated to be minimal to firms owning sweat furnaces, aluminum die casters, aluminum foundries, and secondary aluminum dross reclamation facilities (categorized as model plants 7 and 8), a streamlined economic impact analysis was completed for these markets. This analysis computes the estimated cost of the regulation as a percentage of annual revenues. The cost to sales ratio refers to the change in annualized control costs divided by the sales revenues of a particular good or goods being produced in the process for which additional pollution control is required. It can be estimated for either individual firms or as an average for some set of firms such as affected small firms. While it has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual (or group) of firms are completely passed on to the purchasers of the good(s) being produced, it is an estimate of the price change (in percentage form after

multiplying the ratio by 100). If costs are completely absorbed by the producer, it is an estimate of changes in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of costs to sales ratios across the whole market, the competitiveness of the market, and profit to sales ratios are among the obvious factors that may influence the significance of any particular cost to sales ratio for an individual facility. This analysis was completed on a model plant basis using estimated annual revenues and for a sample of firms using actual company revenue data. A cost to sales ratio of 3 percent or above is an indicator of the potential for significant economic impact for firms in the industries affected by this rule. The results of these analyses are shown in Table 4.

As shown in Table 4, the cost to sales ratios using both model plant data and actual facility data are substantially below one percent for aluminum die casters, aluminum foundries, and firms operating sweat furnaces. This indicates that firms in these industries are not likely to incur significant economic impacts as a result of this regulation.

TABLE 4.—COST TO SALES RATIOS FOR ALUMINUM DIE CASTING, ALUMINUM FOUNDRIES, FIRMS OWNING SWEAT FURNACES, AND FIRMS OWNING ALUMINUM DROSS RECLAMATION FACILITIES

Description	Cost to sales ratios (%)
Firms Operating Sweat Furnaces Model Plant Data:	
Sweat Furnace 1	0.16
Sweat Furnace 2	0.06
Sweat Furnace 3	0.08
Average Actual Firm Data	0.01
Aluminum Die Casting Model Plant Data:	
Model Plant 1	<0.01
Model Plant 2	0.01
Model Plant 3	0.04
Average Actual Firm Data	0.04
Aluminum Foundries Model Plant Data:	
Model Plant 1	0.16
Model Plant 2	0.04
Average Actual Firm Data	0.03
Secondary Aluminum Dross Reclamation Facilities for Model Plants 7 and 8 Model Plant Data:	
Model Plant 7	1.08
Model Plant 8	0.07
Average Actual Firm Data:	
Model Plant 7	0.73
Model Plant 8	0.18

Cost to sales ratios for secondary aluminum dross reclamation facilities (model plants 7 and 8) approximate or are less than one percent on a model plant and actual firm data basis. These firms are also not anticipated to incur significant economic impacts as a result of this regulation. For further information, please see Economic Impact For the Secondary Aluminum NESHAP, Final Report, October 1999.

C. Non-Air Health and Environmental Impacts

As discussed in the preamble to the proposed rule, the NESHAP is based on air pollution control systems which are of the dry type (*e.g.,* afterburners and fabric filters), and there are no water pollution impacts resulting from their use. Solid waste generated by fabric filters in the form of particulate matter (including HAP metals and lime from fabric filters) is typically disposed of by landfilling. With the addition of fabric filters and lime conditioned fabric filters, the amount of solid waste is expected to increase by about 97,904 Mg/yr (107,921 tpy) nationwide. The increase in solid waste is estimated as the sum of the annual reduction in PM emissions and the annual increase in the use of lime in lime-injected fabric filters.

Implementation of the NESHAP will aid in reducing aerial deposition of D/F and HAP metals (lead, cadmium, and mercury), will substantially reduce ambient concentrations of HCl and Cl_2, and will reduce emissions.

D. Energy Impacts

Operating fabric filters and afterburners require the use of electrical energy to operate fans that move the gas stream. The additional electrical energy requirements are estimated at 78 million kilowatt hours per year (kWh/yr), or 282 terajoules per year (TJ/yr), over current requirements. Afterburners may also use natural gas as fuel. Approximately 325,500 kilocubic feet per year (kft^3/yr) or 322 billion British thermal units (Btu)/yr (340 TJ/yr) of additional natural gas will be required.

The increased energy requirements for facilities will result in an increase in utility emissions as more energy is generated. Nationwide emissions of PM, sulfur dioxide (SO_2), and nitrogen oxides (NO_X) from electric power plants are estimated to increase by 8.1 Mg/yr (8.9 tpy), 323 Mg/yr (356 tpy), and 161 Mg/yr (178 tpy), respectively.

VI. Administrative Requirements

A. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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 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).

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In response to comments that the rule as proposed would result in adverse impacts to sources in the secondary aluminum production industry as well as result in costs in excess of $100 million, EPA reexamined the cost of the rule. In view of the changes in the rule that have been made since proposal to clarify applicability as well as the requirements of the rule and to provide greater flexibility in the rule, EPA finds that the cost of the final rule is below $100 million. Because the projected annual costs (including monitoring) for this NESHAP are less than $100 million, a regulatory impact analysis has not been prepared. However, because of concerns expressed by affected facilities regarding the potential for adverse economic impacts, EPA submitted this

final regulation to OMB for review. Any written comments are included in the docket listed under **ADDRESSES**.

C. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This determination has been made since none of the affected facilities under this final rule are owned or operated by State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing the proposed rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments because it contains no requirements that apply to such

governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

G. Regulatory Flexibility Act

The EPA analyzed the potential impact of the proposed rule on small entities. The results of the analysis for the proposed rule and the method used by EPA to perform the analysis of impacts on small entities are discussed in the preamble to the proposed rule (64 FR 6946, February 11, 1999).

In response to comments on the proposed rule that EPA understated the number of small businesses that would be affected by the rule, EPA refined its small business impacts analysis to include information concerning sweat furnaces, aluminum die casting facilities, and aluminum foundries. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. Based on the revised small business impacts analysis prepared concerning this final rule, EPA has also determined that the requirements in this rule will not have a significant impact on a substantial number of small entities.

The regulation will potentially impact firms producing products in SIC codes 3341 (secondary smelting and refining of nonferrous metals), 3353 (aluminum sheet, plate, and foil), 3334 (primary aluminum production), 3354 (aluminum extruded products), 3363 (aluminum die-casting), 3365 (aluminum foundries), 4953 (refuse systems—materials recovery facilities), 5093 (scrap and waste materials), and 5015 (motor vehicle parts-used). The Small Business Administration criteria for each affected industry are shown in Table 5.

TABLE 5.—SECONDARY ALUMINUM NESHAP AFFECTED INDUSTRIES AND SMALL BUSINESS CRITERIA

Standard industrial classification code	Small business criteria
3341 Secondary Smelting and Refining of Nonferrous Metals.	Less than 500 employees.
3353 Aluminum Sheet, Plate, and Foil.	Less than 750 employees.
3334 Primary Aluminum Production.	Less than 1,000 employees.
3354 Aluminum Extruded Products.	Less than 750 employees.
3363 Aluminum Die-Casting.	Less than 500 employees.
3365 Aluminum Foundries.	Less than 500 employees.

TABLE 5.—SECONDARY ALUMINUM NESHAP AFFECTED INDUSTRIES AND SMALL BUSINESS CRITERIA—Continued

Standard industrial classification code	Small business criteria
4953 Refuse Systems.	Less than $6 million in annual sales revenues.
5093 Scrap and Waste Materials.	Less than 100 employees.
5015 Motor Vehicle Parts—Used.	Less than 100 employees.

The EPA received responses to an information collection request from 135 secondary aluminum facilities producing products in SIC 3334, 3341, 3353 and 3355. To define the small business entities, the 135 facilities were matched with their parent companies. It was determined that 32 of these companies employ less than 750 employees and meet the Small Business Administration's definition of a small business entity. (Note the criterion of 750 employees was used for secondary aluminum producers, because it results in a larger number of small businesses. None of the affected firms in the data base producing principally primary aluminum products in SIC 3334 are small businesses.)

There are 320 aluminum die casting companies and approximately 1530 aluminum foundries currently operating domestically. The vast majority of these firms are small businesses employing less than 500 employees. No small businesses within aluminum die casting companies or aluminum foundries have been specifically identified that are impacted by the final rule under applicability as defined. Only large businesses have come forward with information regarding applicability of the standard(s) to their operations. Based on that information, we have performed a small business analysis based on a probable over estimate of the number of small businesses within these industry sectors that may be affected by the final rule. (Docket A–92–61).

It is estimated that around 1650 sweat furnaces are operated by businesses in the United States that will be subject to this rule. Firms owning sweat furnaces are primarily small businesses.

The analysis of small business impacts for these industries focused on a comparison of compliance costs as a percentage of sales (cost/sales ratio). When available, the analysis used actual firm sales data. However, actual firm data were unavailable for a number of small businesses. To estimate the impact for such firms, an analysis comparing model plant control cost estimates to model plant revenue data was conducted. As Table 6 shows, cost to sales ratios based on model plant revenue and cost data yield ratios of less than 1 percent for all model plants other than model plant 7. The cost to sales ratio for model plant 7 is 1.08 percent. For the affected industries, cost to sales ratios of 3 percent or greater are considered an indicator of the potential for significant economic impact. Based upon this criterion, the model plant analysis indicates that small business firms are not likely to experience significant economic impacts as a result of this regulation.

TABLE 6.—SECONDARY ALUMINUM NESHAP COST TO SALES RATIOS ASSUMING MODEL PLANT COST AND REVENUE DATA

Model plant	Model plant cost to sales ratio (percent)
1	0.70
2	0.35
3	0.82
4	0.71
5	0.13
6	0.07
7	1.08
8	0.07
Sweat Furnace 1	0.16
Sweat Furnace 2	0.06
Sweat Furnace 3	0.08
Die Casting 1	<0.01
Die Casting 2	0.01
Die Casting 3	0.04
Foundry 1	0.16
Foundry 2	0.04

A search for actual company revenue data for small businesses was completed. Data were located for 26 of the 32 small secondary aluminum firms (model plants 1–6) and aluminum dross fabricators (model plants 7 and 8) identified by the survey. Data were also collected for 53 small die casting firms, 22 small aluminum foundries, and for 65 small business that may potentially operate sweat furnaces. A summary of the cost to sales ratios for the small secondary aluminum producers using actual company sales data is shown in Table 7 below.

TABLE 7.—SECONDARY ALUMINUM NESHAP COMPANY SPECIFIC COST TO SALES RATIOS FOR AFFECTED SMALL BUSINESSES

Cost/sales ratio	Number of small companies in each cost to sales range
Secondary Aluminum Industry:	
0.00%–0.99%	19
1.00%–1.99%	5
2.00%–2.99%	2
Mean cost to sales ratio=0.74%	Total firms=26
Mean cost to sales ratio	**Number of small companies evaluated (firms)**
Aluminum Die Casting Industry: 0.04%	53
Aluminum Foundry Industry: 0.04%	22
Firms Owning Sweat Furnaces: 0.01%	65

As depicted in Table 7, the majority of small businesses modeled are anticipated to experience cost to sales ratios below 1 percent. Seven small companies show cost to sales ratios above 1 percent, but less than 3 percent. Since no company exhibits cost to sales above 3 percent and the majority of small businesses are expected to incur cost to sales ratios less than 1 percent, significant impacts to small entities are not expected. The results of the analyses conducted using both model plant data and actual small business firm data indicate that impacts from this regulation are not likely to be significant to small business firms. As previously stated, the analysis is based on a probable over estimate of the number of small businesses within these industry sectors that may be affected by the final rule. The EPA concludes that this regulation will not result in a significant economic impact for a substantial number of small entities. For more detailed information, please see Economic Impact Analysis for the Secondary Aluminum NESHAP Final Report, October 1999.

H. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1894.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Division, U.S. Environmental Protection Agency (2136), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–2740.

The promulgated information requirements include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which facilities, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The EPA is required under section 112(d) of the Clean Air Act to regulate emissions of HAPs listed in section 112(b). The requested information is needed as part of the overall compliance and enforcement program. The ICR requires that secondary aluminum production facilities retain records of parameter and emissions monitoring data at facilities for a period of 5 years, which is consistent with the General Provisions to 40 CFR part 63 and the permit requirements under 40 CFR part 70. All major sources subject to this rule will be required to obtain operating permits either through the State-approved permitting program or, if one does not exist, in accordance with the provisions of 40 CFR part 71. Under this final rule, the approved state permitting program has the option to defer the requirement to obtain a title V permit for area sources affected by this rule.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to total 148,000 labor hours per year at a total annual cost of $9.2 million. This estimate includes notifications; a performance test (with repeat tests for major sources); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event where the procedures in the plan were not followed and an operation, maintenance, and monitoring plan; semiannual excess emissions reports; initial and semiannual furnace certifications; and recordkeeping. This estimate also includes one time preparation of emissions averaging plans and scrap sampling plans for some respondents. Total capital costs associated with monitoring requirements over the 3-year period of the ICR is estimated at $1.3 million; this estimate includes the capital and startup costs associated with installation of monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the CAA requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical test methods included in the final rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary

consensus standards. However, no candidate consensus standards were identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule. The rule requires standard EPA methods well known to the industry and States. Approved alternative methods also may be used. The EPA, in coordination with the industry and States, have agreed on the use of these test methods in the rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Secondary aluminum production.

Dated: December 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Part 63 is amended by adding subpart RRR to read as follows:

Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

Sec.

General

63.1500 Applicability.
63.1501 Dates.
63.1502 Incorporation by reference.
63.1503 Definitions.
63.1504 [Reserved]

Emission Standards and Operating Requirements

63.1505 Emission standards for affected sources and emission nits.
63.1506 Operating requirements.
63.1507–63.1509 [Reserved]

Monitoring and Compliance Provisions

63.1510 Monitoring requirements.
63.1511 Performance test/compliance demonstration general requirements.
63.1512 Performance test/compliance demonstration requirements and procedures.
63.1513 Equations for determining compliance.
63.1514 [Reserved]

Notifications, Reports, And Records

63.1515 Notifications.
63.1516 Reports.
63.1517 Records.

Other

63.1518 Applicability of general provisions.
63.1519 Delegation of authority.
63.1520 [Reserved]

Table 1 to Subpart RRR—Emission Standards for New and Existing Affected Sources

Table 2 to Subpart RRR—Summary of Operating Requirements for New and Existing Affected Sources and Emission Units

Table 3 to Subpart RRR—Summary of Monitoring Requirements for New and Existing Affected Sources and Emission Units Appendix A to Subpart RRR—General Provisions Applicability to Subpart RRR

General

§ 63.1500 Applicability.

(a) The requirements of this subpart apply to the owner or operator of each secondary aluminum production facility.

(b) The requirements of this subpart apply to the following affected sources, located at a secondary aluminum production facility that is a major source of hazardous air pollutants (HAPs) as defined in § 63.2:

(1) Each new and existing aluminum scrap shredder;

(2) Each new and existing thermal chip dryer;

(3) Each new and existing scrap dryer/delacquering kiln/decoating kiln;

(4) Each new and existing group 2 furnace;

(5) Each new and existing sweat furnace;

(6) Each new and existing dross-only furnace;

(7) Each new and existing rotary dross cooler; and

(8) Each new and existing secondary aluminum processing unit.

(c) The requirements of this subpart pertaining to dioxin and furan (D/F) emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to the following affected sources, located at a secondary aluminum production facility that is an area source of HAPs as defined in § 63.2:

(1) Each new and existing thermal chip dryer;

(2) Each new and existing scrap dryer/delacquering kiln/decoating kiln;

(3) Each new and existing sweat furnace;

(4) Each new and existing secondary aluminum processing unit, containing one or more group 1 furnace emission units processing other than clean charge.

(d) The requirements of this subpart do not apply to manufacturers of aluminum die castings, aluminum foundries, or aluminum extruders that melt no materials other than clean charge and materials generated within the facility; and that also do not operate a thermal chip dryer, sweat furnace or scrap dryer/delacquering kiln/decoating kiln.

(e) The requirements of this subpart do not apply to facilities and equipment used for research and development that are not used to produce a saleable product.

(f) The owner or operator of a secondary aluminum production facility subject to the provisions of this subpart, is subject to the title V permitting requirements under 40 CFR parts 70 and 71, as applicable. The permitting authority may defer the affected facility from the title V permitting requirements until December 9, 2004, if the secondary aluminum production facility is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If an affected facility receives a deferral from title V permitting requirements under this section, the source must submit a title V permit application by December 9, 2005. The affected facility must continue to comply with the provisions of this subpart applicable to area sources, even if a deferral from title V permitting requirements has been granted to the facility by the permitting authority.

§ 63.1501 Dates.

(a) The owner or operator of an existing affected source must comply with the requirements of this subpart by March 24, 2003.

(b) The owner or operator of a new affected source that commences construction or reconstruction after February 11, 1999 must comply with the requirements of this subpart by March 23, 2000 or upon startup, whichever is later.

§ 63.1502 Incorporation by reference.

(a) The following material is incorporated by reference in the corresponding sections noted. The incorporation by reference (IBR) of certain publications listed in the rule will be approved by the Director of the Office of the Federal Register as of the date of publication of the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval: (1) Chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice,'' American Conference of Governmental Industrial Hygienists, (23rd edition, 1998), IBR approved for § 63.1506(c), and (2)

''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update'' (EPA/625/3–89/016).

(b) The material incorporated by reference is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC; and at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street SW, Washington, DC. The material is also available for purchase from the following addresses:

(1) Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240–1634, telephone number (513) 742–2020; and

(2) The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA, NTIS no. PB 90–145756.

§ 63.1503 Definitions.

Terms used in this subpart are defined in the Clean Air Act as amended (CAA), in § 63.2, or in this section as follows:

Add-on air pollution control device means equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

Afterburner means an air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases; also known as an incinerator or a thermal oxidizer.

Aluminum scrap shredder means a unit that crushes, grinds, or breaks aluminum scrap into a more uniform size prior to processing or charging to a *scrap dryer/delacquering kiln/decoating kiln,* or furnace. A bale breaker is not an *aluminum scrap shredder.*

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A *bag leak detection system* includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to monitor relative particulate matter loadings.

Chips means small, uniformly-sized, unpainted pieces of aluminum scrap, typically below 1¼ inches in any dimension, primarily generated by turning, milling, boring, and machining of aluminum parts.

Clean charge means furnace charge materials including molten aluminum; T-bar; sow; ingot; billet; pig; alloying elements; uncoated/unpainted thermally dried aluminum chips; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher; other oil- and lubricant-free unpainted/uncoated gates and risers; oil-and lubricant-free unpainted/uncoated aluminum scrap, shapes, or products (*e.g.,* pistons) that have not undergone any process (*e.g.,* machining, coating, painting, etc.) that would cause contamination of the aluminum (with oils, lubricants, coatings, or paints); and internal runaround.

Cover flux means salt added to the surface of molten aluminum in a group 1 or group 2 furnace, without agitation of the molten aluminum, for the purpose of preventing oxidation.

D/F means dioxins and furans.

Dioxins and furans means tetra-, penta-, hexa-, and octachlorinated dibenzo dioxins and furans.

Dross means the slags and skimmings from aluminum melting and refining operations consisting of fluxing agent(s), impurities, and/or oxidized and non-oxidized aluminum, from scrap aluminum charged into the furnace.

Dross-only furnace means a furnace, typically of rotary barrel design, dedicated to the reclamation of aluminum from dross formed during melting, holding, fluxing, or alloying operations carried out in other process units. Dross and salt flux are the sole feedstocks to this type of furnace.

Emission unit means a *group 1 furnace* or *in-line fluxer* at a *secondary aluminum production facility.*

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media; also known as a baghouse.

Feed/charge means, for a furnace or other process unit that operates in batch mode, the total weight of material (including molten aluminum, T-bar, sow, ingot, etc.) and alloying agents that enter the furnace during an operating cycle. For a furnace or other process unit that operates continuously, *feed/charge* means the weight of material (including molten aluminum, T-bar, sow, ingot, etc.) and alloying agents that enter the process unit within a specified time period (*e.g.,* a time period equal to the performance test period). The *feed/charge* for a dross only furnace includes the total weight of dross and solid flux.

Fluxing means refining of molten aluminum to improve product quality, achieve product specifications, or reduce material loss, including the addition of solvents to remove impurities (solvent flux); and the injection of gases such as chlorine, or chlorine mixtures, to remove magnesium (demagging) or hydrogen bubbles (degassing). *Fluxing* may be performed in the furnace or outside the furnace by an *in-line fluxer.*

Furnace hearth means the combustion zone of a furnace in which the molten metal is contained.

Group 1 furnace means a furnace of any design that melts, holds, or processes aluminum that contains paint, lubricants, coatings, or other foreign materials with or without reactive fluxing, or processes *clean charge with reactive fluxing.*

Group 2 furnace means a furnace of any design that melts, holds, or processes only *clean charge* and that performs no *fluxing* or performs *fluxing* using only nonreactive, non-HAP-containing/non-HAP-generating gases or agents.

HCl means, for the purposes of this subpart, emissions of hydrogen chloride that serve as a surrogate measure of the total emissions of the HAPs hydrogen chloride, hydrogen fluoride and chlorine.

In-line fluxer means a device exterior to a furnace, located in a transfer line from a furnace, used to refine (flux) molten aluminum; also known as a flux box, degassing box, or demagging box.

Internal runaround means scrap material generated on-site by aluminum extruding, rolling, scalping, forging, forming/stamping, cutting, and trimming operations that do not contain paint or solid coatings. Aluminum chips generated by turning, boring, milling, and similar machining operations that have not been dried at 343 °C (650 °F) or higher, or by an equivalent non-thermal drying process, are not considered internal runaround.

Lime means calcium oxide or other alkaline reagent.

Lime-injection means the continuous addition of lime upstream of a *fabric filter.*

Melting/holding furnace, or melter/holder, means a *group 1 furnace* that processes only *clean charge*, performs melting, holding, and fluxing functions, and does not transfer molten aluminum to or from another furnace.

Operating cycle means for a batch process, the period beginning when the feed material is first charged to the operation and ending when all feed material charged to the operation has been processed. For a batch melting or holding furnace process, *operating cycle* means the period including the charging and melting of scrap aluminum and the fluxing, refining, alloying, and tapping of molten aluminum (the period from tap-to-tap).

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions and as a surrogate for metal HAPs contained in the particulates, including but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Pollution prevention means source reduction as defined under the Pollution Prevention Act of 1990 (*e.g.,* equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control), and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

Reactive fluxing means the use of any gas, liquid, or solid flux (other than cover flux) that results in a HAP emission. Argon and nitrogen are not reactive and do not produce HAPs.

Reconstruction means the replacement of components of an affected source or *emission unit* such that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new affected source, and it is technologically and economically feasible for the reconstructed source to meet relevant standard(s) established in this subpart. Replacement of the refractory in a furnace is routine maintenance and is not a *reconstruction.* The repair and replacement of *in-line fluxer* components (*e.g.,* rotors/shafts, burner tubes, refractory, warped steel) is considered to be routine maintenance and is not considered a *reconstruction. In-line fluxers* are typically removed to a maintenance/repair area and are replaced with repaired units. The replacement of an existing *in-line fluxer* with a repaired unit is not considered a *reconstruction.*

Residence time means, for an *afterburner*, the duration of time required for gases to pass through the *afterburner* combustion zone. *Residence time* is calculated by dividing the *afterburner* combustion zone volume in cubic feet by the volumetric flow rate of the gas stream in actual cubic feet per second.

Rotary dross cooler means a water-cooled rotary barrel device that accelerates cooling of dross.

Scrap dryer/delacquering kiln/decoating kiln means a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting.

Secondary aluminum processing unit (SAPU): an existing SAPU means all existing *group 1 furnaces* and all existing *in-line fluxers* within a *secondary aluminum production facility*. Each existing *group 1 furnace* or existing *in-line fluxer* is considered an *emission unit* within a *secondary aluminum processing unit.* A new *SAPU* means any combination of *group 1 furnaces* and *in-line fluxers* which are simultaneously constructed after February 11, 1999. Each of the *group 1 furnaces* or *in-line fluxers* within a new *SAPU* is considered an *emission unit* within that *secondary aluminum processing unit.*

Secondary aluminum production facility means any establishment using clean charge, post-consumer aluminum scrap, aluminum scrap, aluminum ingots, aluminum foundry returns, dross from aluminum production, or molten aluminum as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.,* melting, holding, refining, fluxing, or alloying), in-line fluxing, or dross cooling. A *secondary aluminum production facility* may be independent or part of a primary aluminum production facility. A facility is a *secondary aluminum production facility* if it includes any of the affected sources listed in § 63.1500(b) or (c). Aluminum die casting facilities, aluminum foundries and aluminum extrusion facilities that process no materials other than materials generated within the facility, or clean charge purchased or otherwise obtained from outside the facility, and that do not operate sweat furnaces, thermal chip dryers, or scrap dryers/delacquering kilns/decoating kilns are not secondary aluminum production facilities.

Sidewell means an open well adjacent to the hearth of a furnace with connecting arches between the hearth and the open well through which molten aluminum is circulated between the hearth, where heat is applied by burners, and the open well, which is used for charging scrap and solid flux or salt to the furnace, injecting fluxing agents, and skimming dross.

Sweat furnace means a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point iron remains in solid form.

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update'' (EPA–625/3–89–016), available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, NTIS no. PB 90–145756.

THC means, for the purposes of this subpart, total hydrocarbon emissions that also serve as a surrogate for the emissions of organic HAP compounds.

Thermal chip dryer means a device that uses heat to evaporate water, oil, or oil/water mixtures from unpainted/uncoated aluminum chips.

Three-day, 24-hour rolling average means daily calculations of the average 24-hour emission rate (lbs/ton of feed/charge), over the 3 most recent consecutive 24-hour periods, for a *secondary aluminum processing unit.*

Total reactive chlorine flux injection rate means the sum of the total weight of chlorine in the gaseous or liquid reactive flux and the total weight of chlorine in the solid reactive chloride flux, divided by the total weight of feed/charge, as determined by the procedure in § 63.1512(o).

§ 63.1504 [Reserved]

Emission Standards and Operating Requirements

§ 63.1505 Emission standards for affected sources and emission units.

(a) *Summary.* The owner or operator of a new or existing affected source must comply with each applicable limit in this section. Table 1 to this subpart summarizes the emission standards for each type of source.

(b) *Aluminum scrap shredder.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of an aluminum scrap shredder at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

(1) Emissions in excess of 0.023 grams (g) of PM per dry standard cubic meter (dscm) (0.010 grain (gr) of PM per dry standard cubic foot (dscf)); and

(2) Visible emissions (VE) in excess of 10 percent opacity from any PM add-on air pollution control device if a continuous opacity monitor (COM) or visible emissions monitoring is chosen as the monitoring option.

(c) *Thermal chip dryer.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of:

(1) 0.40 kilogram (kg) of THC, as propane, per megagram (Mg) (0.80 lb of THC, as propane, per ton) of feed/charge from a thermal chip dryer at a secondary aluminum production facility that is a major source; and

(2) 2.50 micrograms (μg) of D/F TEQ per Mg (3.5×10^{-5} gr per ton) of feed/charge from a thermal chip dryer at a secondary aluminum production facility that is a major or area source.

(d) *Scrap dryer/delacquering kiln/decoating kiln.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln must not discharge or cause to be discharged to the atmosphere emissions in excess of:

(i) 0.03 kg of THC, as propane, per Mg (0.06 lb of THC, as propane, per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(ii) 0.04 kg of PM per Mg (0.08 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(iii) 0.25 μg of D/F TEQ per Mg (3.5×10^{-6} gr of D/F TEQ per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major or area source; and

(iv) 0.40 kg of HCl per Mg (0.80 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(e) *Scrap dryer/delacquering kiln/decoating kiln: alternative limits.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 750 °C (1400 °F) at all times. On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln must not discharge or cause to be discharged to the atmosphere emissions in excess of:

(i) 0.10 kg of THC, as propane, per Mg (0.20 lb of THC, as propane, per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(ii) 0.15 kg of PM per Mg (0.30 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(iii) 5.0 μg of D/F TEQ per Mg (7.0×10^{-5} gr of D/F TEQ per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major or area source; and

(iv) 0.75 kg of HCl per Mg (1.50 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a scrap dryer/ delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(f) *Sweat furnace.* The owner or operator of a sweat furnace shall comply with the emission standard of paragraph (f)(2) of this section.

(1) The owner or operator is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that, on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of two seconds or greater and an operating temperature of 1600 °F or greater.

(2) On and after the date the initial performance test is conducted or required to be conducted, or if no compliance test is required, on and after the compliance date of this rule, whichever date is earlier, the owner or operator of a sweat furnace at a secondary aluminum production facility that is a major or area source must not discharge or cause to be discharged to the atmosphere emissions in excess of 0.80 nanogram (ng) of D/F TEQ per dscm (3.5×10^{-10} gr per dscf) at 11 percent oxygen (O_2).

(g) *Dross-only furnace.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a dross-only furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

(1) Emissions in excess of 0.15 kg of PM per Mg (0.30 lb of PM per ton) of feed/charge.

(2) Visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(h) *Rotary dross cooler.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a rotary dross cooler at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

(1) Emissions in excess of 0.09 g of PM per dscm (0.04 gr per dscf).

(2) Visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(i) *Group 1 furnace.* The owner or operator of a group 1 furnace must use the limits in this paragraph to determine the emission standards for a SAPU.

(1) 0.20 kg of PM per Mg (0.40 lb of PM per ton) of feed/charge from a group 1 furnace, that is not a melting/holding furnace processing only clean charge, at a secondary aluminum production facility that is a major source;

(2) 0.40 kg of PM per Mg (0.80 lb of PM per ton) of feed/charge from a group 1 melting/holding furnace processing only clean charge at a secondary aluminum production facility that is a major source;

(3) 15 μg of D/F TEQ per Mg (2.1×10^{-4} gr of D/F TEQ per ton) of feed/charge from a group 1 furnace at a secondary aluminum production facility that is a major or area source. This limit does not apply if the furnace processes only clean charge; and

(4) 0.20 kg of HCl per Mg (0.40 lb of HCl per ton) of feed/charge or, if the furnace is equipped with an add-on air pollution control device, 10 percent of the uncontrolled HCl emissions, by weight, for a group 1 furnace at a secondary aluminum production facility that is a major source.

(5) The owner or operator of a group 1 furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(6) The owner or operator may determine the emission standards for a SAPU by applying the group 1 furnace limits on the basis of the aluminum production weight in each group 1 furnace, rather than on the basis of feed/charge.

(7) The owner or operator of a sidewell group 1 furnace that conducts reactive fluxing (except for cover flux) in the hearth, or that conducts reactive fluxing in the sidewell at times when the level of molten metal falls below the top of the passage between the sidewell and the hearth, must comply with the emission limits of paragraphs (j)(1) through (j)(4) of this section on the basis of the combined emissions from the sidewell and the hearth.

(j) *In-line fluxer.* Except as provided in paragraph (j)(3) of this section for an in-line fluxer using no reactive flux material, the owner or operator of an in-line fluxer must use the limits in this paragraph to determine the emission standards for a SAPU.

(1) 0.02 kg of HCl per Mg (0.04 lb of HCl per ton) of feed/charge;

(2) 0.005 kg of PM per Mg (0.01 lb of PM per ton) of feed/charge.

(3) The emission limits in paragraphs (j)(1) and (j)(2) of this section do not apply to an in-line fluxer that uses no reactive flux materials.

(4) The owner or operator of an in-line fluxer at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device used to control emissions from the in-line fluxer, if a COM is chosen as the monitoring option.

(5) The owner or operator may determine the emission standards for a SAPU by applying the in-line fluxer limits on the basis of the aluminum production weight in each in-line fluxer, rather than on the basis of feed/charge.

(k) *Secondary aluminum processing unit.* On and after the date of approval of the operation, maintenance and monitoring (OM&M) plan, the owner or operator must comply with the emission limits calculated using the equations for PM and HCl in paragraphs (k)(1) and (k)(2) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major source. The owner or operator must comply with the emission limit calculated using the equation for D/F in paragraph (k)(3) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major or area source.

(1) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of PM in excess of:

$$L_{C_{PM}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{PM}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 1)}$$

Where,

L_{tiPM} = The PM emission limit for individual emission unit i in paragraph (i)(1) and (2) of this section for a group 1 furnace or in paragraph (j)(2) of this section for an in-line fluxer;

T_{ti} = The feed/charge rate for individual emission unit I; and

L_{cPM} = The PM emission limit for the secondary aluminum processing unit.

Note: In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

(2) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of HCl in excess of:

$$L_{Cl_{HCl}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{HCl}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 2)}$$

Where,

L_{tiHCl} = The HCl emission limit for individual emission unit i in paragraph (i)(4) of this section for a group 1 furnace or in paragraph (j)(1) of this section for an in-line fluxer; and

L_{cHCl} = The HCl emission limit for the secondary aluminum processing unit.

Note: In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

(3) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of D/F in excess of:

$$L_{C_{D/F}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{D/F}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 3)}$$

Where,

$L_{tiD/F}$ = The D/F emission limit for individual emission unit i in paragraph (i)(3) of this section for a group 1 furnace; and

$L_{cD/F}$ = The D/F emission limit for the secondary aluminum processing unit.

Note: Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F limit.

(4) The owner or operator of a SAPU at a secondary aluminum production facility that is a major source may demonstrate compliance with the emission limits of paragraphs (k)(1) through (3) of this section by demonstrating that each emission unit within the SAPU is in compliance with the applicable emission limits of paragraphs (i) and (j) of this section.

(5) The owner or operator of a SAPU at a secondary aluminum production facility that is an area source may demonstrate compliance with the emission limits of paragraph (k)(3) of this section by demonstrating that each emission unit within the SAPU is in compliance with the emission limit of paragraph (i)(3) of this section.

§ 63.1506 Operating requirements.

(a) *Summary.* (1) On and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator must operate all new and existing affected sources and control equipment according to the requirements in this section.

(2) The completion of the initial performance tests for SAPUs shall be considered to be the date of approval of the OM&M plan by the permitting authority.

(3) The owner or operator of an existing sweat furnace that meets the specifications of § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of this section on and after the compliance date of this standard.

(4) The owner or operator of a new sweat furnace that meets the specifications of § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of this section by March 23, 2000 or upon startup, whichever is later.

(5) Operating requirements are summarized in Table 2 to this subpart.

(b) *Labeling.* The owner or operator must provide and maintain easily

visible labels posted at each group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln that identifies the applicable emission limits and means of compliance, including:

(1) The type of affected source or emission unit (*e.g.,* scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace, in-line fluxer).

(2) The applicable operational standard(s) and control method(s) (work practice or control device). This includes, but is not limited to, the type of charge to be used for a furnace (*e.g.*, clean scrap only, all scrap, etc.), flux materials and addition practices, and the applicable operating parameter ranges and requirements as incorporated in the OM&M plan.

(3) The afterburner operating temperature and design residence time for a scrap dryer/delacquering kiln/decoating kiln.

(c) *Capture/collection systems.* For each affected source or emission unit equipped with an add-on air pollution control device, the owner or operator must:

(1) Design and install a system for the capture and collection of emissions to meet the engineering standards for minimum exhaust rates as published by the American Conference of Governmental Industrial Hygienists in chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice'' (incorporated by reference in § 63.1502 of this subpart);

(2) Vent captured emissions through a closed system, except that dilution air may be added to emission streams for the purpose of controlling temperature at the inlet to a fabric filter; and

(3) Operate each capture/collection system according to the procedures and requirements in the OM&M plan.

(d) *Feed/charge weight.* The owner or operator of each affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) of feed/charge must:

(1) Except as provided in paragraph (d)(3) of this section, install and operate a device that measures and records or otherwise determine the weight of feed/charge (or throughput) for each operating cycle or time period used in the performance test; and

(2) Operate each weight measurement system or other weight determination procedure in accordance with the OM&M plan.

(3) The owner or operator may chose to measure and record aluminum production weight from an affected source or emission unit rather than feed/charge weight to an affected source or emission unit, provided that:

(i) The aluminum production weight, rather than feed/charge weight is measured and recorded for all emission units within a SAPU; and

(ii) All calculations to demonstrate compliance with the emission limits for SAPUs are based on aluminum production weight rather than feed/charge weight.

(e) *Aluminum scrap shredder.* The owner or operator of a scrap shredder with emissions controlled by a fabric filter must operate a bag leak detection system, or a continuous opacity monitor, or conduct visible emissions observations.

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510, the owner or operator must:

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) If visible emission observations are used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any observation of visible emissions during a daily visible emissions test and complete the corrective action procedures in accordance with the OM&M plan.

(f) *Thermal chip dryer.* The owner or operator of a thermal chip dryer with emissions controlled by an afterburner must:

(1) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(2) Operate each afterburner in accordance with the OM&M plan.

(3) Operate each thermal chip dryer using only unpainted aluminum chips as the feedstock.

(g) *Scrap dryer/delacquering kiln/decoating kiln.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln with emissions controlled by an afterburner and a lime-injected fabric filter must:

(1) For each afterburner,

(i) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(ii) Operate each afterburner in accordance with the OM&M plan.

(2) If a bag leak detection system is used to meet the fabric filter monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete any necessary corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(3) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(4) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14 °C (plus 25 °F).

(5) For a continuous injection device, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(h) *Sweat furnace.* The owner or operator of a sweat furnace with emissions controlled by an afterburner must:

(1) Maintain the 3-hour block average operating temperature of each afterburner at or above:

(i) The average temperature established during the performance test; or

(ii) 1600 °F if a performance test was not conducted, and the afterburner meets the specifications of § 63.1505(f)(1).

(2) Operate each afterburner in accordance with the OM&M plan.

(i) *Dross-only furnace.* The owner or operator of a dross-only furnace with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) Operate each furnace using dross as the sole feedstock.

(j) *Rotary dross cooler.* The owner or operator of a rotary dross cooler with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1 hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) For a continuous injection system, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(4) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(k) *In-line fluxer.* The owner or operator of an in-line fluxer with emissions controlled by a lime-injected fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1 hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) For a continuous injection system, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(4) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(l) *In-line fluxer using no reactive flux material.* The owner or operator of a new or existing in-line fluxer using no reactive flux materials must operate each in-line fluxer using no reactive flux materials.

(m) *Group 1 furnace with add-on air pollution control devices.* The owner or operator of a group 1 furnace with emissions controlled by a lime-injected fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510, the owner or operator must:

(i) Initiate corrective action within 1 hour of a bag leak detection system alarm.

(ii) Complete the corrective action procedures in accordance with the OM&M plan.

(iii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must:

(i) Initiate corrective action within 1 hour of any 6-minute average reading of 5 percent or more opacity; and

(ii) Complete the corrective action procedures in accordance with the OM&M plan.

(3) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14 °C (plus 25 °F).

(4) For a continuous lime injection system, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(5) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(6) Operate each sidewell furnace such that:

(i) The level of molten metal remains above the top of the passage between the

side-well and hearth during reactive flux injection, unless the hearth also is equipped with an add-on control device.

(ii) Reactive flux is added only in the sidewell unless the hearth also is equipped with an add-on control device.

(n) *Group 1 furnace without add-on air pollution control devices.* The owner or operator of a group 1 furnace (including a group 1 furnace that is part of a secondary aluminum processing unit) without add-on air pollution control devices must:

(1) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(2) Operate each furnace in accordance with the work practice/pollution prevention measures documented in the OM&M plan and within the parameter values or ranges established in the OM&M plan.

(3) Operate each group 1 melting/holding furnace subject to the emission standards in § 63.1505(i)(2) using only clean charge as the feedstock.

(o) *Group 2 furnace.* The owner or operator of a new or existing group 2 furnace must:

(1) Operate each furnace using only clean charge as the feedstock.

(2) Operate each furnace using no reactive flux.

(p) *Corrective action.* When a process parameter or add-on air pollution control device operating parameter deviates from the value or range established during the performance test and incorporated in the OM&M plan, the owner or operator must initiate corrective action. Corrective action must restore operation of the affected source or emission unit (including the process or control device) to its normal or usual mode of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. Corrective actions taken must include follow-up actions necessary to return the process or control device parameter level(s) to the value or range of values established during the performance test and steps to prevent the likely recurrence of the cause of a deviation.

§ 63.1507–§ 63.1509 [Reserved]

Monitoring and Compliance Requirements

§ 63.1510 Monitoring requirements.

(a) *Summary.* On and after the date the initial performance test is completed or required to be completed, whichever date is earlier, the owner or operator of a new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in this section. Monitoring requirements for each type of affected source and emission unit are summarized in Table 3 to this subpart.

(b) *Operation, maintenance, and monitoring (OM&M) plan.* The owner or operator must prepare and implement for each new or existing affected source and emission unit, a written operation, maintenance, and monitoring (OM&M) plan. The owner or operator must submit the plan to the applicable permitting authority for review and approval as part of the application for a part 70 or part 71 permit. Any subsequent changes to the plan must be submitted to the applicable permitting authority for review and approval. Pending approval by the applicable permitting authority of an initial or amended plan, the owner or operator must comply with the provisions of the submitted plan. Each plan must contain the following information:

(1) Process and control device parameters to be monitored to determine compliance, along with established operating levels or ranges, as applicable, for each process and control device.

(2) A monitoring schedule for each affected source and emission unit.

(3) Procedures for the proper operation and maintenance of each process unit and add-on control device used to meet the applicable emission limits or standards in § 63.1505.

(4) Procedures for the proper operation and maintenance of monitoring devices or systems used to determine compliance, including:

(i) Calibration and certification of accuracy of each monitoring device, at least once every 6 months, according to the manufacturer's instructions; and

(ii) Procedures for the quality control and quality assurance of continuous emission or opacity monitoring systems as required by the general provisions in subpart A of this part.

(5) Procedures for monitoring process and control device parameters, including procedures for annual inspections of afterburners, and if applicable, the procedure to be used for determining charge/feed (or throughput) weight if a measurement device is not used.

(6) Corrective actions to be taken when process or operating parameters or add-on control device parameters deviate from the value or range established in paragraph (b)(1) of this section, including:

(i) Procedures to determine and record the cause of an deviation or excursion, and the time the deviation or excursion began and ended; and

(ii) Procedures for recording the corrective action taken, the time corrective action was initiated, and the time/date corrective action was completed.

(7) A maintenance schedule for each process and control device that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(8) Documentation of the work practice and pollution prevention measures used to achieve compliance with the applicable emission limits and a site-specific monitoring plan as required in paragraph (o) of this section for each group 1 furnace not equipped with an add-on air pollution control device.

(c) *Labeling.* The owner or operator must inspect the labels for each group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln at least once per calendar month to confirm that posted labels as required by the operational standard in § 63.1506(b) are intact and legible.

(d) *Capture/collection system.* The owner or operator must:

(1) Install, operate, and maintain a capture/collection system for each affected source and emission unit equipped with an add-on air pollution control device; and

(2) Inspect each capture/collection and closed vent system at least once each calendar year to ensure that each system is operating in accordance with the operating requirements in § 63.1506(c) and record the results of each inspection.

(e) *Feed/charge weight.* The owner or operator of an affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) or μg/Mg (gr/ton) of feed/charge must install, calibrate, operate, and maintain a device to measure and record the total weight of feed/charge to, or the aluminum production from, the affected source or emission unit over the same operating cycle or time period used in the performance test. Feed/charge or aluminum production within SAPUs must be measured and recorded on an emission unit-by-emission unit basis. As an alternative to a measurement device, the owner or operator may use a procedure acceptable to the applicable permitting authority to determine the total weight of feed/charge or aluminum production to the affected source or emission unit.

(1) The accuracy of the weight measurement device or procedure must

be ±1 percent of the weight being measured. The owner or operator may apply to the permitting agency for approval to use a device of alternative accuracy if the required accuracy cannot be achieved as a result of equipment layout or charging practices. A device of alternative accuracy will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standard.

(2) The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, or if no calibration schedule is specified, at least once every 6 months.

(f) *Fabric filters and lime-injected fabric filters.* The owner or operator of an affected source or emission unit using a fabric filter or lime-injected fabric filter to comply with the requirements of this subpart must install, calibrate, maintain, and continuously operate a bag leak detection system as required in paragraph (f)(1) of this section or a continuous opacity monitoring system as required in paragraph (f)(2) of this section. The owner or operator of an aluminum scrap shredder must install and operate a bag leak detection system as required in paragraph (f)(1) of this section, install and operate a continuous opacity monitoring system as required in paragraph (f)(2) of this section, or conduct visible emission observations as required in paragraph (f)(3) of this section.

(1) These requirements apply to the owner or operator of a new or existing affected source or existing emission unit using a bag leak detection system.

(i) The owner or operator must install and operate a bag leak detection system for each exhaust stack of a fabric filter.

(ii) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (September 1997). This document is available from the U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document also is available on the Technology Transfer Network (TTN) under Emission Measurement Technical Information (EMTIC), Continuous Emission Monitoring. Other bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(iv) The bag leak detection system sensor must provide output of relative or absolute PM loadings.

(v) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(vi) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(vii) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(ix) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(x) Following initial adjustment of the system, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as detailed in the OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition.

(2) These requirements apply to the owner or operator of a new or existing affected source or an existing emission unit using a continuous opacity monitoring system.

(i) The owner or operator must install, calibrate, maintain, and operate a continuous opacity monitoring system to measure and record the opacity of emissions exiting each exhaust stack.

(ii) Each continuous opacity monitoring system must meet the design and installation requirements of Performance Specification 1 in appendix B to 40 CFR part 60.

(3) These requirements apply to the owner or operator of a new or existing aluminum scrap shredder who conducts visible emission observations. The owner or operator must:

(i) Perform a visible emissions test for each aluminum scrap shredder using a certified observer at least once a day according to the requirements of Method 9 in appendix A to 40 CFR part 60. Each Method 9 test must consist of five 6-minute observations in a 30-minute period; and

(ii) Record the results of each test.

(g) *Afterburner.* These requirements apply to the owner or operator of an affected source using an afterburner to comply with the requirements of this subpart.

(1) The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) The temperature monitoring device must meet each of these performance and equipment specifications:

(i) The temperature monitoring device must be installed at the exit of the combustion zone of each afterburner.

(ii) The monitoring system must record the temperature in 15-minute block averages and determine and record the average temperature for each 3-hour block period.

(iii) The recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1512(m).

(iv) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(3) The owner or operator must conduct an inspection of each afterburner at least once a year and record the results. At a minimum, an inspection must include:

(i) Inspection of all burners, pilot assemblies, and pilot sensing devices for proper operation and clean pilot sensor;

(ii) Inspection for proper adjustment of combustion air;

(iii) Inspection of internal structures (*e.g.,* baffles) to ensure structural integrity;

(iv) Inspection of dampers, fans, and blowers for proper operation;

(v) Inspection for proper sealing;

(vi) Inspection of motors for proper operation;

(vii) Inspection of combustion chamber refractory lining and clean and replace lining as necessary;

(viii) Inspection of afterburner shell for corrosion and/or hot spots;

(ix) Documentation, for the burn cycle that follows the inspection, that the

afterburner is operating properly and any necessary adjustments have been made; and

(x) Verification that the equipment is maintained in good operating condition.

(xi) Following an equipment inspection, all necessary repairs must be completed in accordance with the requirements of the OM&M plan.

(h) *Fabric filter inlet temperature.* These requirements apply to the owner or operator of a scrap dryer/delacquering kiln/decoating kiln or a group 1 furnace using a lime-injected fabric filter to comply with the requirements of this subpart.

(1) The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the temperature of the fabric filter inlet gases consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) The temperature monitoring device must meet each of these performance and equipment specifications:

(i) The monitoring system must record the temperature in 15-minute block averages and calculate and record the average temperature for each 3-hour block period.

(ii) The recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1512(n).

(iii) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(i) *Lime injection.* These requirements apply to the owner or operator of an affected source or emission unit using a lime-injected fabric filter to comply with the requirements of this subpart.

(1) The owner or operator of a continuous lime injection system must verify that lime is always free-flowing by either:

(i) Inspecting each feed hopper or silo at least once each 8-hour period and recording the results of each inspection. If lime is found not to be free-flowing during any of the 8-hour periods, the owner or operator must increase the frequency of inspections to at least once every 4-hour period for the next 3 days. The owner or operator may return to inspections at least once every 8 hour period if corrective action results in no further blockages of lime during the 3-day period; or

(ii) Subject to the approval of the permitting agency, installing, operating and maintaining a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system or other system to confirm that lime is free-flowing. If lime is found not to be free-flowing, the owner or operator must promptly initiate and complete corrective action, or

(iii) Subject to the approval of the permitting agency, installing, operating and maintaining a device to monitor the concentration of HCl at the outlet of the fabric filter. If an increase in the concentration of HCl indicates that the lime is not free-flowing, the owner or operator must promptly initiate and complete corrective action.

(2) The owner or operator of a continuous lime injection system must record the lime feeder setting once each day of operation.

(3) An owner or operator who intermittently adds lime to a lime coated fabric filter must obtain approval from the permitting authority for a lime addition monitoring procedure. The permitting authority will not approve a monitoring procedure unless data and information are submitted establishing that the procedure is adequate to ensure that relevant emission standards will be met on a continuous basis.

(j) *Total reactive flux injection rate.* These requirements apply to the owner or operator of a group 1 furnace (with or without add-on air pollution control devices) or in-line fluxer. The owner or operator must:

(1) Install, calibrate, operate, and maintain a device to continuously measure and record the weight of gaseous or liquid reactive flux injected to each affected source or emission unit.

(i) The monitoring system must record the weight for each 15-minute block period, during which reactive fluxing occurs, over the same operating cycle or time period used in the performance test.

(ii) The accuracy of the weight measurement device must be ±1 percent of the weight of the reactive component of the flux being measured. The owner or operator may apply to the permitting authority for permission to use a weight measurement device of alternative accuracy in cases where the reactive flux flow rates are so low as to make the use of a weight measurement device of ±1 percent impracticable. A device of alternative accuracy will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards.

(iii) The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, or if no calibration schedule is specified, at least once every 6 months.

(2) Calculate and record the gaseous or liquid reactive flux injection rate (kg/Mg or lb/ton) for each operating cycle or time period used in the performance test using the procedure in § 63.1512(o).

(3) Record, for each 15-minute block period during each operating cycle or time period used in the performance test during which reactive fluxing occurs, the time, weight, and type of flux for each addition of:

(i) Gaseous or liquid reactive flux other than chlorine; and

(ii) Solid reactive flux.

(4) Calculate and record the total reactive flux injection rate for each operating cycle or time period used in the performance test using the procedure in § 63.1512(o).

(5) The owner or operator of a group 1 furnace or in-line fluxer performing reactive fluxing may apply to the Administrator for approval of an alternative method for monitoring and recording the total reactive flux addition rate based on monitoring the weight or quantity of reactive flux per ton of feed/charge for each operating cycle or time period used in the performance test. An alternative monitoring method will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis.

(k) *Thermal chip dryer.* These requirements apply to the owner or operator of a thermal chip dryer with emissions controlled by an afterburner. The owner or operator must:

(1) Record the type of materials charged to the unit for each operating cycle or time period used in the performance test.

(2) Submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(f)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(i).

(l) *Dross-only furnace.* These requirements apply to the owner or operator of a dross-only furnace. The owner or operator must:

(1) Record the materials charged to each unit for each operating cycle or time period used in the performance test.

(2) Submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(i)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(ii).

(m) *In-line fluxers using no reactive flux.* The owner or operator of an in-line fluxer that uses no reactive flux

materials must submit a certification of compliance with the operational standard for no reactive flux materials in § 63.1506(l) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(vi).

(n) *Sidewell group 1 furnace with add-on air pollution control devices.* These requirements apply to the owner or operator of a sidewell group 1 furnace using add-on air pollution control devices. The owner or operator must:

(1) Record in an operating log for each charge of a sidewell furnace that the level of molten metal was above the top of the passage between the sidewell and hearth during reactive flux injection, unless the furnace hearth was also equipped with an add-on control device.

(2) Submit a certification of compliance with the operational standards in § 63.1506(m)(7) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(iii).

(o) *Group 1 furnace without add-on air pollution control devices.* These requirements apply to the owner or operator of a group 1 furnace that is not equipped with an add-on air pollution control device.

(1) The owner or operator must develop, in consultation with the applicable permitting authority, a written site-specific monitoring plan. The site-specific monitoring plan must be part of the OM&M plan that addresses monitoring and compliance requirements for PM, HCl, and D/F emissions.

(i) The owner or operator of an existing affected source must submit the site-specific monitoring plan to the applicable permitting authority for review at least 6 months prior to the compliance date.

(ii) The permitting authority will review and approve or disapprove a proposed plan, or request changes to a plan, based on whether the plan contains sufficient provisions to ensure continuing compliance with applicable emission limits and demonstrates, based on documented test results, the relationship between emissions of PM, HCl, and D/F and the proposed monitoring parameters for each pollutant. Test data must establish the highest level of PM, HCl, and D/F that will be emitted from the furnace. Subject to permitting agency approval of the OM&M plan, this may be determined by conducting performance tests and monitoring operating parameters while charging the furnace with feed/charge materials containing the highest anticipated levels of oils and coatings and fluxing at the highest anticipated rate.

(2) Each site-specific monitoring plan must document each work practice, equipment/design practice, pollution prevention practice, or other measure used to meet the applicable emission standards.

(3) Each site-specific monitoring plan must include provisions for unit labeling as required in paragraph (c) of this section, feed/charge weight measurement (or production weight measurement) as required in paragraph (e) of this section and flux weight measurement as required in paragraph (j) of this section.

(4) Each site-specific monitoring plan for a melting/holding furnace subject to the clean charge emission standard in § 63.1505(i)(3) must include these requirements:

(i) The owner or operator must record the type of feed/ charge (*e.g.*, ingot, thermally dried chips, dried scrap, etc.) for each operating cycle or time period used in the performance test; and

(ii) The owner or operator must submit a certification of compliance with the applicable operational standard for clean charge materials in § 63.1506(n)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(iv).

(5) If a continuous emission monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements in accordance with all applicable requirements of the general provisions in subpart A of this part.

(6) If a continuous opacity monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements in accordance with all applicable requirements of this subpart.

(7) If a site-specific monitoring plan includes a scrap inspection program for monitoring the scrap contaminant level of furnace feed/charge materials, the plan must include provisions for the demonstration and implementation of the program in accordance with all applicable requirements in paragraph (p) of this section.

(8) If a site-specific monitoring plan includes a calculation method for monitoring the scrap contaminant level of furnace feed/charge materials, the plan must include provisions for the demonstration and implementation of the program in accordance with all applicable requirements in paragraph (q) of this section.

(p) *Scrap inspection program for group 1 furnace without add-on air pollution control devices.* A scrap inspection program must include:

(1) A proven method for collecting representative samples and measuring the oil and coatings content of scrap samples;

(2) A scrap inspector training program;

(3) An established correlation between visual inspection and physical measurement of oil and coatings content of scrap samples;

(4) Periodic physical measurements of oil and coatings content of randomly-selected scrap samples and comparison with visual inspection results;

(5) A system for assuring that only acceptable scrap is charged to an affected group 1 furnace; and

(6) Recordkeeping requirements to document conformance with plan requirements.

(q) *Monitoring of scrap contamination level by calculation method for group 1 furnace without add-on air pollution control devices.* The owner or operator of a group 1 furnace dedicated to processing a distinct type of furnace feed/charge composed of scrap with a uniform composition (such as rejected product from a manufacturing process for which the coating-to-scrap ratio can be documented) may include a program in the site-specific monitoring plan for determining, monitoring, and certifying the scrap contaminant level using a calculation method rather than a scrap inspection program. A scrap contaminant monitoring program using a calculation method must include:

(1) Procedures for the characterization and documentation of the contaminant level of the scrap prior to the performance test.

(2) Limitations on the furnace feed/ charge to scrap of the same composition as that used in the performance test. If the performance test was conducted with a mixture of scrap and clean charge, limitations on the proportion of scrap in the furnace feed/charge to no greater than the proportion used during the performance test.

(3) Operating, monitoring, recordkeeping, and reporting requirements to ensure that no scrap with a contaminant level higher than that used in the performance test is charged to the furnace.

(r) *Group 2 furnace.* These requirements apply to the owner or operator of a new or existing group 2 furnace. The owner or operator must:

(1) Record a description of the materials charged to each furnace,

including any nonreactive, non-HAP-containing/non-HAP-generating fluxing materials or agents.

(2) Submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(o) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(v).

(s) *Site-specific requirements for secondary aluminum processing units.* (1) An owner or operator of a secondary aluminum processing unit at a facility must include, within the OM&M plan prepared in accordance with § 63.1510(b), the following information:

(i) The identification of each emission unit in the secondary aluminum processing unit;

(ii) The specific control technology or pollution prevention measure to be used for each emission unit in the secondary aluminum processing unit and the date of its installation or application;

(iii) The emission limit calculated for each secondary aluminum processing unit and performance test results with supporting calculations demonstrating initial compliance with each applicable emission limit;

(iv) Information and data demonstrating compliance for each emission unit with all applicable design, equipment, work practice or operational standards of this subpart; and

(v) The monitoring requirements applicable to each emission unit in a secondary aluminum processing unit and the monitoring procedures for daily calculation of the 3-day, 24-hour rolling average using the procedure in § 63.1510(t).

(2) The SAPU compliance procedures within the OM&M plan may not contain any of the following provisions:

(i) Any averaging among emissions of differing pollutants;

(ii) The inclusion of any affected sources other than emission units in a secondary aluminum processing unit;

(iii) The inclusion of any emission unit while it is shutdown; or

(iv) The inclusion of any periods of startup, shutdown, or malfunction in emission calculations.

(3) To revise the SAPU compliance provisions within the OM&M plan prior to the end of the permit term, the owner or operator must submit a request to the applicable permitting authority containing the information required by paragraph (s)(1) of this section and obtain approval of the applicable permitting authority prior to implementing any revisions.

(t) *Secondary aluminum processing unit.* Except as provided in paragraph (u) of this section, the owner or operator must calculate and record the 3-day, 24-hour rolling average emissions of PM, HCl, and D/F for each secondary aluminum processing unit on a daily basis. To calculate the 3-day, 24-hour rolling average, the owner or operator must:

(1) Calculate and record the total weight of material charged to each emission unit in the secondary aluminum processing unit for each 24-hour day of operation using the feed/charge weight information required in paragraph (e) of this section. If the owner or operator chooses to comply on the basis of weight of aluminum produced by the emission unit, rather than weight of material charged to the emission unit, all performance test emissions results and all calculations must be conducted on the aluminum production weight basis.

(2) Multiply the total feed/charge weight to the emission unit, or the weight of aluminum produced by the emission unit, for each emission unit for the 24-hour period by the emission rate (in lb/ton of feed/charge) for that emission unit (as determined during the performance test) to provide emissions for each emission unit for the 24-hour period, in pounds.

(3) Divide the total emissions for each SAPU for the 24-hour period by the total material charged to the SAPU, or the weight of aluminum produced by the SAPU over the 24-hour period to provide the daily emission rate for the SAPU.

(4) Compute the 24-hour daily emission rate using Equation 4:

$$E_{day} = \frac{\sum_{i=1}^{n}\left(T_i \times ER_i\right)}{\sum_{i=1}^{n} T_i} \qquad \text{(Eq. 4)}$$

Where,

E_{day} = The daily PM, HCl, or D/F emission rate for the secondary aluminum processing unit for the 24-hour period;

T_i = The total amount of feed, or aluminum produced, for emission unit i for the 24-hour period (tons);

ER_i = The measured emission rate for emission unit i as determined in the performance test (lb/ton or μg/Mg of feed/charge); and

n = The number of emission units in the secondary aluminum processing unit.

(5) Calculate and record the 3-day, 24-hour rolling average for each pollutant each day by summing the daily emission rates for each pollutant over the 3 most recent consecutive days and dividing by 3.

(u) *Secondary aluminum processing unit compliance by individual emission unit demonstration.* As an alternative to the procedures of paragraph (t) of this section, an owner or operator may demonstrate, through performance tests, that each individual emission unit within the secondary aluminum production unit is in compliance with the applicable emission limits for the emission unit.

(v) *Alternative monitoring method for lime addition.* The owner or operator of a lime-coated fabric filter that employs intermittent or noncontinuous lime addition may apply to the Administrator for approval of an alternative method for monitoring the lime addition schedule and rate based on monitoring the weight of lime added per ton of feed/charge for each operating cycle or time period used in the performance test. An alternative monitoring method will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis.

(w) *Alternative monitoring methods.* An owner or operator may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the emission standards of this subpart, subject to the provisions of paragraphs (w)(1) through (6) of this section.

(1) The Administrator will not approve averaging periods other than those specified in this section.

(2) The owner or operator must continue to use the original monitoring requirement until necessary data are submitted and approval is received to use another monitoring procedure.

(3) The owner or operator shall submit the application for approval of alternate monitoring methods no later than the notification of the performance test. The application must contain the information specified in paragraphs (w)(3) (i) through (iii) of this section:

(i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach;

(ii) A description of the proposed alternative monitoring requirements, including the operating parameters to be monitored, the monitoring approach and technique, and how the limit is to be calculated; and

(iii) Data and information documenting that the alternative monitoring requirement(s) would provide equivalent or better assurance of compliance with the relevant emission standard(s).

(4) The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard(s). Before disapproving any alternate monitoring application, the Administrator will provide:

(i) Notice of the information and findings upon which the intended disapproval is based; and

(ii) Notice of opportunity for the owner or operator to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for the owner or operator to provide additional supporting information.

(5) The owner or operator is responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application nor the Administrator's failure to approve or disapprove the application relieves the owner or operator of the responsibility to comply with any provisions of this subpart.

(6) The Administrator may decide at any time, on a case-by-case basis, that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.

§ 63.1511 Performance test/compliance demonstration general requirements.

(a) *Site-specific test plan.* Prior to conducting a performance test required by this subpart, the owner or operator must prepare and submit a site-specific test plan meeting the requirements in § 63.7(c).

(b) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). The owner or operator must conduct each performance test according to the requirements of the general provisions in subpart A of this part and this subpart. Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/F. Owners or operators of sweat furnaces meeting the specifications of § 63.1505(f)(1) are not required to conduct a performance test.

(1) The owner or operator must conduct each test while the affected source or emission unit is operating at the highest production level with charge materials representative of the range of materials processed by the unit and, if applicable, at the highest reactive fluxing rate.

(2) Each performance test for a continuous process must consist of 3 separate runs; pollutant sampling for each run must be conducted for the time period specified in the applicable method or, in the absence of a specific time period in the test method, for a minimum of 3 hours.

(3) Each performance test for a batch process must consist of three separate runs; pollutant sampling for each run must be conducted over the entire process operating cycle.

(4) Where multiple affected sources or emission units are exhausted through a common stack, pollutant sampling for each run must be conducted over a period of time during which all affected sources or emission units complete at least 1 entire process operating cycle or for 24 hours, whichever is shorter.

(5) Initial compliance with an applicable emission limit or standard is demonstrated if the average of three runs conducted during the performance test is less than or equal to the applicable emission limit or standard.

(c) *Test methods.* The owner or operator must use the following methods in appendix A to 40 CFR part 60 to determine compliance with the applicable emission limits or standards:

(1) Method 1 for sample and velocity traverses.

(2) Method 2 for velocity and volumetric flow rate.

(3) Method 3 for gas analysis.

(4) Method 4 for moisture content of the stack gas.

(5) Method 5 for the concentration of PM.

(6) Method 9 for visible emission observations.

(7) Method 23 for the concentration of D/F.

(8) Method 25A for the concentration of THC, as propane.

(9) Method 26A for the concentration of HCl. Where a lime-injected fabric filter is used as the control device to comply with the 90 percent reduction standard, the owner or operator must measure the fabric filter inlet concentration of HCl at a point before lime is introduced to the system.

(d) *Alternative methods.* The owner or operator may use an alternative test method, subject to approval by the Administrator.

(e) *Repeat tests.* The owner or operator of new or existing affected sources and emission units located at secondary aluminum production facilities that are major sources must conduct a performance test every 5 years following the initial performance test.

(f) *Testing of representative emission units.* With the approval of the permitting authority, a single representative or similar group 1 furnace or in-line fluxer which is not controlled by an add-on control device may be tested to determine the emission rate of all like affected sources at a facility provided that:

(1) The tested emission unit must use identical feed/charge and flux materials in the same proportions as the emission units that it represents;

(2) The tested emission unit is subject to the same work practices and the emission units that it represents;

(3) The tested emission unit is of the same design as the emission units that it represents;

(4) The tested emission unit is tested under the highest load or capacity reasonably expected to occur for any of the emission units that it represents;

(5) At least one of each different style of emission unit at the facility is tested; and

(6) All add-on control devices are tested.

(g) *Establishment of monitoring and operating parameter values.* The owner or operator of new or existing affected sources and emission units must establish a minimum or maximum operating parameter value, or an operating parameter range for each parameter to be monitored as required by § 63.1510 that ensures compliance with the applicable emission limit or standard. To establish the minimum or maximum value or range, the owner or operator must use the appropriate procedures in this section and submit the information required by § 63.1515(b)(4) in the notification of compliance status report. The owner or operator may use existing data in addition to the results of performance tests to establish operating parameter values for compliance monitoring provided each of the following conditions are met to the satisfaction of the applicable permitting authority:

(1) The complete emission test report(s) used as the basis of the parameter(s) is submitted.

(2) The same test methods and procedures as required by this subpart were used in the test.

(3) The owner or operator certifies that no design or work practice changes have been made to the source, process, or emission control equipment since the time of the report.

(4) All process and control equipment operating parameters required to be monitored were monitored as required in this subpart and documented in the test report.

§ 63.1512 Performance test/compliance demonstration requirements and procedures.

(a) *Aluminum scrap shredder.* The owner or operator must conduct performance tests to measure PM emissions at the outlet of the control system. If visible emission observations is the selected monitoring option, the owner or operator must record visible emission observations from each exhaust stack for all consecutive 6-minute periods during the PM emission test according to the requirements of Method 9 in appendix A to 40 CFR part 60.

(b) *Thermal chip dryer.* The owner or operator must conduct a performance test to measure THC and D/F emissions at the outlet of the control device while the unit processes only unpainted aluminum chips.

(c) *Scrap dryer/delacquering kiln/decoating kiln.* The owner or operator must conduct performance tests to measure emissions of THC, D/F, HCl, and PM at the outlet of the control device.

(1) If the scrap dryer/delacquering kiln/decoating kiln is subject to the alternative emission limits in § 63.1505(e), the average afterburner operating temperature in each 3-hour block period must be maintained at or above 760 °C (1400 °F) for the test.

(2) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln subject to the alternative limits in § 63.1505(e) must submit a written certification in the notification of compliance status report containing the information required by § 63.1515(b)(7).

(d) *Group 1 furnace with add-on air pollution control devices.* (1) The owner or operator of a group 1 furnace that processes scrap other than clean charge materials with emissions controlled by a lime-injected fabric filter must conduct performance tests to measure emissions of PM and D/F at the outlet of the control device and emissions of HCl at the outlet (for the emission limit) or the inlet and the outlet (for the percent reduction standard).

(2) The owner or operator of a group 1 furnace that processes only clean charge materials with emissions controlled by a lime-injected fabric filter must conduct performance tests to measure emissions of PM at the outlet of the control device and emissions of HCl at the outlet (for the emission limit) or the inlet and the outlet (for the percent reduction standard).

(3) The owner or operator may choose to determine the rate of reactive flux addition to the group 1 furnace and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all reactive flux added to the group 1 furnace is emitted. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl.

(4) The owner or operator of a sidewell group 1 furnace that conducts reactive fluxing (except for cover flux) in the hearth, or that conducts reactive fluxing in the sidewell at times when the level of molten metal falls below the top of the passage between the sidewell and the hearth, must conduct the performance tests required by paragraph (d)(1) or (d)(2) of this section, to measure emissions from both the sidewell and the hearth.

(e) *Group 1 furnace (including melting holding furnaces) without add-on air pollution control devices.* In the site-specific monitoring plan required by § 63.1510(o), the owner or operator of a group 1 furnace (including a melting/holding furnaces) without add-on air pollution control devices must include data and information demonstrating compliance with the applicable emission limits.

(1) If the group 1 furnace processes other than clean charge material, the owner or operator must conduct emission tests to measure emissions of PM, HCl, and D/F at the furnace exhaust outlet.

(2) If the group 1 furnace processes only clean charge, the owner or operator must conduct emission tests to simultaneously measure emissions of PM and HCl at the furnace exhaust outlet. A D/F test is not required. Each test must be conducted while the group 1 furnace (including a melting/holding furnace) processes only clean charge.

(3) The owner or operator may choose to determine the rate of reactive flux addition to the group 1 furnace and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all reactive flux added to the group 1 furnace is emitted. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl.

(f) *Sweat furnace.* Except as provided in § 63.1505(f)(1), the owner or operator must measure emissions of D/F from each sweat furnace at the outlet of the control device.

(g) *Dross-only furnace.* The owner or operator must conduct a performance test to measure emissions of PM from each dross-only furnace at the outlet of each control device while the unit processes only dross.

(h) *In-line fluxer.* (1) The owner or operator must conduct a performance test to measure emissions of HCl and PM. If the in-line fluxer is equipped with an add-on control device, the emissions must be measured at the outlet of the control device. If the in-line fluxer uses no reactive flux materials, emission tests for PM and HCl are not required.

(2) The owner or operator may choose to determine the rate of reactive flux addition to the in-line fluxer and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all reactive flux added to the in-line fluxer is emitted. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl.

(i) *Rotary dross cooler.* The owner or operator must conduct a performance test to measure PM emissions at the outlet of the control device.

(j) *Secondary aluminum processing unit.* The owner or operator must conduct performance tests as described in paragraphs (j)(1) through (3) of this section. The results of the performance tests are used to establish emission rates in lb/ton of feed/charge for PM and HCl and μg TEQ/Mg of feed/charge for D/F emissions from each emission unit. These emission rates are used for compliance monitoring in the calculation of the 3-day, 24-hour rolling average emission rates using the equation in § 63.1510(t). A performance test is required for:

(1) Each group 1 furnace processing only clean charge to measure emissions of PM and either:

(i) Emissions of HCl (for the emission limit); or

(ii) The mass flow rate of HCl at the inlet to and outlet from the control device (for the percent reduction standard).

(2) Each group 1 furnace that processes scrap other than clean charge to measure emissions of PM and D/F and either:

(i) Emissions of HCl (for the emission limit); or

(ii) The mass flow rate of HCl at the inlet to and outlet from the control device (for the percent reduction standard).

(3) Each in-line fluxer to measure emissions of PM and HCl.

(k) *Feed/charge weight measurement.* During the emission test(s) conducted to determine compliance with emission limits in a kg/Mg (lb/ton) format, the owner or operator of an affected source or emission unit, subject to an emission limit in a kg/Mg (lb/ton) of feed/charge

format, must measure (or otherwise determine) and record the total weight of feed/charge to the affected source or emission unit for each of the three test runs and calculate and record the total weight. An owner or operator that chooses to demonstrate compliance on the basis of the aluminum production weight must measure the weight of aluminum produced by the emission unit or affected source instead of the feed/charge weight.

(l) *Continuous opacity monitoring system.* The owner or operator of an affected source or emission unit using a continuous opacity monitoring system must conduct a performance evaluation to demonstrate compliance with Performance Specification 1 in appendix B to 40 CFR part 60. Following the performance evaluation, the owner or operator must measure and record the opacity of emissions from each exhaust stack for all consecutive 6-minute periods during the PM emission test.

(m) *Afterburner.* These requirements apply to the owner or operator of an affected source using an afterburner to comply with the requirements of this subpart.

(1) Prior to the initial performance test, the owner or operator must conduct a performance evaluation for the temperature monitoring device according to the requirements of § 63.8.

(2) The owner or operator must use these procedures to establish an operating parameter value or range for the afterburner operating temperature.

(i) Continuously measure and record the operating temperature of each afterburner every 15 minutes during the THC and D/F performance tests;

(ii) Determine and record the 15-minute block average temperatures for the three test runs; and

(iii) Determine and record the 3-hour block average temperature measurements for the 3 test runs.

(n) *Inlet gas temperature.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln or a group 1 furnace using a lime-injected fabric filter must use these procedures to establish an operating parameter value or range for the inlet gas temperature.

(1) Continuously measure and record the temperature at the inlet to the lime-injected fabric filter every 15 minutes during the HCl and D/F performance tests;

(2) Determine and record the 15-minute block average temperatures for the 3 test runs; and

(3) Determine and record the 3-hour block average of the recorded temperature measurements for the 3 test runs.

(o) *Flux injection rate.* The owner or operator must use these procedures to establish an operating parameter value or range for the total reactive chlorine flux injection rate.

(1) Continuously measure and record the weight of gaseous or liquid reactive flux injected for each 15 minute period during the HCl and D/F tests, determine and record the 15-minute block average weights, and calculate and record the total weight of the gaseous or liquid reactive flux for the 3 test runs;

(2) Record the identity, composition, and total weight of each addition of solid reactive flux for the 3 test runs;

(3) Determine the total reactive chlorine flux injection rate by adding the recorded measurement of the total weight of chlorine in the gaseous or liquid reactive flux injected and the total weight of chlorine in the solid reactive flux using Equation 5:

$$W_t = F_1W_1 + F_2W_2 \qquad \text{(Eq. 5)}$$

Where,

W_t = Total chlorine usage, by weight;
F_1 = Fraction of gaseous or liquid flux that is chlorine;
W_1 = Weight of reactive flux gas injected;
F_2 = Fraction of solid reactive chloride flux that is chlorine (*e.g.,* F = 0.75 for magnesium chloride; and
W_2 = Weight of solid reactive flux;

(4) Divide the weight of total chlorine usage (W_t) for the 3 test runs by the recorded measurement of the total weight of feed for the 3 test runs; and

(5) If a solid reactive flux other than magnesium chloride is used, the owner or operator must derive the appropriate proportion factor subject to approval by the applicable permitting authority.

(p) *Lime injection.* The owner or operator of an affected source or emission unit using a lime-injected fabric filter system must use these procedures during the HCl and D/F tests to establish an operating parameter value for the feeder setting for each operating cycle or time period used in the performance test.

(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times; and

(2) Record the feeder setting for the 3 test runs. If the feed rate setting varies during the runs, determine and record the average feed rate from the 3 runs.

(q) *Bag leak detection system.* The owner or operator of an affected source or emission unit using a bag leak detection system must submit the information described in § 63.1515(b)(6) as part of the notification of compliance status report to document conformance with the specifications and requirements in § 63.1510(f).

(r) *Labeling.* The owner or operator of each scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace and in-line fluxer must submit the information described in § 63.1515(b)(3) as part of the notification of compliance status report to document conformance with the operational standard in § 63.1506(b).

(s) *Capture/collection system.* The owner or operator of a new or existing affected source or emission unit with an add-on control device must submit the information described in § 63.1515(b)(2) as part of the notification of compliance status report to document conformance with the operational standard in § 63.1506(c).

§ 63.1513 Equations for determining compliance.

(a) *THC emission limit.* Use Equation 6 to determine compliance with an emission limit for THC:

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{M_V \times P \times 10^6} \qquad \text{(Eq. 6)}$$

Where,

E = Emission rate of measured pollutant, kg/Mg (lb/ton) of feed;
C = Measured volume fraction of pollutant, ppmv;
MW = Molecular weight of measured pollutant, g/g-mole (lb/lb-mole): THC (as propane) = 44.11;
Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);
K_1 = Conversion factor, 1 kg/1,000 g (1 lb/lb);
K_2 = Conversion factor, 1,000 L/m^3 (1 ft^3/ft^3);
M_v = Molar volume, 24.45 L/g-mole (385.3 ft^3/lb-mole); and
P = Production rate, Mg/hr (ton/hr).

(b) *PM, HCl and D/F emission limits.* Use Equation 7 to determine compliance with an emission limit for PM, HCl, and D/F:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 7)}$$

Where,

E = Emission rate of PM, HCl, or D/F, kg/Mg (lb/ton) of feed;
C = Concentration of PM, HCl, or D/F, g/dscm (gr/dscf);
Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);
K_1 = Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and
P = Production rate, Mg/hr (ton/hr).

(c) *HCl percent reduction standard.* Use Equation 8 to determine compliance with an HCl percent reduction standard:

$$\%R = \frac{L_i - L_o}{L_i} \times 100 \qquad \text{(Eq. 8)}$$

Where,

$\%R$ = Percent reduction of the control device;

L_i = Inlet loading of pollutant, kg/Mg (lb/ton); and

L_o = Outlet loading of pollutant, kg/Mg (lb/ton).

(d) *Conversion of D/F measurements to TEQ units.* To convert D/F measurements to TEQ units, the owner or operator must use the procedures and equations in ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update'' (EPA–625/3–89–016), incorporated by reference in § 63.1502 of this subpart, available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, NTIS no. PB 90–145756.

(e) *Secondary aluminum processing unit.* Use the procedures in paragraphs (e)(1), (2), and (3) or the procedure in paragraph (e)(4) of this section to determine compliance with emission limits for a secondary aluminum processing unit.

(1) Use Equation 9 to compute the mass-weighted PM emissions for a secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit (E_{cPM}) is less than or equal to the emission limit for the secondary aluminum processing unit (L_{cPM}) calculated using Equation 1 in § 63.1505(k).

$$E_{C_{PM}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{PM}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 9)}$$

Where,

E_{cPM} = The mass-weighted PM emissions for the secondary aluminum processing unit;

E_{tiPM} = Measured PM emissions for individual emission unit i;

T_{ti} = The average feed rate for individual emission unit i during the operating cycle or performance test period; and

n=The number of emission units in the secondary aluminum processing unit.

(2) Use Equation 10 to compute the aluminum mass-weighted HCl emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit (E_{cHCl}) is less than or equal to the emission limit for the secondary aluminum processing unit (L_{cHCl}) calculated using Equation 2 in § 63.1505(k).

$$E_{C_{HCl}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{HCl}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 10)}$$

Where,

E_{cHCl} = The mass-weighted HCl emissions for the secondary aluminum processing unit; and

E_{tiHCl} = Measured HCl emissions for individual emission unit i.

(3) Use Equation 11 to compute the aluminum mass-weighted D/F emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit is less than or equal to the emission limit for the secondary aluminum processing unit ($L_{cD/F}$) calculated using Equation 3 in § 63.1505(k).

$$E_{C_{D/F}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{D/F}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 11)}$$

Where,

$E_{cD/F}$ = The mass-weighted D/F emissions for the secondary aluminum processing unit; and

$E_{tiD/F}$ = Measured D/F emissions for individual emission unit i.

(4) As an alternative to using the equations in paragraphs (e)(1), (2), and (3) of this section, the owner or operator may demonstrate compliance for a secondary aluminum processing unit by demonstrating that each existing group 1 furnace is in compliance with the emission limits for a new group 1 furnace in § 63.1505(i) and that each existing in-line fluxer is in compliance with the emission limits for a new in-line fluxer in § 63.1505(j).

§ 63.1514 [Reserved]

Notifications, Reports, And Records

§ 63.1515 Notifications.

(a) *Initial notifications.* The owner or operator must submit initial notifications to the applicable permitting authority as described in paragraphs (a)(1) through (7) of this section.

(1) As required by § 63.9(b)(1), the owner or operator must provide notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard.

(2) As required by § 63.9(b)(3), the owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is not required under § 63.5(d), must provide notification that the source is subject to the standard.

(3) As required by § 63.9(b)(4), the owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is required by § 63.5(d) must provide the following notifications:

(i) Intention to construct a new major affected source, reconstruct a major source, or reconstruct a major source such that the source becomes a major affected source;

(ii) Date when construction or reconstruction was commenced (submitted simultaneously with the application for approval of construction or reconstruction if construction or reconstruction was commenced before the effective date of this subpart, or no later than 30 days after the date construction or reconstruction commenced if construction or reconstruction commenced after the effective date of this subpart);

(iii) Anticipated date of startup; and

(iv) Actual date of startup.

(4) As required by § 63.9(b)(5), after the effective date of this subpart, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to this subpart, or reconstruct a source such that it becomes an affected source subject to this subpart, must provide notification of the intended construction or reconstruction. The notification must include all the information required for an application for approval of construction or reconstruction as required by § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill these requirements.

(i) The application must be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date) if the construction or reconstruction commences after the effective date of this subpart; or

(ii) The application must be submitted as soon as practicable before startup but no later than 90 days after the effective date of this subpart if the construction or reconstruction had commenced and

initial startup had not occurred before the effective date.

(5) As required by § 63.9(d), the owner or operator must provide notification of any special compliance obligations for a new source.

(6) As required by § 63.9(e) and (f), the owner or operator must provide notification of the anticipated date for conducting performance tests and visible emission observations. The owner or operator must notify the Administrator of the intent to conduct a performance test at least 60 days before the performance test is scheduled; notification of opacity or visible emission observations for a performance test must be provided at least 30 days before the observations are scheduled to take place.

(7) As required by § 63.9(g), the owner or operator must provide additional notifications for sources with continuous emission monitoring systems or continuous opacity monitoring systems.

(b) *Notification of compliance status report.* Each owner or operator must submit a notification of compliance status report within 60 days after the compliance dates specified in § 63.1501. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (a)(1) through (10) of this section. The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, the owner or operator must provide duplicate notification to the applicable Regional Administrator. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously submitted. A complete notification of compliance status report must include:

(1) All information required in § 63.9(h). The owner or operator must provide a complete performance test report for each affected source and emission unit for which a performance test is required. A complete performance test report includes all data, associated measurements, and calculations (including visible emission and opacity tests).

(2) The approved site-specific test plan and performance evaluation test results for each continuous monitoring system (including a continuous emission or opacity monitoring system).

(3) Unit labeling as described in § 63.1506(b), including process type or furnace classification and operating requirements.

(4) The compliant operating parameter value or range established for each affected source or emission unit with supporting documentation and a description of the procedure used to establish the value (*e.g.,* lime injection rate, total reactive chlorine flux injection rate, afterburner operating temperature, fabric filter inlet temperature), including the operating cycle or time period used in the performance test.

(5) Design information and analysis, with supporting documentation, demonstrating conformance with the requirements for capture/collection systems in § 63.1506(c).

(6) If applicable, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.1510(f).

(7) Manufacturer's specification or analysis documenting the design residence time of no less than 1 second for each afterburner used to control emissions from a scrap dryer/delacquering kiln/decoating kiln subject to alternative emission standards in § 63.1505(e).

(8) Manufacturer's specification or analysis documenting the design residence time of no less than 2 seconds and design operating temperature of no less than 1600 °F for each afterburner used to control emissions from a sweat furnace that is not subject to a performance test.

(9) Approved OM&M plan (including site-specific monitoring plan for each group 1 furnace with no add-on air pollution control device).

(10) Startup, shutdown, and malfunction plan, with revisions.

§ 63.1516 Reports.

(a) *Startup, shutdown, and malfunction plan/reports.* The owner or operator must develop and implement a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. The owner or operator shall also keep records of each event as required by § 63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.6(e)(3). In addition to the information required in § 63.6(e)(3), the plan must include:

(1) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended; and

(2) Corrective actions to be taken in the event of a malfunction of a process or control device, including procedures for recording the actions taken to correct the malfunction or minimize emissions.

(b) *Excess emissions/summary report.* As required by § 63.10(e)(3), the owner or operator must submit semiannual reports within 60 days after the end of each 6-month period. Each report must contain the information specified in § 63.10(c). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period.

(1) A report must be submitted if any of these conditions occur during a 6-month reporting period:

(i) The corrective action specified in the OM&M plan for a bag leak detection system alarm was not initiated within 1 hour.

(ii) The corrective action specified in the OM&M plan for a continuous opacity monitoring deviation was not initiated within 1 hour.

(iii) The corrective action specified in the OM&M plan for visible emissions from an aluminum scrap shredder was not initiated within 1 hour.

(iv) An excursion of a compliant process or operating parameter value or range (*e.g.,* lime injection rate or screw feeder setting, total reactive chlorine flux injection rate, afterburner operating temperature, fabric filter inlet temperature, definition of acceptable scrap, or other approved operating parameter).

(v) An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the plan as described in § 63.6(e)(3).

(vi) An affected source (including an emission unit in a secondary aluminum processing unit) was not operated according to the requirements of this subpart.

(vii) A deviation from the 3-day, 24-hour rolling average emission limit for a secondary aluminum processing unit.

(2) Each report must include each of these certifications, as applicable:

(i) For each thermal chip dryer: ''Only unpainted aluminum chips were used as feedstock in any thermal chip dryer during this reporting period.''

(ii) For each dross-only furnace: ''Only dross was used as the charge

material in any dross-only furnace during this reporting period.''

(iii) For each sidewell group 1 furnace with add-on air pollution control devices: ''Each furnace was operated such that the level of molten metal remained above the top of the passage between the sidewell and hearth during reactive fluxing, and reactive flux, except for cover flux, was added only to the sidewell or to a furnace hearth equipped with an add-on air pollution control device for PM, HCl, and D/F emissions during this reporting period.''

(iv) For each group 1 melting/holding furnace without add-on air pollution control devices and using pollution prevention measures that processes only clean charge material: ''Each group 1 furnace without add-on air pollution control devices subject to emission limits in § 63.1505(i)(2) processed only clean charge during this reporting period.''

(v) For each group 2 furnace: ''Only clean charge materials were processed in any group 2 furnace during this reporting period, and no fluxing was performed or all fluxing performed was conducted using only nonreactive, non-HAP-containing/non-HAP-generating fluxing gases or agents, except for cover fluxes, during this reporting period.''

(vi) For each in-line fluxer using no reactive flux: ''Only nonreactive, non-HAP-containing, non-HAP-generating flux gases, agents, or materials were used at any time during this reporting period.''

(3) The owner or operator must submit the results of any performance test conducted during the reporting period, including one complete report documenting test methods and procedures, process operation, and monitoring parameter ranges or values for each test method used for a particular type of emission point tested.

(c) *Annual compliance certifications.* For the purpose of annual certifications of compliance required by 40 CFR part 70 or 71, the owner or operator must certify continuing compliance based upon, but not limited to, the following conditions:

(1) Any period of excess emissions, as defined in paragraph (b)(1) of this section, that occurred during the year were reported as required by this subpart; and

(2) All monitoring, recordkeeping, and reporting requirements were met during the year.

§ 63.1517 Records

(a) As required by § 63.10(b), the owner or operator shall maintain files of all information (including all reports and notifications) required by the general provisions and this subpart.

(1) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site.

(2) The owner or operator may retain records on microfilm, computer disks, magnetic tape, or microfiche; and

(3) The owner or operator may report required information on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

(b) In addition to the general records required by § 63.10(b), the owner or operator of a new or existing affected source (including an emission unit in a secondary aluminum processing unit) must maintain records of:

(1) For each affected source and emission unit with emissions controlled by a fabric filter or a lime-injected fabric filter:

(i) If a bag leak detection system is used, the number of total operating hours for the affected source or emission unit during each 6-month reporting period, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action(s) taken.

(ii) If a continuous opacity monitoring system is used, records of opacity measurement data, including records where the average opacity of any 6-minute period exceeds 5 percent, with a brief explanation of the cause of the emissions, the time the emissions occurred, the time corrective action was initiated and completed, and the corrective action taken.

(iii) If an aluminum scrap shredder is subject to visible emission observation requirements, records of all Method 9 observations, including records of any visible emissions during a 30-minute daily test, with a brief explanation of the cause of the emissions, the time the emissions occurred, the time corrective action was initiated and completed, and the corrective action taken.

(2) For each affected source with emissions controlled by an afterburner:

(i) Records of 15-minute block average afterburner operating temperature, including any period when the average temperature in any 3-hour block period falls below the compliant operating parameter value with a brief explanation of the cause of the excursion and the corrective action taken; and

(ii) Records of annual afterburner inspections.

(3) For each scrap dryer/delacquering kiln/decoating kiln and group 1 furnace, subject to D/F and HCl emission standards with emissions controlled by a lime-injected fabric filter, records of 15-minute block average inlet temperatures for each lime-injected fabric filter, including any period when the 3-hour block average temperature exceeds the compliant operating parameter value +14 °C (+25 °F), with a brief explanation of the cause of the excursion and the corrective action taken.

(4) For each affected source and emission unit with emissions controlled by a lime-injected fabric filter:

(i) Records of inspections at least once every 8-hour period verifying that lime is present in the feeder hopper or silo and flowing, including any inspection where blockage is found, with a brief explanation of the cause of the blockage and the corrective action taken, and records of inspections at least once every 4-hour period for the subsequent 3 days. If flow monitors, pressure drop sensors or load cells are used to verify that lime is present in the hopper and flowing, records of all monitor or sensor output including any event where blockage was found, with a brief explanation of the cause of the blockage and the corrective action taken;

(ii) If lime feeder setting is monitored, records of daily inspections of feeder setting, including records of any deviation of the feeder setting from the setting used in the performance test, with a brief explanation of the cause of the deviation and the corrective action taken.

(iii) If lime addition rate for a noncontinuous lime injection system is monitored pursuant to the approved alternative monitoring requirements in § 63.1510(v), records of the time and mass of each lime addition during each operating cycle or time period used in the performance test and calculations of the average lime addition rate (lb/ton of feed/charge).

(5) For each group 1 furnace (with or without add-on air pollution control devices) or in-line fluxer, records of 15-minute block average weights of gaseous or liquid reactive flux injection, total reactive flux injection rate and calculations (including records of the identity, composition, and weight of each addition of gaseous, liquid or solid reactive flux), including records of any period the rate exceeds the compliant operating parameter value and corrective action taken.

(6) For each continuous monitoring system, records required by § 63.10(c).

(7) For each affected source and emission unit subject to an emission

standard in kg/Mg (lb/ton) of feed/charge, records of feed/charge (or throughput) weights for each operating cycle or time period used in the performance test.

(8) Approved site-specific monitoring plan for a group 1 furnace without add-on air pollution control devices with records documenting conformance with the plan.

(9) Records of all charge materials for each thermal chip dryer, dross-only furnace, and group 1 melting/holding furnaces without air pollution control devices processing only clean charge.

(10) Operating logs for each group 1 sidewell furnace with add-on air pollution control devices documenting conformance with operating standards for maintaining the level of molten metal above the top of the passage between the sidewell and hearth during reactive flux injection and for adding reactive flux only to the sidewell or a furnace hearth equipped with a control device for PM, HCl, and D/F emissions.

(11) Operating logs for each in-line fluxer using no reactive flux materials documenting each flux gas, agent, or material used during each operating cycle.

(12) Records of all charge materials and fluxing materials or agents for a group 2 furnace.

(13) Records of monthly inspections for proper unit labeling for each affected source and emission unit subject to labeling requirements.

(14) Records of annual inspections of emission capture/collection and closed vent systems.

(15) Records for any approved alternative monitoring or test procedure.

(16) Current copy of all required plans, including any revisions, with records documenting conformance with the applicable plan, including:

(i) Startup, shutdown, and malfunction plan;

(ii) For major sources, OM&M plan; and

(iii) Site-specific secondary aluminum processing unit emission plan (if applicable).

(17) For each secondary aluminum processing unit, records of total charge weight, or if the owner or operator chooses to comply on the basis of aluminum production, total aluminum produced for each 24-hour period and calculations of 3-day, 24-hour rolling average emissions.

Other

§ 63.1518 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.1519 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the CAA, the authorities contained in paragraph (b) of this section are retained by the Administrator and are not transferred to a State.

(b) Applicability determinations pursuant to § 63.1.

§ 63.1520 [Reserved]

BILLING CODE 6560–50–P

Table 1 to Subpart RRR--Emission Standards for New and Existing Affected Sources

Affected source/ Emission unit	Pollutant	Limit	Units
All new and existing affected sources and emission units that are controlled with a PM add-on control device and that choose to monitor with a COM; and all new and existing aluminum scrap shredders that choose to monitor with a COM or to monitor visible emissions	Opacity	10	percent
New and existing aluminum scrap shredder	PM	0.01	gr/dscf
New and existing thermal chip dryer	THC D/F[a]	0.80 2.50	lb/ton of feed μg TEQ/Mg of feed
New and existing scrap dryer/delacquering kiln/decoating kiln	PM HCl THC D/F[a]	0.08 0.80 0.06 0.25	lb/ton of feed lb/ton of feed lb/ton of feed μg TEQ/Mg of feed
Or			
Alternative limits if afterburner has a design residence time of at least 1 second and operates at a temperature of at least 1400 °F	PM HCl THC D/F[a]	0.30 1.50 0.20 5.0	lb/ton of feed lb/ton of feed lb/ton of feed μg TEQ/Mg of feed
New and existing sweat furnace	D/F[a]	0.80	ng TEQ/dscm @ 11% O_2[b]
New and existing dross-only furnace	PM	0.30	lb/ton of feed

New and existing in-line fluxer[c]	HCl PM	0.04 0.01	lb/ton of feed lb/ton of feed
New and existing in-line fluxer with no reactive fluxing		No limit	Work practice: no reactive fluxing
New and existing rotary dross cooler	PM	0.04	gr/dscf
New and existing clean furnace (Group 2)		No limit	Work practices: clean charge only and no reactive fluxing
New and existing group 1 melting/holding furnace (processing only clean charge)[c]	PM HCl	0.80 0.40 or 10	lb/ton of feed lb/ton of feed percent of the HCl upstream of an add-on control device
New and existing group 1 furnace[c]	PM HCl	0.40 0.40 or 10	lb/ton of feed lb/ton of feed percent of the HCl upstream of an add-on control device
	D/F[a]	15.0	μg TEQ/Mg of feed
New and existing group 1 furnace[c] with clean charge only	PM HCl	0.40 0.40 Or 10	lb/ton of feed lb/ton of feed percent of the HCl upstream of an add-on control device
	D/F[a]	No Limit	Clean charge only

New and existing secondary aluminum processing unit[a,d] (consists of all existing group 1 furnaces and existing in-line flux boxes at the facility, or all simultaneously constructed new group 1 furnaces and new in-line fluxers)	PM[e]	$L_{t_{PM}} = \frac{\sum_{i=1}^{n} (L_{i_{PM}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$
	HCl[f]	$L_{t_{HCl}} = \frac{\sum_{i=1}^{n} (L_{i_{HCl}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$
	D/F[g]	$L_{t_{D/F}} = \frac{\sum_{i=1}^{n} (L_{i_{D/F}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$

[a] D/F limit applies to a unit at a major or area source.

[b] Sweat furnaces equipped with afterburners meeting the specifications of §63.1505(f)(1) are not required to conduct a performance test.

[c] These limits are also used to calculate the limits applicable to secondary aluminum processing units.

[d] Equation definitions: L_{iPM} = the PM emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; T_i = the feed rate for individual emission unit i in the secondary aluminum processing unit; L_{tPM} = the overall PM emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{iHCl} = the HCl emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{tHCl} = the overall HCl emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{iD/F}$ = the D/F emission limit for individual emission unit i [μg TEQ/Mg (gr TEQ/ton) of feed]; $L_{tD/F}$ = the overall D/F emission limit for the secondary aluminum processing unit [μg TEQ/Mg (gr TEQ/ton) of feed]; n = the number of units in the secondary aluminum processing unit.

[e] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

[f] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

[g] Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F limit.

BILLING CODE 6560–50–C

TABLE 2 TO SUBPART RRR.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements
All affected sources and emission units with an add-on air pollution control device.	Emission capture and collection system.	Design and install in accordance with Industrial Ventilation: A Handbook of Recommended Practice; operate in accordance with OM&M plan.[b]
All affected sources and emission units subject to production-based (lb/ton of feed) emission limits[a].	Charge/feed weight or Production weight.	Operate a device that records the weight of each charge; Operate in accordance with OM&M plan.[b]
Group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln.	Labeling	Identification, operating parameter ranges and operating requirements posted at affected sources and emission units; control device temperature and residence time requirements posted at scrap dryer/delacquering kiln/decoating kiln.
Aluminum scrap shredder with fabric filter.	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with OM&M plan[b]; operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM or	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with OM&M plan.[b]
	VE	Initiate corrective action within 1-hr of any observed VE and complete in accordance with the OM&M plan.[b]
Thermal chip dryer with afterburner	Afterburner operating temperature	Maintain average temperature for each 3-hr period at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with OM&M plan.[b]
	Feed material	Operate using only unpainted aluminum chips.
Scrap dryer/delacquering kiln/decoating kiln with afterburner and lime-injected fabric filter.	Afterburner operating temperature	Maintain average temperature for each 3-hr period at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with OM&M plan.[b]
	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hr period at or below average temperature during the performance test +14 °C (+25 °F).
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established during the performance test for continuous injection systems.
Sweat furnace with afterburner	Afterburner operating temperature	If a performance test was conducted, maintain average temperature for each 3-hr period at or above average operating temperature during the performance test; if a performance test was not conducted, and afterburner meets specifications of §63.1505(f)(1), maintain average temperature for each 3-hr period at or above 1600 °F.
	Afterburner operation	Operate in accordance with OM&M plan.[b]
Dross-only furnace with fabric filter	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
	Feed/charge material	Operate using only dross as the feed material.
Rotary dross cooler with fabric filter	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
In-line fluxer with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established during performance test for continuous injection systems.

TABLE 2 TO SUBPART RRR.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements
	Reactive flux injection rate	Maintain reactive flux injection rate at or below rate used during the performance test for each operating cycle or time period used in the performance test.
In-line fluxer (using no reactive flux material).	Flux materials	Use no reactive flux.
Group 1 furnace with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector or	Initiate corrective action within 1-hr of alarm; operate such that alarm does not sound more than 5% of operating time in 6-month period; complete corrective action in accordance with the OM&M plan.[b]
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more; complete corrective action in accordance with the OM&M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hour period at or below average temperature during the performance test +14 &degC (+25 °F).
	Reactive flux injection rate	Maintain reactive flux injection rate (lb/hr) at or below rate used during the performance test for each furnace cycle.
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established at performance test for continuous injection systems.
	Maintain molten aluminum level	Operate side-well furnaces such that the level of molten metal is above the top of the passage between sidewell and hearth during reactive flux injection, unless the hearth is also controlled.
	Fluxing in sidewell furnace hearth	Add reactive flux only to the sidewell of the furnace unless the hearth is also controlled.
Group 1 furnace without add-on controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate	Maintain reactive flux injection rate (lb/hr) at or below rate used during the performance test for each operating cycle or time period used in the performance test.
	Site-specific monitoring plan[c]	Operate furnace within the range of charge materials, contaminant levels, and parameter values established in the site-specific monitoring plan.
	Feed material (melting/holding furnace).	Use only clean charge.
Clean (group 2) furnace	Charge and flux materials	Use only clean charge. Use no reactive flux.

[a] Thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, in-line fluxers and group 1 furnaces including melting/holding furnaces.
[b] OM&M plan—Operation, maintenance, and monitoring plan.
[c] Site-specific monitoring plan. Owner/operators of group 1 furnaces without control devices must include a section in their OM&M plan that documents work practice and pollution prevention measures, including procedures for scrap inspection, by which compliance is achieved with emission limits and process or feed parameter-based operating requirements. This plan and the testing to demonstrate adequacy of the monitoring plan must be developed in coordination with and approved by the permitting authority.

TABLE 3 TO SUBPART RRR.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/Emission unit	Monitor type/Operation/Process	Monitoring requirements
All affected sources and emission units with an add-on air pollution control device.	Emission capture and collection system.	Annual inspection of all emission capture, collection, and transport systems to ensure that systems continue to operate in accordance with ACGIH standards.
All affected sources and emission units subject to production-based (lb/ton of feed/charge) emission limits[a].	Feed/charge weight	Record weight of each feed/charge, weight measurement device or other procedure accuracy of ±1%[b]; calibrate according to manufacturers specifications, or at least once every 6 months.
Group 1 furnace, group 2 furnace, in-line fluxer, and scrap dryer/delacquering kiln/decoating kiln.	Labeling	Check monthly to confirm that labels are intact and legible.
Aluminum scrap shredder with fabric filter.	Bag leak detector or	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''[c]; record voltage output from bag leak detector.
	COM or	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	VE	Conduct and record results of 30-minute daily test in accordance with Method 9.
Thermal chip dryer with afterburner	Afterburner operating temperature	Continuous measurement device to meet specifications in §63.1510(g)(1); record average temperature for each 15-minute block; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.

TABLE 3 TO SUBPART RRR.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/Emission unit	Monitor type/Operation/Process	Monitoring requirements
	Feed/charge material	Record identity of each feed/charge; certify feed/charge materials every 6 months.
Scrap dryer/ delacquering kiln/ decoating kiln with afterburner and lime injected fabric filter.	Afterburner operating temperature	Continuous measurement device to meet specifications in §63.1510(g)(1); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.
	Bag leak detector or	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' [c]; record voltage output from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	Lime injection rate	For continuous injection systems, inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day periode; record feeder setting daily.
	Fabric filter inlet temperature	Continuous measurement device to meet specifications in §63.1510(h)(2); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
Sweat furnace with afterburner	Afterburner operating temperature	Continuous measurement device to meet specifications in §63.1510(g)(1); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.
Dross-only furnace with fabric filter	Bag leak detector or	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' [c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	Feed/charge material	Record identity of each feed/charge; certify charge materials every 6 months.
Rotary dross cooler with fabric filter	Bag leak detector or	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' [c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
In-line fluxer with lime-injected fabric filter.	Bag leak detector or	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' [c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages
	Reactive flux injection rate	Weight measurement device accuracy of ±1% [b]; calibrate according to manufacturer's specifications or at least once every 6 months; record time, weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test; or Alternative flux injection rate determination procedure per §63.1510(j)(5).
	Lime injection rate	For continuous injection systems, record feeder setting daily and inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.[d]
In-line fluxer using no reactive flux	Flux materials	Record flux materials; certify every 6 months for no reactive flux.
Group 1 furnace with lime-injected fabric filter.	Bag leak detector or	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' [c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 part CFR 63; determine and record 6-minute block averages.
	Lime injection rate	For continuous injection systems, record feeder setting daily and inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.[d]

TABLE 3 TO SUBPART RRR.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/Emission unit	Monitor type/Operation/Process	Monitoring requirements
	Reactive flux injection rate Weight measurement device accuracy of +1%b; calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test; or.	
	Alternative flux injection rate determination procedure per §63.1510(j)(5)..	
	Fabric filter inlet temperature	Continuous measurement device to meet specifications in §63.1510(h)(2); record temperatures in 15-minute block averages; determine and record 3-hour block averages.
	Maintain molten aluminum level in sidewell furnace.	Maintain aluminum level operating log; certify every 6 months.
Group 1 furnace without add-on controls.	Fluxing in sidewell furnace hearth	Maintain flux addition operating log; certify every 6 months.
	Reactive flux injection rate	Weight measurement device accuracy of +1%[b]; calibrate according to manufacturers specifications or at least once every six months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test.
	OM&M plan (approved by permitting agency).	Demonstration of site-specific monitoring procedures to provide data and show correlation of emissions across the range of charge and flux materials and furnace operating parameters.
	Feed material (melting/holding furnace).	
Record type of permissible feed/charge material; certify charge materials every 6 months..		
Clean (group 2) furnace	Charge and flux materials	Record charge and flux materials; certify every 6 months for clean charge and no reactive flux.

[a] Thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, in-line fluxers and group 1 furnaces or melting/holding furnaces.

[b] Permitting agency may approve measurement devices of alternative accuracy, for example in cases where flux rates are very low and costs of meters of specified accuracy are prohibitive; or where feed/charge weighing devices of specified accuracy are not practicable due to equipment layout or charging practices.

[c] Non-triboelectric bag leak detectors must be installed and operated in accordance with manufacturers' specifications.

[d] Permitting agency may approve other alternatives including load cells for lime hopper weight, sensors for carrier gas pressure, or HCl monitoring devices at fabric filter outlet.

APPENDIX A TO SUBPART RRR.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
§63.1(a)(1)–(4)	General Applicability	Yes.	
§63.1(a)(5)	.....	No	[Reserved].
§63.1(a)(6)–(8)	.....	Yes.	
§63.1(a)(9)	.....	No	[Reserved].
§63.1(a) (10)–(14)	.....	Yes.	
§63.1(b)	Initial Applicability Determination	Yes	EPA retains approval authority.
§63.1(c)(1)	Applicability After Standard Established	Yes.	
§63.1(c)(2)	.....	Yes	States have option to exclude area sources from title V permit program.
§63.1(c)(3)	.....	No	[Reserved].
§63.1(c)(4)–(5)	.....	Yes.	
§63.1(d)	.....	No	[Reserved].
§63.1(e)	Applicability of Permit Program	Yes.	
§63.2	Definitions	Yes	Additional definitions in §63.1503.
§63.3	Units and Abbreviations	Yes	
§63.4(a)(1)–(3)	Prohibited Activities	Yes.	
§63.4(a)(4)	.....	No	[Reserved]
§63.4(a)(5)	.....	Yes.	

APPENDIX A TO SUBPART RRR.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
§ 63.4(b)–(c)	Circumvention/ Severability	Yes.	
§ 63.5(a)	Construction and Reconstruction—Applicability	Yes.	
§ 63.5(b)(1)	Existing, New, Reconstructed Sources—Requirements.	Yes.	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/ Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§ 63.6(b)(1)–(5)	New and Reconstructed Sources—Dates	Yes.	
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes.	
§ 63.6(c)(1)	Existing Sources Dates	Yes	§ 63.1501 specifies dates.
§ 63.6(c)(2)		Yes.	
§ 63.6(c)(3)–(4)		No	[Reserved].
§ 63.6(c)(5)		Yes.	
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)–(2)	Operation & Maintenance Requirements	Yes	§ 63.1510 requires plan.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	
§ 63.6(f)	Compliance with Emission Standards	Yes.	
§ 63.6(g)	Alternative Standard	No	
§ 63.6(h)	Compliance with Opacity/VE Standards	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Exemption from Compliance	Yes.	
§ 63.7(a)–(h)	Performance Test Requirements—Applicability and Dates.	Yes	§ 63.1511 requires repeat tests every 5 years for major sources.
§ 63.7(b)	Notification	Yes.	
§ 63.7(c)	Quality Assurance/Test Plan	Yes.	
§ 63.7(d)	Testing Facilities	Yes.	
§ 63.7(e)	Conduct of Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes.	
§ 63.7(g)	Data Analysis	Yes.	
§ 63.7(h)	Waiver of Tests	Yes.	
§ 63.8(a)(1)	Monitoring Requirements—Applicability	Yes.	
§ 63.8(a)(2)		Yes.	
§ 63.8(a)(3)		No	[Reserved]
§ 63.8(a)(4)		Yes	
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	CMS Operation and Maintenance	Yes.	
§ 63.8(c)(4)–(8)		Yes.	
§ 63.8(d)	Quality Control	Yes.	
§ 63.8(e)	CMS Performance Evaluation	Yes.	
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	No	§ 63.1510(w) includes provisions for monitoring alternatives.
§ 63.8(f)(6)	Alternative to RATA Test	Yes.	
§ 63.8(g)(1)	Data Reduction	Yes.	
§ 63.8(g)(2)		No	§ 63.1512 requires five 6-minute averages for an aluminum scrap shredder.
§ 63.8(g)(3)–(5)		Yes.	
§ 63.9(a)	Notification Requirements—Applicability	Yes.	
§ 63.9(b)	Initial Notifications	Yes.	
§ 63.9(c)	Request for Compliance Extension	Yes.	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	Yes.	
§ 63.9(g)	Additional CMS Notifications	Yes.	
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes.	
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5)–(6)		Yes.	
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability	Yes.	
§ 63.10(b)	General Requirements	Yes	§ 63.1517 includes additional requirements.

APPENDIX A TO SUBPART RRR.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
§ 63.10(c)(2)–(4)		No	[Reserved].
§ 63.10(c)(5)		Yes.	
§ 63.10(c)(6)		Yes.	
§ 63.10(c)(7)–(8)		Yes.	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c) (10)–(13)		Yes.	
§ 63.10(c) (14)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes.	
§ 63.10(d)(2)	Performance Test Results	Yes.	
§ 63.10(d)(3)	Opacity or VE Observations	Yes.	
§ 63.10(d)(4) –(5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes.	
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports	Yes.	
§ 63.10(e)(4)	COMS Data Reports	Yes.	
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
§ 63.12(a)–(c)	State Authority and Delegations	Yes.	EPA retains authority for applicability determinations.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	Chapters 3 and 5 of ACGIH Industrial Ventilation Manual for capture/collection systems.
§ 63.15	Availability of Information/Confidentiality	Yes.	

* * * * *

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Part III

Department of Housing and Urban Development

Final Report of HUD Review of Model Building Codes; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4554–N–01]

Final Report of HUD Review of Model Building Codes

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final report.

SUMMARY: The United States Department of Housing and Urban Development (HUD or the Department) issues a policy statement and Final Report of HUD Review of Model Building Codes (Final Report) that identifies the variances between the design and construction requirements of the Fair Housing Act (the Act) and the:

BOCA National Building Code (BNBC), Building Officials and Code Administrators International (BOCA) 1996 edition;

Uniform Building Code (UBC), International Conference of Building Officials (ICBO) 1997 edition;

Standard Building Code (SBC), Southern Building Code Congress International (SBCCI) 1997 edition; and

International Building Code First Draft (IBC), International Code Council (ICC) November 1997; Proposed International Building Code 2000, International Code Council (IBC–2000) Chapters 10 and 11, Appendix to Chapter 11, and Section 3407 (1999).

This Final Report also contains guidance on the Department's policy concerning the relationship between the requirements of the Act and its standards.

The U.S. House of Representatives Committee on Appropriations directed HUD to complete its review of a matrix that summarized the provisions of the four model codes and to issue a policy statement by December 31, 1999. H.R. Rep. No. 286, 106th Cong., 1st Sess. 34 (1999). This Final Report is intended to meet that Congressional mandate. This Final Report additionally is intended to provide technical assistance to other interested parties on this issue. The Department has not and does not intend to promulgate any new technical requirements or standards by way of this Final Report. The Department does not intend this Final Report to be considered an endorsement of any model building code.

The Department does not wish to suggest through the issuance of this report that it is shifting its responsibility to enforce the design and construction requirements of the Act to any model code organization or to state and local building officials. However, the Department recognizes that one important way to increase compliance with the design and construction requirements of the Act is to incorporate those requirements into state and local building codes.

This Final Report is divided into chapters as follows:

Chapter 1—Introduction and Response to Public Comments
Chapter 2—Policy Statement
Chapter 3—IBC Analysis
Chapter 4—UBC Analysis
Chapter 5—SBC Analysis
Chapter 6—BOCA Analysis

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Kent, Director, Program Compliance and Disability Rights Support Division, 451 Seventh Street, SW, Room 5240, Washington, DC 20410–0500, telephone (202) 708–2333, extension 7058. (This telephone number is not toll-free.) Hearing or speech-impaired individuals also may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

This Final Report and the policy statement are also located at www.hud.gov/fhe/modelcodes. The Fair Housing Act, as amended in 1988, the regulations implementing the Act, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this web site. You may view the matrix or the updated matrix, or the chapters of the codes that the Department reviewed; or purchase copies of CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998, at www.intlcode.org/fairhousing. ANSI A117.1–1986 is only available for purchase from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112. However, copies of the 1986, 1992 and 1998 editions of ANSI A117.1 may be viewed at the HUD headquarters library at 451 Seventh Street, SW, Washington, DC 20410 and at HUD Fair Housing Offices in the following locations: Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Fort Worth, Texas; Kansas City, Kansas; Denver, Colorado; San Francisco, California; and Seattle, Washington.

Copies of all of the relevant documents, including the ICC/ANSI A117.1–1998, the ANSI A117.1–1986, and the CABO/ANSI A117.1–1992 are also available for viewing at the HUD Library at 451 Seventh St., SW, Washington, DC 20410. To gain admission to the HUD Library you must present identification to the security guards and ask to visit the library. Photocopying in the HUD library is limited to 40 pages and all of the documents, with the exception of the HUD produced documents, are copyrighted and, therefore, not available for photocopying.

Dated: March 14, 2000.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Chapter 1: Introduction and Response to Public Comments [1]

Background

Title VIII of the Civil Rights Act (the Fair Housing Act), 42 U.S.C. 3601 *et seq.*, prohibits discrimination in housing and housing related transactions based on race, color, religion, national origin, and sex. In 1988, Congress extended the protections of the Act to families with children and persons with disabilities. 42 U.S.C. 3604. (The Act refers to people with ''handicaps.'' Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term ''persons with disabilities,'' or ''disability,'' which is the preferred usage. Accordingly, this Final Report hereinafter uses the terms ''persons with disabilities,'' ''disability'' or ''disabled.'') In response to the serious lack of accessible housing in the United States, Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991, must include certain basic features of accessible and adaptive design. 42 U.S.C. 3604(f)(3)(C). These basic accessibility requirements are known as the Act's design and construction requirements. One of the underlying concepts of the design and construction requirements is the creation of housing that is accessible for persons with disabilities but that does not necessarily appear to be different from conventional housing.

The Act mandates that all covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed so that: (1) The public and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (2) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (3) All premises within such dwellings contain the following features of adaptive

[1] In this document, citation for the United States Code is U.S.C.; the citation for the Code of Federal Regulations is CFR; and the citation for **Federal Register** publication is FR.

design: (a) An accessible route into and through the dwelling; (b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) Reinforcements in bathroom walls to allow later installation of grab bars; and (d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604(f)(3)(C).

The Act's design and construction requirements apply to ''covered multifamily dwellings,'' which means ''buildings consisting of 4 or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units.'' 42 U.S.C. 3604(f)(7). The Act's design and construction requirements apply to all covered multifamily dwellings built for first occupancy after March 13, 1991. The Act's design and construction requirements do not apply to alterations or renovations to multifamily dwelling units or to single family detached houses.

The Act does not set forth specific technical design criteria that have to be followed in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly referred to as ANSI A117.1, satisfies the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. 3604(f)(4).

The Act states that Congress did not intend the Department to *require* states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. 42 U.S.C. § 3604(f)(5)(C). However, Congress authorized the Department to encourage the inclusion of these requirements into their procedures. *Id.*

The Act also makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or constructed in a manner that affords persons with disabilities greater access than that required under the Act. 42 U.S.C. 3604(f)(8). Further, federally funded facilities and dwelling units covered by section 504 of the Rehabilitation Act of 1973 (Section 504), the Architectural Barriers Act (ABA), or, where applicable, the Americans with Disabilities Act (ADA), must also comply with their respective regulatory requirements, including the Uniform Federal Accessibility Standard (UFAS). For Section 504, these regulatory requirements may be found at 24 CFR part 8; for the ABA, 24 CFR part 40; and for the ADA, 28 CFR parts 35 and/or 36, as applicable.

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. In the regulations, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986 satisfies the requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e).

Congress directed the Secretary of HUD to ''provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements].'' 42 U.S.C. 3604(f)(5)(C). To this end, on March 6, 1991, the Department published the ''Final Fair Housing Accessibility Guidelines,'' (the Guidelines) at 56 FR 9472–9515. The Guidelines set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Fair Housing Act.

Section I of the Guidelines states:

> These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.

56 FR at 9499.

On June 24, 1994, the Department published its ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines,'' at 59 FR 33362–33368 (the Questions and Answers About the Guidelines). The Department published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes.

In 1992, the Department was contacted by the Council of American Building Officials (CABO) and model building code organizations. CABO advised the Department of its interest in drafting building code language that would reflect the design and construction requirements of the Act, and asked the Department to provide technical assistance to its Board for Coordination of Model Codes (BCMC). The Department recognized that incorporation of building code requirements that are consistent with the Act's requirements would provide increased compliance. Therefore, in support of this effort, the Department agreed to provide technical assistance to BCMC and the building industry organizations during 1992 and 1993. Subsequently, the model building code organizations incorporated the results of their efforts into the model building codes.

The American National Standards Institute (ANSI) is responsible for establishing technical standards in many different areas. Among the standards addressed by the ANSI, through the A117 Committee, are technical standards for the design of housing and facilities that are accessible to persons with disabilities. BCMC recommended that the ANSI A117 Committee set up a Residential Task Force to develop technical criteria to address the Act's accessibility requirements. The Department is a member of the ANSI A117 Committee and served on the Residential Task Force. The focus of the ANSI Residential Task Force was to develop technical criteria to address the accessibility requirements for dwelling units that are covered by the Act. This effort was completed and included in the ICC/ANSI A117.1–1998. (The reference to ICC, International Code Council, reflects an organizational change in the ANSI only.) Because prior to 1998, ANSI A117.1 already included technical criteria for fully accessible dwelling units, the 1998 ICC/ANSI A117.1 refers to fully accessible dwelling units as ''Type A dwelling units.'' Section 1003 of ICC/ANSI A117.1–1998 contains the technical criteria for ''Type B dwelling units,'' which are intended to reflect the technical requirements for dwelling units required by the Act to be accessible.

In 1997, CABO, three model building code organizations, and several building industry organizations contacted the Department to discuss, among other items, the importance of assuring that the design and construction requirements of the Act were accurately reflected in the three model building codes and in the draft International Building Code (IBC), which was scheduled for completion in 2000. The Department met with representatives of these groups along with representatives of disability advocacy organizations and indicated its willingness to review the model building codes for consistency with the requirements of the Act, the regulations, and the Guidelines, and then convene a public meeting at a later date to share the results of that review.

In December 1997, CABO submitted to the Department a matrix that

compared four model building codes to the Act's design and construction requirements. In the fall of 1998, the Department awarded a contract to Steven Winter Associates, Inc. (SWA) to analyze the matrix and the model building codes and to identify those sections of the codes that did not meet the requirements of the Act, regulations, and the Guidelines. The Department also requested that SWA provide recommendations on how each identified variance could be revised to conform with the Act, the regulations, and the Guidelines.

The original matrix focused on the 1997 First Draft of the IBC. Because the IBC had progressed to a proposed IBC 2000 in 1999, the International Code Council (ICC) asked the Department to include in its review, to the greatest extent possible, the proposed IBC 2000. The Department also was asked to review the new 1999 edition of the National Building Code published by BOCA. The Department agreed to undertake a limited review of the proposed IBC 2000, but due to time constraints, was unable to review the 1999 BOCA National Building Code. To facilitate review of portions of the proposed IBC 2000, BOCA prepared an update to the matrix that compared the Guidelines with the First Draft IBC and the proposed IBC 2000. In addition, the Department was provided with copies of Chapters 10 and 11, Appendix to Chapter 11, Section 3407, and Appendix 34–2 of the proposed IBC 2000.

The Department formed a Model Code Working Group (Working Group) to work with its contractor, SWA, on the review of the model building codes. The Working Group consisted of staff from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U. S. Department of Justice (DOJ) also participated in the Working Group.

On October 26, 1999, the Department published a draft policy statement and draft report of four model building codes which identified the variances between these codes and the Act's design and construction requirements (the draft report). On November 10, 1999, the Department convened a public meeting to listen to comments on the draft report. Ten persons, many representing consolidated comments from various groups, presented oral comments at the public meeting. The Department also solicited and received written comments. The Department received 30 public comments, representing input from many organizations and individuals. Almost all of those who submitted comments focused on the draft report's discussion of the proposed IBC 2000.

Those who submitted comments included Acanthus Architecture and Planning PC (Arizona), the American Institute of Architects (AIA), the American Seniors Housing Association, the Arizona Center for Disability Law, the Bazelon Center for Mental Health Law, Paul Bishop (California architect), the Boston Office of Civil Rights, the Building Officials and Code Administrators International (BOCA), the Colorado Civil Rights Division, the Consortium of Citizens with Disabilities, the Disability Rights Action Coalition for Housing, the Disability Rights Action Committee, Disability Rights Inc., the Eastern Paralyzed Veterans Association (EPVA), Larry Field (Delaware accessibility consultant and codes enforcement expert), the International Code Council (ICC), the International Conference of Building Officials (ICBO), the Kansas Disability Rights Action Coalition for Housing, Marsha Mazz with the United States Access Board, Bruce McKarley (California building code official), the Monroe County Legal Assistance Corporation (Rochester, New York), the National Apartment Association (NAA), the National Association of Home Builders (NAHB), the National Fair Housing Alliance, the National Multi Housing Council (NMHC), the New Mexico Governor's Committee on Concerns of the Handicapped, the Paralyzed Veterans of America (PVA), Larry Perry (AIA), the Rochester Center for Independent Living, Emory Rodgers (an Arlington, Virginia building code official), the Southern Building Code Congress International (SBCCI), the Topeka Independent Living Resource Center, Wheelchair Access Now Today, Bill Wright (Oklahoma architect), and Leslie Young with the Center for Universal Design at NC State University.

The AIA, the BOCA International, the ICC, the ICBO, the NMHC, and Larry Perry, Architect, AIA, submitted one set of consolidated comments and later submitted specific recommended code language to address variances that the Department had identified in the draft report. The Department met with this group and others, including the NAHB and EPVA, to discuss the recommendations. In addition, HUD staff members had telephone conversations with some of the commenters in order to obtain clarification of their comments or solicit their technical knowledge of the issues raised in their comments.

General Comments on the Draft Report

Dialogue With Code Organizations

Comments

The overwhelming majority of the commenters praised or endorsed HUD's efforts to provide technical assistance to the model building code organizations to help ensure that the model codes meet the accessibility requirements of the Act. A number of commenters strongly urged HUD to continue to maintain a dialogue with the model code organizations to ensure that future updates to the International Building Code are consistent with the Act's accessibility requirements. Some commenters cautioned that no loopholes should weaken the scoping or technical requirements of the Act.

Response

The Department agrees with these comments and intends to be actively engaged in development of future editions of ANSI A117.1 through its participation on the ANSI A117 Committee. The Department also is available for consultation in the development of future editions of the International Building Code. In this Final Report, the Department recommends code language that may be used by model code organizations and states and localities that wish to modify their codes to be consistent with the Act. However, the Department believes that its recommendations are a continuing step in the dialogue needed to achieve consistency between the model codes, particularly the International Building Code, and the Act's design and construction requirements.

CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 As Safe Harbors

Comments

Many commenters commended the Department for recognizing ANSI A117.1–1998 as a safe harbor under the Fair Housing Act. Several commenters stated that ICC/ANSI A117.1–1998 is the basis for the accessibility provisions in the model codes and that in their view, HUD's acceptance of ANSI A117.1–1998 as a safe harbor resolves many of the concerns of the multifamily housing industry. One commenter also urged the Department to accept future editions of the ANSI A117.1 standard as being a safe harbor for complying with the Fair Housing Act.

As new editions of ANSI A117.1 have been developed, various organizations have encouraged HUD to acknowledge that compliance with those new editions constitutes safe harbors for

compliance with the Act. For example, in 1998, one commenter wrote to HUD that:

''The ANSI standard has been revised * * * and a 1998 version is about to be published. It is logical to rely on the latest version of a standard, unless a statute specifically refers to a particular edition. In addition, there are sound policy reasons to rely on the latest version of the ANSI standard, since it reflects improvements in accessible design. Since the Fair Housing Act does not refer to a particular edition of the ANSI standard, it would be reasonable for the [HUD Design] Manual and the Guidelines to specifically permit the use of the current 1998 ANSI standard. The 1998 ANSI standard is currently used by local code officials around the country. Therefore, we urge HUD to clarify that the most recent version of ANSI meets the requirements of the Fair Housing Act.''

Response

In response to the many commenters who have encouraged the Department to adopt the ICC/ANSI A117.1–1998, the Department will soon be publishing an interim rule, amending certain sections of 24 CFR 100.200 to state that compliance with the appropriate requirements of the 1986, 1992, or 1998 editions of ANSI A117.1 suffices to satisfy the Act's design and construction requirements for the interiors of dwellings and public and common use areas. Compliance with these versions of ANSI A117.1, the Guidelines, or the Design Manual are all safe harbors under the Act.

The Act explicitly states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the Act's design and construction requirements for the interiors of dwellings. 42 U.S.C. 3604(f)(4). However, Congress did not intend to limit the ways to comply with the requirements of the Act to the ANSI A117.1 standard. Congress specified the ANSI A117.1 standard in the Act in order to assure designers of new multifamily housing that if they follow the ANSI standard, they will have met the Act's adaptive design requirements. Congress also noted that its reference to ANSI was not intended to require ''that designers follow this standard exclusively, for there may be other local or state standards with which compliance is required or there may be other creative methods of meeting these standards.'' H.R. Rep. No. 711, 100th Cong., 2d Sess., p.27. (1988).

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. At the time Congress passed the Act, and the Department promulgated its regulations, the current edition of ANSI A117.1 was the 1986 edition. In response to concerns that an ''open ended'' reference to the ANSI standard constituted an unlawful delegation of the Department's rulemaking authority, the Department identified the 1986 ANSI A117.1 edition in its final rule implementing the Fair Housing Act, and stated its intent to review and, if appropriate, to adopt future editions as they were published.

It is important to note that ANSI A117.1 contains only technical criteria, whereas the Fair Housing Act, the implementing regulations, and the Accessibility Guidelines contain both ''scoping'' and technical criteria. Scoping criteria define when a building element or space must be accessible; technical criteria provide the technical specifications on how to make an element accessible. Thus, designers and builders who wish to follow ANSI A117.1 instead of the Accessibility Guidelines must still look to the Act and the Department's regulations to determine which buildings, dwelling units, and elements are covered by the Act.

Type A Units

Comment

A commenter stated that the HUD draft report does not point out that Type A units in ICC/ANSI A117.1–1998 exceed the Fair Housing Act Accessibility Guidelines and urged HUD to clarify that Type A units are not required under the Act.

Response

Since 1980, ANSI A117.1 has included technical criteria for fully accessible dwelling units. At the time the Act was passed, the only ANSI A117.1 standard for residential design were standards for a fully accessible dwelling unit. The ICC/ANSI A117.1–1998 now references two types of dwelling units, a ''Type A dwelling unit,'' which is intended to be a fully accessible dwelling unit as has been traditionally provided for in ANSI A117.1, and a ''Type B dwelling unit,'' which is intended to meet the Act's technical requirements for the interiors of dwellings.

The Department agrees that the Act does not require that private developers build new construction to the Type A standard, although a Type A unit will satisfy the Fair Housing Act requirements. Congress specifically recognized this when it stated that compliance with the appropriate requirements of ANSI A117.1 suffices as compliance with the Act.

Type B Units

Comment

One commenter disagreed with the draft report's conclusion that the ICC/ANSI A117.1–1998 standard is consistent with the Act's requirements. This commenter stated that there are numerous requirements in the ICC/ANSI A117.1 standard for Type B units that go beyond Fair Housing Act requirements, although Type B units are supposed to reflect the Fair Housing Act accessibility requirements. The commenter proffered that the draft report should have made an explicit comparison between the Act's requirements and Type B requirements in ICC/ANSI A117.1. This commenter subsequently submitted a list of eight areas where this commenter believes the requirements in the IBC exceed those in the Guidelines. These eight areas are: (1) The definition, scoping and requirements for Type A dwelling units; (2) Location of accessible routes; (3) Requirements for a minimum number of accessible entrances; (4) Technical provisions for security and intercom controls and exceptions for redundant controls; (5) Requirements for laundry equipment within dwelling units; (6) Exceptions for provisions for bath facilities; and (7) Dwelling units with accessible communication features; and (8) Exceptions to provisions for ''lavatory.''

Response

The Department will take the commenter's concerns under advisement and will work with this commenter and other interested organizations to review these areas of concern. In addition, the Department will continue to work with members of the Committee in the development and refinement of the ANSI A117.1 criteria. The Department will provide technical assistance to state and local governments that are considering adopting, either completely or with modification, model codes or other provisions in their building codes in order to reflect the requirements of the Act.

Further, the Department pledges to work with the model code organizations as they review and revise the International Building Code. The ICC plans to issue a ''stand-alone'' document containing the accessibility requirements found in the IBC 2000, incorporating its responses to the Department's recommendations in this Final Report. This ''stand alone'' document will contain the IBC provisions that meet or exceed the design and construction requirements of

the Fair Housing Act. The ICC and the National Association of Homebuilders (NAHB) are working on an appendix to the ''stand alone'' document to address the eight areas where they agree that the Type B dwelling unit exceeds the Fair Housing Accessibility Guidelines. The Department has agreed to review those documents and is committed to working with those organizations and others to arrive at a document in code language to serve as a safe harbor under the Fair Housing Act Amendments for persons who design and construct multifamily dwellings to its specifications.

By way of further explanation with respect to the Department's draft report, the purpose of the Department's review was to identify any instances where the technical criteria in the later versions of ANSI A117.1 did not provide the same level of accessibility as described in the Guidelines, the 1986 ANSI A117.1, or as mandated by the Act. The Department found no such instances where a difference in the technical criteria was inconsistent with the requirements of the Act.

The Act does not require that developers of covered multifamily housing build according to the ANSI A117.1 standard or to its Type B dwelling unit design criteria. Compliance with the ICC/ANSI A117.1 for Type B dwelling units is one of several ways to comply with the Act. As stated above, the Fair Housing Act's accessibility requirements can be achieved in a number of ways. However, a developer would be required to comply with a state or local code or law to which they are otherwise subject, that has adopted either a model code or accessibility standard that includes the Type B dwelling unit.

The Act recognized that many states and localities, as well as certain other federal laws, already had established stricter accessibility requirements than those provided for under the Act. The Act states that it shall not be construed to invalidate or limit any law that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required under the Act. 42 U.S.C. 3604(f)(8). To the extent that states and localities adopt ANSI A117.1 standards that go beyond the Act's minimum standards, the Department is without authority or desire to invalidate or limit this adoption.

The Accredited Standards Committee on Architectural Features and Site Design of Public Buildings and Residential Structures for Persons With Handicaps (A117) developed the A117.1 ANSI standards in 1986, 1992, and 1998. That Committee included this Department as well as other federal agencies, building and housing industry representatives, building code organizations, disability advocacy organizations, and many of the commenters on HUD's draft report. The American National Standards Institute which adopted the standards submitted by the Committee, requires that due process and consensus be met by the Committee. The ANSI Board of Standards Review considers that consensus has been met when ''substantial agreement has been reached by directly and materially affected interests.'' Consensus means more than a simple majority but does not necessarily require unanimity, and requires that all points of view be heard.

Relationship Between the Act's Requirements and Other Accessibility Requirements and Standards

This Final Report addresses only the application of the requirements of the Act to covered multifamily dwellings. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may also be covered by various other laws, such as the Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157 (the ABA); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504); and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101–12213 (the ADA).

The ABA applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the ABA are found at 24 CFR parts 40 and 41. Section 504 applies to programs and activities receiving federal financial assistance, and programs and activities conducted by Executive agencies, including the Department. The Department's regulations for Section 504 are found at 24 CFR parts 8 and 9. The Fair Housing Act accessibility requirements apply to both private housing and to government-funded housing, including federally funded housing, which is also subject to the accessibility requirements of Section 504. HUD funded housing must be designed and constructed to meet the scoping and technical requirements of both the Fair Housing Act and Section 504, and in certain instances, the ABA.

The ADA is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. The Department of Justice (DOJ) is the lead federal agency for implementation of the ADA. HUD does not have the authority to review the model building code standards for compliance with the ADA.

Comments

A number of commenters expressed concern that the draft report included within the coverage of the Act types of occupancies and uses that are also covered under the ADA. They urged the Department to make it clear that the Act does not preempt any of the accessibility requirements of the ADA. One commenter requested that HUD coordinate with DOJ with respect to the Act and ADA accessibility standards as they apply to public and common use areas.

One commenter requested that the Department encourage architects and builders to follow design and construction concepts incorporated in standards for ''universal design'' of accessible housing.

Response

Although the Department's team which reviewed the model building codes included staff from DOJ, the focus of the review was the Fair Housing Act. In addition, as stated above, the Department does not have authority to review the model building codes for compliance with the ADA.

Title II of the ADA applies to housing that is designed and constructed by a state or local governmental entity (including a public housing authority). Because most government-constructed housing is constructed with federal funds, in the majority of circumstances, there will be overlapping coverage of that housing under the Act, Title II, and Section 504. In some cases a state or local government may develop housing without the use of federal funding. In those cases, the requirements of the Act and Title II of the ADA, but not Section 504, would apply to the housing.

Title III of the ADA, in relevant part, applies to commercial facilities and public accommodations. Inns, hotels, motels, and other places of lodging are public accommodations under Title III of the ADA, as are dormitories, homeless shelters, nursing homes, and some timeshares. *See* 28 CFR 36.104. In addition, the common areas for public use at ''covered multifamily dwellings'' under the Act must meet the ADA Standards for Accessible Design (ADA Standards). A rental office in a multifamily residential development, a convenience store located in that development, or a room in a home that is used as a day care center or medical office, would be covered under Title III of the ADA. 28 CFR 36.104. Common use areas that are for use only by the

residents and their guests would not be covered by the ADA.

The Department recognizes that the Act's design and construction requirements do not preempt the ADA and wishes to clarify that in those cases where a development is subject to more than one accessibility standard, the laws and the standards must be read together and followed together.

There are certain properties, or portions thereof, that are covered by both the Act and Title II and/or Title III of the ADA. These may include certain timeshares, dormitories, residential hotels, boarding houses, nursing homes, homeless shelters, congregate care facilities, public use portions of private multifamily dwellings, and public housing. These properties *must* be designed and built in accordance with the accessibility requirements of both the Act and the ADA. In addition, to the extent that the requirements of these various laws overlap, the more stringent requirements of each law must be met, in terms of both scoping and technical requirements.

In the preamble to its rule implementing Title III, DOJ discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act may apply to the facility. The preamble to the Title III rule also stated that residential hotels, commonly known as ''single room occupancies,'' may fall under the Fair Housing Act when operated or used as long term residences, but they are also considered ''places of lodging'' under the ADA when guests are free to use them on a short term basis. The preamble also discussed a similar analysis with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. The preamble concluded that such facilities should be analyzed separately under both the Fair Housing Act and the ADA. 56 FR at 3551–52.

Enforcement of the Fair Housing Act

Comments

Many of the commenters specifically urged HUD to continue to vigorously enforce the Act's accessibility requirements. Several other commenters made clear that they see incorporation of the Act's requirements into the codes as a supplement to the enforcement methods currently available under the Act, not as a replacement for that enforcement. One commenter, a local building code official, stated that by adoption of codes that include the requirements of the Act, state and local jurisdictions will be assisting HUD in its enforcement efforts. Finally, several of the commenters indicated that once the Act's requirements are incorporated into a building code, the permitting and inspection process should not create a safe harbor for builders who receive permits, nor should it absolve housing industry professionals from their responsibilities under the Act.

Response

The Act is clear that while state and local building code officials are responsible for enforcing the building code standards adopted in their respective jurisdictions, 42 U.S.C. 3604 (f)(5)(B); 24 CFR 100.205(g), the Department is responsible for enforcing the design and construction requirements of the Act. 42 U.S.C. 3604(f)(6)(A), 3610. If a jurisdiction adopts a model building code that HUD has determined conforms with the design and construction requirements of the Act, then covered residential buildings that are constructed in accordance with plans and specifications approved during the building permitting process will be in compliance with the requirements of the Act, unless the building code official has waived one or more of those requirements, or the building code official has incorrectly interpreted or applied the building code provisions.

However, the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, or that construction of a residential building was approved under a code, does not change the Department's statutory responsibility to conduct an investigation based on receipt of a complaint from an aggrieved person to determine whether the requirements of the Act have been met. 42 U.S.C. 3604(f)(6)(A); 24 CFR 100.205(h). Section 804 of the Act provides that ''determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title.'' 42 U.S.C. 3604(f)(6)(B). A full discussion of the Department's enforcement responsibilities may be found in the Department's policy statement connected with this Final Report.

Certification of Codes

Comments

Two commenters recommended that HUD consider certifying state and local building codes as meeting the accessibility requirements of the Fair Housing Act.

Response

There are over 40,000 state and local building code jurisdictions in the United States. The Act does not require the Department to certify codes. However, through its work with the model code organizations, and existing and planned activities to provide technical assistance to state and local building code officials, the Department intends to work with building code organizations to ensure that those codes incorporate the requirements of the Act.

Comments Related to the Model Code Reports

Definition of Dwelling Unit

In Draft Recommendation Number 1 in the draft report on the proposed IBC 2000, the Department suggested that the proposed IBC 2000 be revised to modify the definition of ''dwelling unit,'' for purposes of the accessibility requirements of the proposed IBC 2000 at Section 1102.1, so that it covers all the residential structures that are covered by the Act, as follows:

> A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. For purposes of Chapter 11, sleeping accommodations intended for occupancy by a separate household in structures with shared cooking or toileting facilities shall be considered to be separate dwelling units.

Comments

A large number of commenters believed that the IBC's definition of ''dwelling unit'' should remain as it is. Two commenters pointed out that adopting Recommendation 1 would result in the inclusion of such buildings as hotels, hospitals and prisons that otherwise are neither R–2 properties nor covered by the Act's design and construction requirements. One commenter also noted that adoption of Recommendation 1 would require building officials to make a decision as to whether residents of a building with shared kitchens and bathrooms were separate households or a single ''family.'' That commenter also stated that HUD's scoping recommendations may create confusion by suggesting that certain technical terms mean something different in Chapter 11 than they do in other chapters of the existing model codes and the proposed IBC.

One commenter specifically supported Recommendation 1. That commenter noted that the Act

recognizes that group homes that operate as a single housekeeping unit are indistinguishable (for land use purposes) from homes that house traditional families. In the clearest sense, then, according to the commenter, such group homes do not constitute ''covered multifamily dwellings.'' The commenter noted further that, as a practical matter, most group homes are established in existing single family structures. Those few group homes that are newly constructed under HUD's Section 811 program are required to meet the accessibility requirements set forth in the Department's Section 504 regulations.

One commenter recommended that a new word or phrase should be used to ensure coverage of those situations in which sleeping rooms with shared kitchens or bathroom facilities are covered by the Act. Another commenter had a similar suggestion that, rather than revising the definitions of ''dwelling unit'' and the use groups, ICC should adopt one new term that describes all covered multifamily dwellings, including dormitories, timeshares, congregate care facilities, shared kitchens and bathrooms, and excludes such transient properties as hotels. In subsequent discussions with the Department, the ICC recommended adding a new term and definition for ''sleeping unit,'' which captures covered units not now covered by the IBC. The ICC suggested, ''Sleeping Unit—a room or space in which people sleep, which can also include permanent provisions for living, eating, and sanitation, but does not include permanent kitchen facilities.'' That term would be used in conjunction with the term dwelling unit where appropriate in the IBC.

Another commenter also suggested an alternate revision, specifically that the term ''Dwelling Unit, Type B'' be revised to include a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. The revised term would also include units with permanent provisions for living and sleeping with shared cooking or sanitation facilities outside the unit. The Type B unit would be designed and constructed in accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law.

Response

Rather than revising the definition of ''dwelling unit,'' in new Recommendation Number 2, the Department recommends adding the term ''sleeping accommodation intended as a residence'' to Chapter 11 of the proposed IBC 2000.

The comments to the proposed IBC 2000 also apply, with variation, to the remaining three model building codes. In its Final Report on the UBC, the Department has recommended changes to appropriate sections of Chapter 11 covering ''guestrooms'' that are intended as a residence. In the Final Report on the BNBC and the SBC, the Department has recommended the addition of a new term, ''sleeping unit,'' defined as a room in which people sleep intended to be occupied as a residence,'' and adding that term to the appropriate sections of Chapter 11 of BNBC and SBC.

However, the Department recognizes that there may be other approaches to resolving this variance that may be as or more effective. The Department will continue to work with the model code organizations and other interested members of the public on this issue.

It is the Department's position that detached single family dwellings occupied by persons who function as a single household, including group homes that function as a single household, are not ''covered multifamily dwellings'' for purposes of the design and construction requirements of the Act. However, the Department's regulations make it clear that all group homes are ''dwelling units'' for purposes of the Act's prohibitions on discrimination based on disability. *See* 24 CFR 100.201. The Department further recognizes that other accessibility standards, including accessibility requirements mandated under programs providing federal financial assistance, apply to detached single family group homes.

Recommended Revision to the Definition of ''Dwelling Unit, Type B''

Section 1102 of the proposed IBC 2000 defines a ''Dwelling Unit, Type B'' as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, ''intended to be consistent with the technical requirements of fair housing required by federal law.'' The Department did not discuss this definition in its draft report.

Response

In response to the comments concerning the definition of ''dwelling unit,'' and the comments concerning the relationship between the requirements of the Fair Housing Act and other federal accessibility standards, the Department has added a new finding of a variance, and a new Recommendation Number 1, in the Final Report on the proposed IBC 2000 with respect to the definition of a ''Dwelling unit, Type B.'' This Recommendation is intended to clarify that the Type B dwelling unit incorporates the requirements of the Fair Housing Act, but not necessarily the requirements of any other federal law.

Transient Housing

In Draft Recommendation 2 of its draft report on the proposed IBC 2000, HUD suggested that the proposed IBC 2000, and other model codes, be revised to make clear that certain types of housing that the model codes viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels, or homeless shelters. Most of the model codes use a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to their accessibility requirements for dwellings in Chapter 11.

It is the Department's position that a 30-day measure is inappropriate in determining whether a building is covered by the Act. As stated in its draft report, the Department's position on this issue is discussed in the Questions and Answers About the Guidelines. Thus, the draft report echoed the Questions and Answers when it noted that length of stay is only *one* factor in determining whether a building is a ''covered multifamily dwelling.'' Other factors to be considered include: (1) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) Whether the terms and length of occupancy will be established through a lease or other written agreement; (3) What amenities will be included inside the unit, including kitchen facilities; (4) How the purpose of the property will be marketed to the public; (5) Whether the resident possesses the right to return to the property; and (6) Whether the resident has anywhere else to which to return.

Comments

Only one commenter supported the Department's recommendation, and that commenter encouraged HUD to provide a more detailed means to measure whether a residential occupancy is ''primarily transient in nature'' or ''primarily permanent in nature.''

Several commenters suggested that HUD should endorse the 30-day measure of transience used in the model codes, stating that length of stay is the most prevalent, substantive and reliable criteria.

With respect to timeshares specifically, one group of commenters suggested: (1) Deleting ''vacation'' because the reason for the timeshare is irrelevant, and (2) listing timeshares as R–1 occupancies, but scoping them in Chapter 11 with the same criteria as for R–2 occupancies. The Department agrees that the term ''vacation'' is unnecessary.

Response

After considering the comments, HUD agrees that revising the IBC's residential use groups, as reflected in Draft Recommendation 2, would not be the most appropriate way to ensure that timeshares, residential hotels, homeless shelters occupied as a residence, boarding houses, and similar short-term housing meet the accessibility requirements in Chapter 11 of the Code. However, the Department continues to believe that the 30-day test of transience used by the IBC is inappropriate. To endorse such a requirement would mislead designers, builders and other readers of the code because it would give the false impression that such housing need not meet the requirements of the Act. The Department endorses the factor analysis stated in the above response for determining whether a dwelling is not transient.

In promulgating the fair housing regulations and the Guidelines, HUD specified as dwellings covered by the Act and its design and construction requirements such short-term housing as time-sharing properties and homeless shelters. *See* 24 CFR 100.201; 56 FR at 9500; 54 FR at 3238 & 3244. Courts also have applied the Act's general requirements to various types of short-term housing, including timeshare units, *Louisiana Acorn Fair Housing* v. *Quarter House, Oak Ridge Park, Inc.,* 952 F. Supp. 352, 359 (E.D. La. 1997); housing for migrant farm workers, *Lauer Farms, Inc.* v. *Waushara County Board of Adjustment,* 986 F. Supp. 544, 559 (E.D. Wis. 1997), *Hernandez* v. *Ever Fresh Co.,* 923 F. Supp. 1305, 1308 (D. Ore. 1996), *Villegas v. Sandy Farms, Inc.,* 929 F. Supp. 1324, 1328 (D. Ore. 1996); nursing homes, *Hovsons, Inc.* v. *Township of Brick,* 89 F.3d 1096, 1102 (3d Cir. 1996), *United States* v. *Commonwealth of Puerto Rico*, 764 F. Supp. 220 (D.P.R. 1991); a facility for people with HIV, *Baxter* v. *City of Belleville*, 720 F. Supp. 720, 731 (S.D. Ill. 1989); homeless shelters, *Turning Point* v. *City of Caldwell,* 74 F.3d 941 (9th Cir. 1996), *Woods* v. *Foster*, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995); a residential school for emotionally disturbed children, *United States* v. *Massachusetts Industrial Finance Agency*, 910 F. Supp. 21, 26 n.2 (D. Mass. 1996); and seasonal vacation bungalows, *United States* v. *Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990), *cert. denied*, 501 U.S. 1205 (1991).

In finding that these types of short-term residencies are subject to the Act's requirements, the courts have noted that length of stay is not the sole measure of whether the property is a ''dwelling'' under the Act. The courts have looked to various factors, including whether the resident possesses the right to return to the property, whether he or she has anywhere else to which to return, and the amenities at the property. *See, e.g., Louisiana Acorn Fair Housing*, 952 F. Supp. at 359; *Woods* v. *Foster*, 884 F. Supp. at 1173; *Baxter* v. *City of Belleville*, 720 F. Supp. at 731.

The factors that HUD set forth in the draft report seek to provide guidance on determining whether a property is a short-term dwelling covered by the Act or a transient property that is not covered by the Act. HUD continues to believe that these factors must be considered by owners, designers, builders, developers and architects in determining whether a building must be designed and constructed in accordance with the Act.

In sum, the Department cannot endorse the 30-day measure that the proposed IBC 2000 and other model codes use. Therefore, the Department is retaining its determination that three of the model codes do not meet the requirements of the Act in that regard. The UBC defines residential use groups differently than the other three model codes, and the Department did not find a variance with respect to that model code.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet IBC Chapter 11's requirements for dwelling units, the IBC is not consistent with the Act, the regulations and the Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the IBC and the Department's regulations. Therefore, the Department is withdrawing Draft Recommendation Number 2. The Department will continue to work with ICC and other interested code, industry and advocacy organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, developers, designers and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Assisted Living/Congregate Housing

In Draft Recommendation Number 3 on the proposed IBC 2000, the Department suggested that the definition of ''dwelling unit'' contained in Draft Recommendation Number 1 be adopted and that the proposed IBC 2000 be revised to modify the language of the charging paragraph of the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units. Modification to the charging paragraph would require that in occupancies in Group R–2 and R–3, as applicable in Section 101.2, where there are four or more dwelling units in a single structure, every dwelling unit shall be a Type B dwelling unit. In occupancies in Group R–4 where there are four or more dwelling units in a single structure, at least one shall be Type A, and all other dwelling units shall be Type B dwelling units. In occupancies in Group I–1 where there are four or more dwelling units in a single structure, at least 4 percent, but not less than one, of the dwelling units shall be Type A, and all other dwelling units shall be Type B. In nursing homes of Group I–2, where there are four or more dwelling units in a single structure, at least 50 percent, but not less than one, of the dwelling units shall be Type A dwelling units, and all of the other dwelling units shall be Type B.

Comments

One group of commenters suggested that rather than adopting Draft Recommendation Number 3, the IBC should be revised to make it clear that all covered units must comply with the requirements for Type B dwelling units, in addition to the ADA Standards for accessible units.

Response

After consideration of all of the comments, the Department has decided to modify its Draft Recommendation Number 3 with a new Recommendation Number 2 in the Final Report on the proposed IBC 2000 which recommends new language to be included in Section 1107.5.4 that requires ''sleeping accommodations intended to be occupied as a residence'' to be Type B. In addition, under its new Recommendation Number 2, the Department recommends modifications to the charging paragraphs of Sections 1107.3.1 (Group I–1), 1107.3.2 (Group I–2), and 1107.5.7 (Group R–4) which require all sleeping accommodations intended to be occupied as a residence to be Type B. Additionally, since these

comments also apply to other model building codes reviewed, similar modifications have been made to each of those reports.

Definition of ''Ground Floor''

In its draft report, the Department concluded that the IBC's scoping of Type B dwelling units does not adequately address situations where there may be more than one ground floor in a building. The Department's Draft Recommendation Number 4 for addressing this variance was that the proposed IBC 2000 define the term ground floor for purposes of Chapter 11 to match the regulations and the Guidelines and delete the definition of ''dwelling unit, ground floor'' from Section 1102.

Comments

One commenter believed that an exception may be needed for dwelling units in which the entry to the unit is on the ground floor, but the living and sleeping areas are on the second floor, and that in such case, the unit would not be required to meet the accessibility requirements of the Act.

A group of commenters stated that the proposed IBC 2000 is intended to be consistent with the Department's regulations and Guidelines, which state that a building may have more than one ground floor or may have ground floor dwelling units on different levels of a building. However, this group noted that it is not unreasonable to consider clarifying its intent by making it more evident in the code that there can be more than one ground floor or ground floor units on different levels of a building.

This group pointed out that any unit that meets the IBC's definition of ''Dwelling unit, ground floor,'' is a ground floor unit, regardless on which floor or level of the building it is located. The IBC definition is:

Dwelling unit, ground floor—a dwelling unit with a primary entrance and habitable space at grade.

The group added, however, that the Department's recommended language is not consistent with the language and style that is customary to building codes. The group concluded that the potential confusion can be eliminated and the intent of the Act achieved by requiring that at least one level containing dwelling units be provided with an entrance from the exterior (and thus have Type B dwelling units); and any other levels that have an entrance from the exterior and contain dwelling units have Type B dwelling units. The group, however, did not offer language to accomplish this recommendation.

Another commenter agreed that a definition of ''ground floor'' is needed in Chapter 11, since the exceptions in 1107.5.4 use the term, and it is not defined elsewhere in the code. This commenter also noted that the IBC definition of ''Dwelling unit, ground floor'' does not describe ground floor units that are on an accessible route that is above grade.

This commenter suggested that some of the wording in the Department's recommendation should be in the commentary section of the code. The commenter suggested that the definition of ground floor be: ''Any floor of a building with an entrance on an accessible route.'' The commenter also stated that the provision in the Department's recommendation that states: ''Where the first floor containing dwelling units in a structure is above grade, all units on that floor shall be served by an entrance on an accessible route,'' is a requirement, and should not be buried in a definition. The commenter recommended adding this language to the end of the charging paragraph of 1107.5.4, just before the exceptions.

In addition, during the review of the public comments, two new concerns arose: (1) whether or not the IBC scoping language, in combination with the definition of ''dwelling unit, ground floor,'' makes it clear that there must be at least one ground floor in a building, and (2) whether the language of Exception 2 of 1107.5.4 results in requiring builders to make the lowest floor of a building containing dwelling units accessible even if it were more practical to make a different floor (such as the second or third floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.''

Response

The Department carefully considered all comments received on this issue. The Department believes this is one of the more difficult issues to address because the Act is a civil rights law, and the language of the statute and the Department's regulations make it clear that covered multifamily dwellings must be designed and constructed in a manner that incorporates those features of accessible and adaptable design. The Department's regulatory definition of ground floor is also clear that a building may have one or more ground floors.

The Department is also mindful of the fact that the language in the Department's definition of ground floor is not couched in building code terminology. While some commenters offered alternative language, the Department does not believe the alternative language offered addresses the variances discussed above. Therefore, the Department is retaining its finding that the proposed IBC 2000 language, and the comparable language of the other three model codes, is not consistent with the requirements of the 1988 Act. The Department maintains that the IBC is not clear with respect to requiring additional ground floors to be accessible, and that the scoping language and exception discussed above creates another potential variance with respect to the fact that there must be at least one ground floor (unless it is impractical as provided in the Department's regulations and the Guidelines).

However, the Department is withdrawing its recommendation with respect to the proposed IBC 2000 and the other model codes that also contained a similar recommendation. The Department will work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction. In the meantime, builders, developers, owners, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of ''ground floor'' when making decisions about the applicability of the accessibility requirements of the Act.

First Level of Living

In its draft report on the UBC, the Department concluded that the language of Section 1103.1.9.3, Multi-unit dwellings, Exception 2, was ambiguous and could be interpreted to exclude the first floor of dwelling units in a building in which dwelling units are not on the floor at grade. Draft Recommendation Number 5 of the UBC analysis proposed to clear up the ambiguity by changing the language of Section 1103.1.9.3, as follows:

Where no elevator service is provided in a structure and a floor at grade does not contain dwelling units, only those dwelling units located on the first floor containing dwelling units of either Group R, Division 1 apartment occupancies or Group R, Division 3 occupancies need comply with the requirements of this section.

Comments

A commenter that reviewed the draft report on the UBC commented that Draft Recommendation Number 5 to the UBC did not sufficiently clear up the ambiguity noted by the Department. This commenter suggested revising the Recommendation to read: * * * only

those dwelling units located on the first floor containing dwelling units *above the floor at grade.*''

Response

The Department has adopted the commenter's suggested language and revised the applicable recommendation in the UBC draft report, as well as in any other relevant model code report.

Definition of Building and Structure

In Draft Recommendation Number 5 to the IBC 2000 draft report, the Department recommended that the proposed IBC 2000 Exceptions in Section 1107.5.4 be modified by eliminating any reference to the term ''building'' and replacing it with the term ''structure'' to ensure that firewall criteria are eliminated for the purpose of scoping the accessibility requirements for Type B dwelling units.

Comments

Several commenters opposed Draft Recommendation Number 5. One commenter noted that replacing ''building'' with ''structure'' is unnecessary and may have unintended consequences. Another commenter believed that there is a better way of fixing the variance and proposed modifying the definition of a Type B unit to say that dwelling units separated by firewalls do not constitute separate buildings. A group of commenters suggested that changing the term ''building'' to ''structure'' would mean that, in a newly-built project, if one townhouse owner elected to have an elevator installed in his/her unit, all other units would then have to be constructed with elevators. The ICC also believed that changing ''building'' to ''structure'' could actually reduce the number of units required to be accessible.

Response

After re-examining the proposed IBC 2000, the Department believes that the proposed IBC 2000 is clear that dwelling units separated by firewalls do not constitute separated buildings and that the suggested revision to IBC is not needed. Thus, the Department has withdrawn this recommendation from the Final Report on the proposed IBC 2000. The Department also has made modifications to the reports on the other model codes as appropriate.

Breezeways

The Department noted in its draft report in Draft Recommendation Number 6 on the proposed IBC 2000 that in most cases two structures that are connected by a breezeway or stairway and share the same roof are considered one building. However, in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not this is one building must be determined under the IBC on a case by case basis. In addition, in some cases, the IBC considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. The Department, therefore, concluded that the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways, and recommended adding language to Section 3104.2 to make it clear that for purposes of accessibility under Chapter 11, buildings or structures structurally connected to other buildings or structures by pedestrian walkways, breezeways, or stairways shall be considered one structure.

Comments

A number of commenters thought that the Department's recommendation was incorrect and impractical. They pointed out that the word ''structure'' includes sidewalks and utility lines that link single family homes. Another pointed out that two unrelated buildings separated by a distance of more than ''a few feet'' but connected by a bridge could be considered to be a single building, when this may not have been the Department's intent.

Response

The Department has carefully considered all of these comments, but continues to believe that for purposes of calculating the total number of dwelling units required to be Type B dwelling units, buildings that are structurally connected and buildings with multiple wings are a single building and must be treated as such. In addition, Section 3104 of the proposed IBC 2000 applies specifically to connections between buildings such as pedestrian walkways or tunnels, located at, above, or below grade level, that are used as a means of travel by persons. The Department also disagrees with the conclusion that all of the structures referenced by some of the commenters would come into consideration, *i.e.,* pipes, gas lines, telephone poles, etc. The Department's recommendation specified what facilities would be deemed as being connecting, that is, pedestrian walkways, breezeways, or stairways.

On the other hand, the Department agrees with the concern that the reference to Chapter 11 in its recommendation is too broad. The Department notes that it did not intend to address two clearly separate structures that are joined only by a walkway or a tunnel of considerable distance. Therefore, the Department is revising its recommendation to state that for purposes of calculating the number of Type B dwelling units and Type B sleeping accommodations required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure. Similar modifications are being made to the reports concerning the other model codes.

Multistory Units

The Department concluded that the proposed IBC 2000's definition of ''dwelling unit, multistory,'' which is a dwelling unit with habitable or bathroom space located on more than one story, could result in a unit being considered multistory if one level contains living or ''habitable'' space and the floor above or below contains only a bathroom. Therefore, the Department recommended in Draft Recommendation Number 7, that this definition be revised to delete the reference to bathroom space.

Comments

One group of commenters agreed with the Department's recommended definition of multistory units, but suggested that it be prefaced with the statement, ''[f]or purposes of accessibility.'' Another commenter disagreed with the Department's recommendation and believed that bathroom space should be considered part of the living space.

Response

The Department disagrees with the contention that bathroom space is living space. The Department believes that the inclusion of bathroom space in the definition of ''Dwelling unit, multistory'' creates the possibility that a dwelling unit designed with a small ''loft,'' or a ground floor with an entry foyer and a bathroom would be treated as a multistory dwelling unit and thereby not covered by the requirements of the Act.

However, the Department agrees with the suggestion that the language be prefaced, ''For purposes of accessibility,'' and has revised the recommendation accordingly in the report on the proposed IBC 2000 and all other model code reports that discuss this issue.

Site Impracticality

In its draft report on the proposed IBC 2000, and in other model code reports, the Department noted that the model code language describing site impracticality due to site terrain, using the site analysis test set forth in the Guidelines, did not include language clarifying that all ground floor units in buildings with a common entrance, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. The reports also pointed out that the codes did not use the term ''less than 10%'' in the test. The reports also found that the model codes did not meet the provisions of the Guidelines because they failed to include language that, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. The Department made several recommendations to address these inconsistencies under Draft Recommendation Number 8.

Comments

One commenter, in its review of the draft report on the UBC, agreed with the general intent of the recommendation, but thought that the use of the term ''walkway'' implies something actually constructed, and the Department should substitute the term ''accessible route''. The commenter stated that it had encountered a situation where the slope between a planned entrance and a vehicular or pedestrian arrival point was less than 8.33% but there was no ''walkway'' connecting the entrance and arrival point. The commenter discussed a specific situation where a development had been constructed on a steep site but all buildings on top of the site were on a completely flat area. However, there was always at least one step between the parking lot and each unit, and consequently there was no accessible route between the unit entrance and the parking lot. The commenter asked whether a builder could calculate the number of units that had to comply with the Act based on the total buildable area that has an existing natural grade of less than 10% slope only, excluding dwelling units that have a grade of less than 10% slope but lack an accessible route because of the imposition of a step along the route from the entrance to the planned arrival point.

Another commenter agreed with the strategy to incorporate an elevated walkway concept into the site analysis test. A group of commenters agreed with our recommendation with respect to the proposed IBC 2000, but restated the recommendation in code language and format.

Response

The Department believes that it is clear from the language of the regulations, and the language of the Guidelines, that the site impracticality exception cannot be applied to instances in which the lack of an accessible route is due to manmade barriers, such as the failure to provide a walkway or the construction of a step. The language of Exception 4, Section 1103.1.9.3 of the UBC refers to measurement of the slope of grades prior to development. The Department believes that this language adequately addresses the commenter's concern.

The Department has reviewed proposed language submitted by the ICC to address these issues, and has adopted these recommendations, with some modifications, in the Final Report on the proposed IBC 2000 as well as in the other model code reports. The Department believes these revisions also help to address the concerns raised by the commenter on the UBC.

Application of the Site Impracticality Test to Buildings With Elevators

The Department found that the language of the model codes did not adequately clarify that buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. The Department recommended language that addressed this variance, in Recommendation Number 9 of the proposed IBC 2000 and comparable recommendations in the reports on the other model codes.

The only comments received on this recommendation endorsed it. The Department's recommendation remains unchanged in the model code reports.

Sites With Unusual Characteristics

In Draft Recommendation Number 10 on the proposed IBC 2000, and in comparable recommendations in the other model code reports, the Department addressed its concern that the model code language describing the site impracticality test for sites with unusual characteristics did not contain the provision that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and ALL vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival points. The Department believed that the omission of the words ''AND'' and ''ALL'' constituted a variance with the provisions of the Guidelines.

Comments

The only two organizations to comment on this recommendation agreed with the recommendation. However, one of the commenters pointed out that the term ''all'' is implied based on the construction of building code language, and therefore is unnecessary.

Response

The Department agrees with the commenter on this point and has revised its recommendation in all of the model code reports accordingly, while retaining its recommendation related to substitution of ''and'' for ''or.''

Vehicular Route as an Alternative to an Accessible Pedestrian Route

Proposed IBC 2000 Section 1107.5.5, and comparable sections of the other model codes, contain an Exception that is similar to the provision in the Guidelines that permits a vehicular route as an alternative to an accessible pedestrian route under certain circumstances. That Exception states:

> If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The Department concluded that the IBC does not include language making it clear that accessible parking and curb ramps must be available at each public or common use facility to which access is provided by a vehicular route.

Comments

According to one group of commenters, Recommendation Number 11 is not needed. This group believed that the IBC's current reference to ''parking'' under Exception 1 to Section 1107.5.5 is adequate. The group believed that there is no need to insert the term ''accessible'' before the term ''parking'' and the terms ''spaces and curb ramps'' after the term ''parking'' because it may create an ''undesirable restriction of configurations''. The group referred to Section 1106, which regulates parking and requires a certain percentage of parking spaces to be

accessible, and 1106.5, which requires accessible parking spaces to be located on the shortest accessible route to an accessible entrance. The group indicated that curb ramps are needed only where curbs are provided. It stated that ANSI requires curb ramps to be provided where accessible routes cross curbs and that this is adequate.

This group of commenters further indicated that, in some cases, not all public and common use facilities are required to be accessible. They stated that the Department's recommendation would require accessible parking at non-accessible facilities. They indicated that inserting the terms ''public or common use'' in the Department's recommendation is not necessary because the charging paragraph applies to ''exterior and interior spaces and facilities'' that serve the accessible dwelling unit which includes the ''public and common use'' spaces.

Another commenter agreed with our recommendation and believes it adds clarity to the code.

Response

The Department agrees that the language of IBC Section 1107.5.5, together with the language of Section 1106, incorporate the technical requirements associated with the vehicular route exception. For purposes of clarity, the Department recommends that the language of the Exception to IBC Section 1107.5.5 be modified to add a reference to Section 1106. Similar revisions have been made to the other model code reports.

Subsection 1(d) of the section of Requirement 2 of the Guidelines that addresses accessible routes states: ''Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least 2% of covered dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility.'' This language does not limit the requirement to provide accessible parking to accessible facilities. Similarly, subsection 4 of Requirement 2 of the Guidelines provides that, if provided at the site, there must be accessible parking at facilities that serve accessible buildings. The Department is not implying in this recommendation that each public or common use facility on a site must be accessible.

Headroom

In its draft report on the proposed IBC 2000, and in other model code reports, the Department noted that the code apparently did not include headroom requirements in its technical provisions for accessible routes. However, the IBC 2000 does include headroom requirements in the provisions for protruding objects. In Draft Recommendation Number 12 in the proposed IBC 2000, and in the other draft reports, the Department recommended a revision to the code language regarding accessible route.

Comments

While one commentator agreed with our recommendation, another pointed out that the IBC's requirement included all ''circulation paths'' and not just the means of egress as would the Department's recommendation.

Response

The Department has concluded that it is appropriate to delete Draft Recommendation Number 12 in the proposed IBC 2000 Final Report and in the other model code reports because similar language in the code addresses the Department's concerns.

Stairs

In its draft report on the proposed IBC 2000, and other model codes, the Department expressed concern that the requirements related to the accessibility provisions for stairs, because they were found in Chapter 10, Means of Egress, did not necessarily apply to stairs that connect levels not connected by an elevator if they are not part of a means of egress. The Guidelines state that accessibility should be provided on stairs located along routes connecting levels not connected by an elevator. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. In Draft Recommendation Number 13 to the proposed IBC 2000, and in comparable sections of the reports on other model codes, the Department proposed revised language to the codes addressing this issue.

Comments

Commenters suggested that accessible stair design should reference IBC Chapter 10 instead of the ICC/ANSI A117.1–1998 and that the Department's requirement would actually allow non-complying stairs where the two levels are served by an elevator. One organization commented that: ''The IBC requires all stairs on a means of egress (except those within a dwelling unit) to meet requirements conforming to ICC/ANSI A117.1–1998. Essentially, all stairs except those in a dwelling unit will comply, and dwelling units with stairs will inevitably be multistory and therefore not covered by the requirements of the Act. The SWA proposal would actually reduce compliance by allowing levels served by elevators to be served by non-complying stairs. At any rate, the proposed change to Section 1108 would be overridden by the 'mainstreamed' requirements found in IBC Chapter 10.'' Another commenter stated: ''We agree with the intent and recommendation, but think that to avoid inconsistency, the reference should be to Section 1003.3.3 in IBC chapter 10, rather than to ICC/ANSI A117.1–1998.''

One group of commenters conceded that there were a few differences between the stairway requirements in the IBC 2000 and those in the ICC/ANSI A117.1. They also pointed out a recommended editorial revision to the reference to stairs along accessible routes connecting floor levels that are not connected by an elevator.

Response

The Department concurs with the group of commenters' editorial recommendation, and also concurs with the group of commenters that there are slight differences in the technical requirements for stairs in Chapter 10 from those in the ICC/ANSI A117.1–1998. There also appear to be some differences in the scoping provisions. For these reasons, the Department has modified its recommendation to address part of the group of commenters' recommendation but maintains its position regarding referencing of ICC/ANSI A117.1–1998.

Parking and Passenger Loading Zones

Section 1106 of the proposed IBC 2000 contains the scoping and technical criteria for parking and passenger loading zones. In its review of Section 1106, the Department noted few variances with the requirements of the Act. However, the Department did note variances with respect to several of the Guidelines' provisions for accessible parking, including: (1) Technical criteria to address accessibility of public and common use type single-car parking garages when such garages are made available for assignment or rental, (2) scoping requirements to assure that accessible parking is provided on the same terms and with the full range of choices as those provided to other residents, (3) if visitor parking is provided, accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and (4) where parking is

provided at facilities, accessible parking.

In Draft Recommendation Number 14 on the proposed IBC 2000, the Department made recommendations to address these identified variances.

Comments

The Department received a number of comments on this section of its draft report. One commenter stated that including garage provisions from the Questions and Answers About the Guidelines in our recommendation is not appropriate because they are not part of the Guidelines. This commenter also observed that the IBC applies the 2% rule to all the parking at the site and not just to the parking serving covered units; that accessible ''visitor'' parking is difficult to enforce unless there is a clear separation between parking for residents and parking for visitors; and that the parking provisions in the IBC are based on ''where provided'' because local zoning codes, not building codes, require parking. Commenters also stated that the term ''sufficient'' in HUD's recommendation may be less than required by IBC and the ADA Standards when parking also serves a public accommodation. The term ''sufficient'' also captures parking serving other use groups, shops on a ground floor, for example. The term ''sufficient'' is a problem because it is not building code terminology.

In addition, the commenters opined that HUD's recommendation is based on a false assumption that all types of parking are available to all residents. One group of commenters noted that the Act does not require parking where none is intended.

Another commenter stated that the parking requirements of the codes are conflicting. For example, the UBC requirement for accessible parking exceeds that of the FHA. One commenter stated that HUD should not accept any standard that does not specify that accessible parking must be close to an accessible entrance. The commenter noted that the 1986 version of ANSI A117.1 contained a provision that accessible parking spaces shall be located on the shortest possible accessible circulation route to an accessible entrance of the building. The commenter noted that this standard had been eliminated from the CABO ANSI A117.1–1992.

Response

The Guidelines provide:

> If provided at the site, designated accessible parking at the dwelling unit on request of residents with handicaps, on the same terms and with the full range of choices (*e.g.,* surface parking or garage) that are provided for other residents of the project, with accessible parking on a route accessible to wheelchairs for at least 2% of the covered dwelling units; accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings; and accessible parking at facilities (*e.g.,* swimming pools) that serve accessible buildings.

In addition to the above provisions of the Guidelines, the Questions and Answers About the Guidelines provide additional guidance on the requirements for parking related to technical criteria for accessible public and common use type single-car garages, and application of the 2% requirement when there is more than one type of parking. The Questions and Answers are a supplement to the Guidelines and the Department treats them as further interpretation of the Guidelines.

The Department has considered all of these comments, and made some revisions in its recommendations. The Department's identified variances are not intended to recommend that IBC or any of the other model codes revise any scoping requirements that are broader than those in the Guidelines. However, the Department continues to believe that those scoping provisions identified as variances are not consistent with the language in the Guidelines, and is maintaining these identified variances. The Department further notes, however, with respect to accessibility of public and common use single-car parking garages, that there may be other technical criteria that the codes could adopt that will constitute accessibility of such garages, such as by applying the accessibility requirements for van accessible parking spaces to the interiors of such garages, and providing another means of egress from the garage that connects to the accessible route and the entrances of covered dwelling units. The Department's recommendation is not intended to preclude the code organizations from developing alternative language to address this inconsistency. The Department is also willing to work with the code organizations and any other interested persons in developing language to address these variances. The Department is also clarifying the use of the term ''sufficient'' in its final recommendations.

The ANSI A117 Committee made a specific effort to remove all scoping language from the CABO/ANSI A117.1–1992. Similarly, ICC/ANSI A117.1–1998 removed scoping provisions. The requirement that accessible parking be located on the shortest possible route to an accessible building entrance is a scoping provision. All of the model building codes include this requirement in their code language.

Accessible Facilities/Recreational Facilities

In its review of the model codes, the Department did not identify any variances related to the number of accessible recreational facilities that must be provided at a site.

Comments

One commenter, reviewing the draft report on the UBC, commented that the Guidelines state that: ''Where multiple recreational facilities, (*e.g.,* tennis courts) are provided sufficient accessible facilities of each type should be provided to assure equal opportunity for use by persons with disabilities.'' However, Section 1103.9.1.1 of the UBC requires that at least 25%, but not less than one, of each type of each group of facilities be accessible. This provision also is found in the other model codes.

Response

The Department recognizes that the UBC's language in Section 1103.9.1.1 and equivalent language in other model codes differ from the provisions of the Guidelines. The Guidelines state that ''[w]here multiple recreational facilities (*e.g.,* tennis courts) are provided, sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps.'' As discussed in the preamble to the final Guidelines, several persons who were commenting on the Department's proposed Guidelines, suggested that the Department adopt the standard that is reflected in the model codes—a minimum of 25% (or at least one) of each type of recreational facility. The Department decided to retain the more flexible approach that the requirements of 24 CFR 100.205(c)(1) are met if ''sufficient'' accessible facilities are provided.

In many instances, compliance with the scoping requirement under the model codes for the provision of accessible recreational facilities when there are multiple recreational facilities of the same type on a site will constitute compliance with the Guidelines' provision for ''sufficient accessible facilities to assure equitable opportunity for use * * *''. However, there may be instances when, using the model code formula, there are not sufficient accessible recreational facilities to serve the accessible units at a site. Therefore, the Department has added a finding that the model codes that have expressed this formula do not comply with the provisions of the Guidelines. However,

because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Multistory Units Served by Elevators

The Department noted that the IBC does not state that where a multistory dwelling unit is provided with elevator service to only one floor, the story served by the elevator must be the primary entry to the unit. The Department recommended a change to Section 1107.5.4, Exception 3, to address this issue.

Comments

A group of commenters agreed that there is a need to clarify that the primary entrance be on the floor of elevator service where the elevator only serves one floor of a multistory unit. Another commenter agreed with Recommendation 15. One commenter seemed to interpret this recommendation to be saying that once an elevator is installed in one multistory unit, this would somehow require other units in a townhouse development to be required to be accessible.

Response

The Department's Draft Recommendation Number 15 was intended to address a concern with the language of Exception 3 to Section 1107.5.4 of the proposed IBC 2000, which the Department interprets to be addressing situations in which a multistory unit is located in a building that has one or more elevators, such as a mid-rise building where the top floor consists of multistory rather than single-story apartments. The Department's recommendation is not intended to require, with respect to a non-elevator building consisting of a row of multistory townhouses, that if one such townhouse is designed and constructed with an elevator, all other multistory units in that building must include an elevator. The Department discussed this issue in the preamble to its regulations, and concluded the multistory townhouses are not covered unless they have elevators. Thus, only the unit that is designed and constructed with an elevator, in a building of four or more dwelling units, would be covered. Therefore, the Department's recommendation on this issue remains the same.

Accessible Route and Special Design Features

The Department identified only one variance concerning the UBC language related to Requirement 4 of the Guidelines, Accessible route into and through the covered dwelling unit. That variance dealt with multistory dwelling units in elevator buildings, discussed above.

Comments

One commenter pointed out that the Guidelines state that where a covered dwelling unit has special design features, such as a raised or sunken living room, these areas must not interrupt the accessible route through the remainder of the dwelling unit. The commenter additionally noted that the Design Manual clarified that only one of these special design features is allowed and that no part of the kitchen or bathroom may be located in a raised or sunken area. The commenter believes that the UBC does not sufficiently address these limitations on the use of special design features.

Response

The charging paragraph of UBC Section 1106.2.1 states: ''At least one accessible route complying with this section shall connect all spaces and elements that are a part of the dwelling unit. Where only one accessible route is provided, it shall not pass through bathrooms, closets or similar spaces.'' The Exception to that paragraph is that only one of either a sunken or raised living, dining, or sleeping room, or a mezzanine that does not have plumbing fixtures or enclosed habitable space is allowed. The Department believes that the language of Section 1106.2.1 is sufficiently clear and means that special design features may not interrupt an accessible route and that bathroom or kitchen space may not be located in a special design feature.

Chapter 2: Policy Statement

Introduction

This policy statement provides information on the design and construction requirements of the Fair Housing Act (the Act) with regard to new construction of residential housing built for first occupancy after March 13, 1991, and the U.S. Department of Housing and Urban Development's (HUD or the Department) administration and enforcement of these requirements. The policy statement, together with the Final Report of HUD Review of Model Building Codes (Final Report), provide technical assistance to building code organizations and officials regarding the accessibility provisions of four model building codes and identify variances between the model building codes and the requirements of the Act, the Department's implementing regulations at 24 CFR Part 14 *et al.* (the regulations), and the Fair Housing Accessibility Guidelines (the Guidelines).

This policy statement and the Final Report also provide guidance on the Department's policy concerning the relationship between the requirements of the Act and its enforcement by the Department and the model building codes and other accessibility laws and standards.

Further, this policy statement and Final Report responds to the House of Representatives Committee on Appropriations directive to HUD to complete its review of a matrix submitted by building and code organizations that compared the Guidelines with the accessibility provisions in the model building codes and to issue a policy statement by December 31, 1999. H.R. Rep. No. 298, 106th Cong., 1st Sess. 34 (1999).

Background

The Fair Housing Act mandates that all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, must contain specified features of accessible and adaptable design. 42 U.S.C. 3604(f)(3)(C). In 1989, the Department issued its regulations implementing the Act's design and construction requirements. 24 CFR 100.205. Both the Act and the regulations state that compliance with the appropriate requirements of the American National Standards Institute (ANSI) A117.1 standard suffices to satisfy the Act's accessibility requirements. (The Act uses the term ''handicap,'' however, in keeping with preferred terminology established in the Americans with Disabilities Act of 1990, this policy statement and Final Report uses the terms ''persons with disabilities,'' ''disability,'' or ''disabled.'')

On March 6, 1991, after consideration of extensive public comment from architects, developers, builders, persons with disabilities, and other interested groups, the Department published the ''Fair Housing Accessibility Guidelines,'' which set forth specific guidelines for designing dwelling units consistent with the Act. 56 FR 9472–9515. In keeping with the Act and the regulations, the Guidelines are largely based on the ANSI A117.1 standard.

In 1992, the Department was contacted by the Council of American Building Officials (CABO), and the model building code organizations.

CABO advised the Department of its interest in drafting building code language that would reflect the design and construction requirements of the Act, and asked the Department to provide technical assistance to its Board for Coordination of Model Codes (BCMC) in this regard. The Department recognized that incorporation of building code requirements that are consistent with the Act's requirements would provide an increased measure of compliance. Therefore, in support of this effort, the Department agreed to provide technical assistance to BCMC and the building industry organizations, and did so during 1992 and 1993. The model building code organizations subsequently incorporated the results of their efforts into the model building codes.

The American National Standards Institute (ANSI) is responsible for establishing technical standards in many different areas. Among the standards addressed by the ANSI, through the A117 Committee, are technical standards for the design of housing and facilities that are accessible to persons with disabilities. BCMC recommended that the ANSI A117 Committee set up a Residential Task Force to develop technical criteria to address the Act's accessibility requirements. The Department is a member of the ANSI A117 Committee, and was asked to appoint representatives to serve on the Residential Task Force. The technical criteria developed by the ANSI Residential Task Force were included in the ICC/ANSI A117.1–1998. (The reference to ICC, International Code Council, reflects an organizational change in the ANSI only.)

Since 1961, ANSI A117.1 has been the accessibility standard used by the private industry, and, since 1980, has included technical criteria for fully accessible dwelling units. The 1998 ICC/ANSI A117.1 calls these fully accessible dwelling units ''Type A dwelling units.'' The requirements for Type A dwelling units are found at Section 1002 of ICC/ANSI A117.1–1998. The 1998 ANSI also contains technical criteria for a ''Type B dwelling unit.'' These criteria are found at Section 1003 of ICC/ANSI A117.1–1998 and are intended to reflect the technical requirements for dwelling units required to be accessible by the Act. Note, however, that the Act does not require that developers build new construction to the Type A standard in order to meet the requirements of the Act, although a Type A unit will satisfy the Act's requirements.

In 1997, CABO, three model building code organizations and several building industry organizations contacted the Department to discuss, among other items, the importance of assuring that the design and construction requirements of the Act were accurately reflected in the three model building codes and in the draft International Building Code (IBC), which was scheduled for completion in 2000. The Department met with representatives of these groups along with representatives of disability advocacy organizations and indicated its willingness to review these model building codes for consistency with the requirements of the Act, the regulations, and the Guidelines, and then convene a public meeting at a later date to share the results of that review.

In late December 1997, CABO submitted to the Department a matrix that compared model four building codes to the Fair Housing Act's design and construction requirements. In the fall of 1998, the Department awarded a contract to Steven Winter Associates, Inc., (SWA) to analyze the matrix and the model building codes and to identify those sections of the codes which did not meet the requirements of the Act, the regulations, and the Guidelines. The Department also requested that SWA draft recommendations on how each identified variance could be corrected in order to conform with the Act, the regulations, and the Guidelines. The four model building codes are as follows:

National Model Building Codes

- National Building Code, Building Officials and Code Administrators International (BOCA), 1996 edition
- Uniform Building Code, International Conference of Building Officials (ICBO), 1997 edition
- Standard Building Code, Southern Building Code Congress International (SBCCI), 1997 edition

International Building Code

International Building Code, (First Draft) International Code Council (ICC) November 1997

Although the original matrix focused on the 1997 First Draft of the International Building Code (IBC), because the IBC had progressed to a proposed IBC 2000, the ICC asked the Department to include in its review, to the greatest extent possible, the proposed IBC 2000 and the new 1999 edition of the National Building Code published by BOCA. The Department agreed to undertake a limited review of the proposed IBC 2000, but due to time constraints, was unable to review the 1999 BOCA. To facilitate review of portions of the proposed IBC 2000, BOCA prepared an update to the December, 1997 matrix that compared the Guidelines with the First Draft IBC, and the proposed IBC 2000. In addition, the Department was provided with copies of Chapters 10 and 11, Appendix to Chapter 11, Section 3407, and Appendix 34–2 of the proposed IBC 2000.

The Department formed a Model Code Working Group (Working Group) to work with its contractor on the review of the model building codes. The Working Group consisted of staff from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U.S. Department of Justice (DOJ) also participated in the Working Group.

The Department published a draft report and policy statement on October 26, 1999. On November 10, 1999, the Department convened a public meeting to listen to comments on the draft report. The Department solicited written comments as well. The Department carefully considered all of the comments it received and has made revisions accordingly so that the policy statement and Final Report reflects the public comments.

The Final Report consists of an Introduction (preamble), this policy statement, and four reports on the model building codes. The four model building code reports were prepared by SWA and have been reviewed and adopted by the Department.

The Final Report serves solely to respond to CABO's request for technical assistance and to provide technical assistance to other interested parties on this issue. The Department has not and does not intend to promulgate any new technical requirements or standards by way of this Final Report. The Department does not intend this Final Report to be considered an endorsement of any model building code.

The Department is not attempting through the issuance of this Final Report to shift its responsibility to enforce the design and construction requirements of the Act to any model code organization or to state and local building code officials. However, the Department recognizes that an important way to increase compliance with the design and construction requirements of the Act is to incorporate those requirements into state and local building codes.

History of Fair Housing Act Design and Construction Requirements

In 1988, Congress extended the protections of the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, the nation's primary housing civil rights law, to families with children and to persons with disabilities. 42 U.S.C. 3604. In response to the serious lack of accessible housing in the United States, Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991, include certain basic features of accessible and adaptive design. 42 U.S.C. 3604(f)(3)(C). These basic accessibility requirements are known as the Act's design and construction requirements.

The Act mandates that all covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed so that:

(1) The public and common use areas are readily accessible to and usable by persons with disabilities;

(2) All doors designed to allow passage into and within all premises in covered dwellings are sufficiently wide to allow passage by persons using wheelchairs;

(3) All premises within dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(c) Reinforcements in bathroom walls to allow later installation of grab bars; and

(d) Usable kitchens and bathroom such that an individual using a wheelchair can maneuver about the space.

42 U.S.C. 3604(f)(3)(C). These provisions were incorporated in the Department's Fair Housing Accessibility Guidelines as seven requirements. The underlying concept behind the design and construction requirements is to create housing that is accessible for persons with disabilities but which does not necessarily appear to be different from conventional housing.

The Act's design and construction requirements apply to ''covered multifamily dwellings,'' which are buildings consisting of 4 or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units. The terms ''dwelling unit,'' ''ground floor,'' and ''building'' all have particular meanings that are set forth in the Act, the regulations, and the Guidelines. The Act's design and construction requirements apply to all covered multifamily dwellings built for first occupancy after March 13, 1991. The Act's design and construction requirements do not apply to alterations or renovations to multifamily dwelling units or to single-family detached houses.

The Act does not set forth specific technical design criteria that builders have to follow in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the American National Standard Accessible and Usable Buildings and Facilities (commonly referred to as ANSI A117.1) would satisfy the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. 3604(f)(4).

In the Department's 1989 regulations implementing the design and construction requirements of the Fair Housing Act, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986 suffices to satisfy the requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e). The Department also references ANSI A117.1–1986 for the public and common use areas, in its definition of ''accessible.'' At the time Congress passed the Act, and the Department promulgated its regulations, the current version of ANSI A117.1 was the 1986 edition.

The Act emphasizes that Congress did not intend the Department to require states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. However, Congress authorized the Department to encourage the inclusion of these requirements into their procedures. 42 U.S.C. 3604(f)(5)(C).

The Act makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or constructed in a manner that affords persons with disabilities greater access than that required under the Act. 42 U.S.C. 3604(f)(8).

Congress charged the Secretary of HUD to ''provide technical assistance to states and units of local government and other persons to implement the requirements of paragraph 3(C) [setting forth the design and construction requirements].'' 42 U.S.C. 3604(f)(5)(C). To this end, in order to properly meet this obligation, on March 6, 1991, the Department published the ''Fair Housing Accessibility Guidelines,'' (the Guidelines) published at 56 FR 9472–9515, which set forth specific guidelines for designing dwelling units consistent with the Fair Housing Act. On June 24, 1994, the Department published its ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' published at 59 FR 33362–33368 (the Questions and Answers About the Guidelines).

Section I of the Guidelines states:

> These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act. 56 FR at 9499.

The Department also published a Fair Housing Act Design Manual (Design Manual). In addition to describing the design and construction requirements of the Act, the Design Manual provides further technical guidance of a practical nature on the application of the Guidelines. The Design Manual also serves as a safe harbor for compliance.

CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 as Safe Harbors

Through its review of the SWA draft reports, the Department reviewed the technical standards in the CABO/ANSI A117.1–1992 and the ICC/ANSI A117.1–1998, particularly the latter's technical standards for the interiors of dwelling units, called Type B dwelling units, to determine whether these later editions of ANSI meet the requirements of the Act, the Guidelines, and the 1986 edition of ANSI A117.1. The 1992 and 1998 editions of ANSI A117.1 have been adopted by several of the model building code associations. Mindful of the language of the Act, and having now reviewed those technical standards, the Department believes that CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 are consistent with the Act and are additional safe harbors for compliance with the Act's technical accessibility requirements. Therefore, the Department will soon be publishing an interim rule amending certain sections of 24 CFR 100.200, to state that compliance with the appropriate requirements of ICC/ANSI A117.1–1998, ANSI A117.1–1986, and CABO/ANSI A117.1–1992 suffices to satisfy the requirements of the Act related to interiors of dwelling units and public and common use areas. Additionally, the Department maintains its position that compliance with its Fair Housing

Accessibility Guidelines also constitutes compliance with the Act. The Design Manual also serves as a safe harbor for compliance.

It is important to note that ANSI A117.1 contains only technical criteria, whereas the Fair Housing Act, the implementing regulations, and the Guidelines contain both ''scoping'' and technical criteria. Scoping criteria define when a building element or space must be accessible; technical criteria provide the technical specifications on how to make an element accessible. Therefore, designers and builders relying on ANSI A117.1 also need to consult the Act and the Department's regulations, or the Guidelines for the scoping criteria.

As a further note, the Department wishes to emphasize that the safe harbors for compliance outlined above apply only to the accessibility requirements of the Fair Housing Act, and do not constitute a safe harbor for compliance for Federally funded facilities and dwelling units covered by Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794(a); 24 CFR 8 and 9; the Architectural Barriers Act of 1968 (ABA), 42 U.S.C. 4151–4157; 24 CFR 40 and 41, which must comply with their respective regulatory requirements, including the Uniform Federal Accessibility Standard (UFAS); and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213. However, to the extent that the requirements of the Fair Housing Act overlaps with the requirements of Section 504, the ABA, or the ADA, it is necessary to read the laws together and meet the requirements of all applicable laws.

Enforcement of the Fair Housing Act Design and Construction Requirements Where a State Has Adopted a Building Code That Conforms to the Act

The Act makes it clear that while state and local building code officials are responsible for enforcing the building code standards adopted in their respective jurisdictions, 42 U.S.C. 3604 (f)(5)(B); 24 CFR 100.205(g), the Department is responsible for enforcing the design and construction requirements of the Fair Housing Act. 42 U.S.C. 3604(f)(6)(A), 3610. If a jurisdiction adopts a model building code that HUD has determined conforms with the design and construction requirements of the Act, then covered residential buildings that are constructed in accordance with plans and specifications approved during the building permitting process will be in compliance with the requirements of the Act, unless the building code official has waived one or more of those requirements, or the building code official has incorrectly interpreted or applied the building code provisions.

However, the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, or that construction of a residential building was approved under a code, does not change the Department's statutory responsibility to conduct an investigation based on receipt of a complaint from an aggrieved person to determine whether the requirements of the Act have been met. 42 U.S.C. 3604(f)(6)(A); 24 CFR 100.205(h). Section 804 of the Act provides that: ''determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title.'' 42 U.S.C. 3604(f)(6)(B).

Fair Housing Act Procedures When a Design and Construction Complaint is Filed

The Department is required to conduct investigations of housing discrimination in response to a complaint filed with the Department. 42 U.S.C. 3610; 24 CFR 103.200. Discrimination complaints may be filed by an individual or organization that is an ''aggrieved person'' under the Act. 42 U.S.C. 3602(i)–(j); 24 CFR 103.15. A discrimination complaint may also be filed by the Secretary or his designee, the Assistant Secretary for Fair Housing and Equal Opportunity. 42 U.S.C. 3610(a); 24 CFR 103.15.

When a complaint is filed with the Department, all of the parties to a complaint are notified of its receipt. 42 U.S.C. 3610(a)(1)(B)(i)(ii); 24 CFR 103.45 and 103.50. The Department then conducts an investigation to determine whether there is reasonable cause to believe that the allegations in the complaint are true. 42 U.S.C. 3610(a)(1(B)(iv); 24 CFR 103.200. The Department also attempts to resolve housing discrimination complaints through conciliation. 42 U.S.C. 3610(b)(1); 24 CFR 103.300. If the Department finds that there is reasonable cause to believe that the allegations of unlawful discrimination are true, and attempts to resolve the complaint through conciliation have failed, then the Department issues a charge of discrimination. 42 U.S.C. 3610(g)(1)–(2); 24 CFR 103.400(a)(2). The parties then have the right to elect to pursue litigation through the Department's administrative adjudicative process or in federal district court. 42 U.S.C. 3612(a); 24 CFR 103.410.

The Department refers to the appropriate administrative agency a complaint that arises in a jurisdiction that has been determined to have a state or local law that provides rights and remedies substantially equivalent to the Act, and which has a Cooperative Agreement with the Department to process housing discrimination complaints. 42 U.S.C. 3610(f); 24 CFR 103.100. Additionally, the United States Department of Justice (DOJ) has authority to commence litigation when it determines that there is a pattern or practice of discrimination. 42. U.S.C. 3614(a); 24 CFR 103.500.

When the Department receives a potential housing discrimination complaint alleging violations of the design and construction requirements of the Act, it first makes an initial determination whether it has jurisdiction to investigate the complaint. In making that determination, the Department examines whether: (1) The person or organization filing the complaint alleges an injury because of the fact that the property in question was not designed and constructed to meet the accessibility requirements of the Act; (2) The complaint was filed within one year of the date on which the alleged discrimination occurred or terminated; (3) The Department has jurisdiction over the owners, developers, architects and others involved in the design and construction who are named in the complaint (the respondents); and (4) The property is a ''covered multifamily dwelling'' under the Act that was designed and constructed for first occupancy after March 13, 1991.

An investigation of an accessibility discrimination complaint under the Act typically involves a review of building permits and certificates of occupancy, plans and specifications showing the design of the buildings and the site, and an on site inspection of the property. During the investigation, Department investigators or contractors takes measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning whether the Department has jurisdiction over the complaint, and whether the Act has been violated as alleged.

In making a determination whether the design and construction requirements of the Act have been violated, the Department uses the language of the Act, the regulations, the Guidelines, and the technical standards for the interiors of dwellings and for public and common use areas found in the ANSI A117.1–1986 standard. The

respondents to the complaint have an opportunity to demonstrate that the requirements of the Act have been met even if the standards in the Guidelines, the Design Manual, or ANSI A.117.1–1986 have not been met. Upon publication of an interim rule announcing the Department's position that ICC/ANSI A117.1–1998 and CABO/ANSI A117.1–1992 also constitute safe harbors for compliance, as explained earlier in this policy statement, the Department will also consider evidence provided by a respondent showing that the respondent has complied with either of those editions of ANSI A117.1.

When the Department or DOJ finds that the design and construction requirements of the Act have been violated, the Department or DOJ seek to remedy the violation, including appropriate remedies for the victim of discrimination. Where technically and otherwise feasible, the Department or DOJ seek to have the property retrofitted so that it meets the requirements of the Act. The requirement to retrofit applies even though a building code may not require properties to be altered in order to meet the requirements of the Act. Where it is not feasible to retrofit the property, the Department or DOJ explore with all parties other remedies that will provide accessible housing opportunities for persons with disabilities.

Other Accessibility Standards

Nothing in the Act precludes a jurisdiction from adopting accessibility standards that provide a greater degree of accessibility than is required under the Act. 42 U.S.C. 3604(f)(7). In addition, residential properties may be subject to more than one accessibility standard. For example, when a residential property receives federal financial assistance, it must comply with the accessibility requirements of Section 504, 24 CFR 8.1, *et seq.*; and may also be subject to the ABA.

The Americans with Disabilities Act (the ADA) also contains accessibility requirements, which have been incorporated in the Americans with Disabilities Act Standards for Accessible Design (ADA Standards), 28 CFR Part 36, Appendix A (1999). The requirements of Title II of the ADA, which prohibits discrimination on the basis of disability by public entities, apply, in relevant part, to housing that is designed and constructed by a state or local governmental entity (including a public housing authority). 42 U.S.C. 12131–12134. The requirements of Title III of the ADA, which prohibits discrimination by private owners or operators of public accommodations, apply, in relevant part, to commercial facilities and public accommodations in connection with housing. 42 U.S.C. 12181–12189.

The Department wishes to stress that developments may be subject to more than one accessibility requirement and all applicable laws must be read together. If the Fair Housing Act's accessibility requirements apply to a development that is also subject to the ADA, Section 504 or the ABA, the Fair Housing Act requirements do not preempt the ADA, Section 504 or ABA requirements.

Conclusion

Overall, the Final Report acknowledges that the model building codes reflect the majority of the technical requirements of the Act. In addition, the Final Report found that all four model building codes applied accessibility requirements to most, but not all, of the covered multifamily dwellings that are subject to the design and construction requirements of the Act. The Final Report identifies areas where the model building codes need to be revised in order to ensure that they are consistent with the requirements of the Act, and makes recommendations to assist the model building code organizations in developing model building codes that are consistent with the design and construction requirements of the Act.

Chapter 3: International Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the International Building Code (IBC) First Draft and proposed Chapters 10, 11, Appendix to Chapter 11, and Section 3407 of the International Building Code 2000 (IBC 2000) that do not meet the requirements of the Fair Housing Act (the Act), the Department's regulations implementing the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, recommendations are provided for how the IBC should be revised to meet the requirements of the Act, the regulations, or the Guidelines.

Where an IBC Section citation refers to ''IBC 2000'' in this report, it is for the purpose of reflecting revisions to substance or numbering of the Section that were made from the First Draft of the IBC to the proposed IBC 2000. If the citation does not include a reference to the proposed IBC 2000, it is SWA's understanding that there is no difference in substance between the IBC and the proposed IBC 2000. However, it should be noted that some chapters of the proposed IBC 2000, notably Chapter 3, were not available for review at the time of this report.

II. Methodology

The analysis of the IBC by the Department and Steven Winter Associates, Inc. (SWA), its contractor, consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the regulations, 24 CFR 100.201 and 205, the Guidelines,'' 56 FR at 9472–9515 (March 6, 1991), and the ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' 59 FR 33362–33368 (June 28, 1994) (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997, copyrighted comparative matrix developed by the International Code Council, Inc. (ICC), Building Officials & Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International, Inc. (SBCCI), and the Council of American Building Officials (CABO). The matrix consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three national model building codes and the IBC. The analysis of the IBC began with a review of the column of the matrix that includes the IBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between IBC's accessibility requirements and those of the Act, the regulations, and Guidelines.

—A review of the accessibility provisions of the IBC, First Draft, November 1997, herein referred to as the IBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and ICC/ANSI A117.1–1998. The IBC, First Draft, November 1997, refers to CABO/ANSI A117.1–1992 for the technical provisions for accessibility. In the July 1998, Final Draft, the title of the referenced standard was editorially revised from CABO A117.1 to ICC/ANSI A117.1–1998 to reflect the change in the secretariat. Proposed changes to the Final Draft to be included in the IBC 2000 include changing the title of the referenced standard to ICC A117.1–1998. However, this standard is herein referred to as ICC/ANSI A117.1–1998. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the IBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the ICC responds to

variances that were identified. SWA found it necessary to understand ICC's interpretations of its own requirements that may not be apparent when reviewing code text.

—A review of the August 23, 1999 update to the December 15, 1997 comparative matrix, prepared by BOCA. The updated matrix compared the Guidelines with the November 1997 First Draft International Building Code and the proposed IBC 2000. The updated matrix includes the final text of any changes to the first draft subject to final approval by ICC.

—A review of the proposed IBC 2000 Chapters 10 and 11, Section 3407, and the Appendix to Chapter 11. Hereafter, all references to IBC 2000 refer to these chapters only. They were used to cross check sections of the updated matrix that indicated changes to the first draft to be included in the IBC 2000. The updated matrix included ''challenges,'' or proposed changes to the Final Draft, that were voted on during hearings on September 12–17, 1999. The analysis was completed based on information from ICC that the challenges did not pass.

The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U.S. Department of Justice (DOJ) also participated in the Working Group. The Working Group conferred with SWA by conference call on September 15, 1999, asking questions and making comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between Department staff and other code staff.

The draft report was made available for public comment on October 26, 1999, and a public meeting on the draft report was held on November 10, 1999. In addition to oral testimony, and written testimony provided at the public meeting, the Department received 30 written comments on the report. These written comments included one set of consolidated comments from a group of organizations. All comments were reviewed and considered. The Final Report incorporates many of those comments and has been revised from the draft report.

III. The International Building Code

The International Code Council (ICC) is an umbrella organization created in 1994 to assist common code development. The International Building Code (IBC) represents an effort to bring national uniformity to building codes. Drafts of the proposed code were developed by representatives of the three national model code bodies: The Building Officials and Code Administrators International (BOCA), Inc., the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI), Inc.

The IBC includes provisions for accessibility intended to reflect the intent of the Act, the regulations and the Guidelines. Chapter 11 of the Code, ''Accessibility'' addresses the accessibility provisions of the Act. Any jurisdiction that adopts the IBC 2000 code must follow these accessibility provisions.

A Working Draft of the IBC was published in May, 1997. This draft was revised to include approved changes and was published as the First Draft, November 1997. The first draft was revised to include approved changes and was published as the Final Draft, July 1998. Hearings on the proposed changes to the Final Draft were held in September, 1999. The IBC 2000 Edition is now scheduled to be published. The IBC 2000 consists of the IBC Final Draft plus all approved 1999 Cycle changes. (ICC has informed SWA that November 1, 1999, is the start of the next code development cycle, called the 2000 Cycle during which the ICC will address proposed changes to the 2000 Edition. The 2000 Cycle will end in September of 2000, and approved changes from that cycle, along with approved changes from the subsequent 2001 Cycle and a 2002 Cycles, will be incorporated and will constitute the 2003 Edition of the IBC.)

Unlike the Act, the IBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the IBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for accessibility that have been defined in versions of ANSI A117.1 prior to 1998. These dwelling units are referred to in the IBC in Section 1102 as a ''Type A dwelling unit.'' ICC/ANSI A117.1–1998 is the first edition of ANSI A117.1 to include technical standards for what is referred to as a ''Type B dwelling unit.'' The ICC/ANSI A117.1 does not define a Type B unit, however, Section 101 of the standard states: ''Section 1003 of this standard provides technical criteria for Type B dwelling units. These criteria are intended to be consistent with the intent of only the technical requirements of the Federal Fair Housing Amendments Act Accessibility Guidelines. These Type B dwelling units are intended to supplement, not replace, accessible Type A dwelling units as specified in this standard.'' *See* ICC/ANSI A117.1–1998, Section 101. Therefore, the purpose of the ICC/ANSI A117.1–1998 technical criteria for Type B dwelling units is to incorporate technical provisions for the interiors of dwelling units, intended to be consistent with the Act, the regulations, and the Guidelines. It is important to note, however, that ICC/ANSI A117.1–1998 does not contain scoping provisions. The importance of this distinction is discussed below.

In the IBC 2000, Section 1102 defines Type B dwelling units as follows: ''A dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law.''

As noted under ''Methodology,'' above, the IBC references the ICC/ANSI A117.1–1998 standard, but in the code, the reference is to ''ICC A117.1.'' The reference to ''ANSI'' has been dropped. While not a variance, the Department recommends that the IBC consider reinstating the use of ''ANSI'' in the title, since the Act itself references the ANSI A117.1 standard.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the IBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the IBC included an examination of the following:

IBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

IBC's classification of residential buildings according to use and occupancy; and IBC's scoping of dwelling units to which the accessibility provisions apply.

Based on the First Draft of the IBC, those chapters of the proposed IBC 2000 that were available for review, and

conversations with representatives of the ICC, the Department and SWA concludes in this analysis that the proposed IBC 2000 covers most of the same dwelling units, buildings and residential uses as do the Act, the regulations, and the Guidelines. For example, the Department and SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single-story townhouses and modular units are covered; and additions of four or more dwelling units to existing buildings are included within the IBC's scoping requirements for Type B dwelling units.

However, the Department and SWA have concluded that the following provisions of the proposed IBC 2000 do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, the regulations, and Guidelines.

Definition of ''Dwelling Unit''—(Draft Recommendation #1)

The regulations define the term ''dwelling unit'' as:

A single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 CFR 100.201. It is clear from the discussion in the preamble to the regulations, 54 FR 3232–3317 (Jan. 23, 1989) (the preamble), that the Department intended that each sleeping room occupied by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act. 54 FR at 3244.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a ''covered multifamily dwelling.'' In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home,'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The IBC defines the term ''dwelling unit'' in Section 310.2, Definitions, as follows: ''A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.'' The IBC does not consider sleeping accommodations intended for occupancy by separate households in a building with shared toileting or kitchen facilities to be dwelling units.

In general, the IBC 2000 (1107.5.4) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R–2 containing four or more dwelling units and in occupancies in Group R–3 where there are four or more dwelling units in a single structure. The list of R–2 occupancies includes non-transient boarding houses and dormitories, as well as fraternity and sorority houses. Dormitories are listed in both the regulations and the Guidelines as being covered under the Act's accessibility requirements. Subsequent interviews with representatives of ICC have clarified that the IBC does not define a dormitory room whose occupants share kitchen or bathroom space with the other residents of that building as a ''dwelling unit.'' According to ICC representatives, there is no circumstance in which the IBC considers a separate sleeping room to be ''dwelling unit.''

In its draft report, SWA proposed revising the IBC definition of ''dwelling unit'' to be consistent with the regulations, to include sleeping rooms occupied by separate households. In response to comments on the draft report, the Department determined that it would withdraw this recommendation. Instead, recommendations respecting the scoping requirements of Chapter 11 have been revised to add references to both dwelling units and ''sleeping accommodations'' as defined by the IBC in chapter 1. *See* Recommendation 2, below. Therefore, the former Recommendation Number 1 has been eliminated.

Dwelling Unit, Type B

The IBC 2000 (1102) defines ''Dwelling Unit, Type B'' as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, intended to be consistent with the technical requirements of fair housing required by federal law. The IBC 2000 (1102) also defines Dwelling Unit, Type A as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998. The Department has determined that the difference in the definitions of Type A and Type B units is unclear. In addition, by referring to ''fair housing required by federal law'' in the definition of Dwelling Unit, Type B, it may be incorrectly inferred that this encompasses all federal laws, including, for example, the Americans with Disabilities Act (ADA) of 1990, and Section 504 of the Rehabilitation Act of 1973 (Section 504). Type B dwelling units are intended to be consistent with the federal Fair Housing Act only.

Recommendation Number 1

It is recommended that the proposed IBC 2000 be revised to include a modification of the definition of Dwelling Unit, Type B (1102) as follows:

> Dwelling Unit, Type B: A dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, intended to be consistent with the design and construction requirements of the federal Fair Housing Act.

Residential Care/Assisted Living Facilities—(Draft Recommendations Numbers 1 and 3)

The Act defines a ''dwelling'' as ''any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.'' 42 U.S.C. 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

The Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

> The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least

one building with four or more dwelling units. Whether a facility is a ''dwelling'' under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. 59 FR at 33364.

According to the IBC, most of these types of facilities, referred to by the IBC as Residential Care/Assisted Living facilities, are classified as R–4, I–1, or I–2 occupancies and are not required to comply with the proposed IBC 2000, Section 1107.5.4, Accessible dwelling units. According to the IBC, Section 310.2, Definitions, the term ''Residential Care/Assisted Living Facilities'' is defined as follows:

A building or part thereof housing a maximum of sixteen (16) or less persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. The classification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities. Residential Care/Assisted Living Facilities housing more than sixteen (16) persons shall be classified as a Group I–1.

If a Residential Care/Assisted Living Facility has between 6 and 16 occupants, it is classified as R–4, and not covered under the proposed IBC 2000 1107.5.4. In group R–4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. (IBC 2000 Section 1107.5.7.)

The only instance where a Residential Care/Assisted Living Facility is required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, is if the facility has five or less occupants, regardless of whether the occupants are capable of self preservation. Sections 308.2; 308.3. In that case, they are classified as R–3 occupancies, which are required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, *if* they have four or more dwelling units as defined by the IBC.

If the same facility has more than 16 occupants who are mostly capable of responding to an emergency situation without physical assistance from staff, it is classified as I–1. Section 308.2, Group I–1, is defined by the IBC as follows:

This occupancy shall include a building or part thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment but which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. Where accommodating persons of the above description, the following types of facilities shall be classified as I–1 facilities: residential board and care facilities, assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities.

In occupancies classified as I–1, at least 4% of the sleeping rooms and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.1.)

If the occupants of a facility with more than five occupants are not capable of responding to an emergency situation without physical assistance from staff, the facility is classified as I–2. Section 308.3, Group I–2, is defined by the IBC as follows:

This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I–2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less persons shall be classified as a residential occupancy.

For nursing homes in Group I–2, at least 50% of the patient facilities and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.2).

The fact that a facility covered under R–4, or I–1, such as a group home, may be considered to be a ''single family'' residence for zoning and land use or other purposes, does not preclude its inclusion in the R–4 or I–1 classification of the IBC. Additionally, a group home or assisted living facility receiving federal financial assistance may be required under the applicable HUD program regulations to comply with the design and construction requirements of the Act, as well as the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), and, where appropriate, the accessibility requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*

The scoping provisions of the IBC with respect to ''Residential Care/Assisted Living'' facilities do not meet the requirements of the Act, the regulations, or the Guidelines, because the classification of these facilities as R–4, I–1, or I–2 may exclude from coverage dwelling units within those facilities that would be covered by the Act, the regulations and the Guidelines.

Recommendation Number 2 (Draft Recommendation 1 and 3)

To ensure that the IBC covers the same dwelling units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the proposed IBC 2000 be revised as follows:

Modify Sections 1107.3, 1107.3.1, 1107.3.2, 1107.4, 1107.5.1, and 1107.5.7 as follows:

1107.3.1 Group I–1. In occupancies in Group I–1, at least 4 percent, but not less than one, of the residential sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in residential board and care facilities, assisted living facilities, group homes, congregate care facilities, and convalescent facilities of Group I–1 occupancies, in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B dwelling units as required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

1107.3.2 Group I–2. In nursing homes of Group I–2, at least 50 percent, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in nursing homes of Group I–2 in structures with four or more sleeping accommodations intended to be occupied as a residence every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

1107.4 Care facilities. Occupancies containing care facilities (Group E, I–2 and I–4) shall be accessible as provided in this chapter.

Exception: Where a care facility is part of a dwelling unit, only the portion of the structure utilized for the care facility is required to be accessible. In Nursing homes of Group I–2 where a care facility is part of a dwelling unit or sleeping accommodation intended to be occupied as a residence in structures with four or more dwelling units or sleeping accommodations intended to be occupied as a residence, every dwelling unit and sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B dwelling units and Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided in Section 1107.5.4.

1107.5.1 Accessible sleeping accommodations. In occupancies in Groups R–1 and R–2 with sleeping accommodations, accessible sleeping accommodations shall be provided in accordance with Table 1107.5.1. In addition, In Group R–1 occupancies intended to be occupied as a residence, R–2, R–3, and R–4 occupancies in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations as required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

Exception: Group homes intended to be occupied by a single household and detached single-family homes occupied by a single household.

Modify 1107.5.4, as follows:

1107.5.4 Accessible dwelling units. In occupancies in Group R–2 and R–3 where there are four or more dwelling units or sleeping accommodations intended to be occupied as a residence in a single structure, every dwelling unit and sleeping accommodation intended to be occupied as a residence shall be Type B. Dwelling units required to * * * (the rest of 1107.5.4 remains as it currently appears in the IBC).

Exceptions:

1. Where no elevator service is provided in a building, Type A and B dwelling units and Type B sleeping accommodations need not be provided on floors other than the ground floor * * *

2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units or sleeping accommodations intended to be occupied as a residence, only those dwelling units and sleeping accommodations intended to be occupied as a residence located on the lowest floor containing dwelling units or sleeping accommodations intended to be occupied as a residence need comply with the requirements of this section.

3. A multistory dwelling unit * * *

4. The number of Type B dwelling units and Type B sleeping accommodations provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling units and sleeping accommodations intended to be occupied as a residence which is equal to the percentage of the entire site having grades, prior to development, which are less than 10 percent; but in no case shall the number of Type B dwelling units or Type B sleeping accommodations be less than 20 percent of the ground floor dwelling units or ground floor sleeping accommodations intended to be occupied as a residence on the entire site.

5. The required number of Type A and Type B dwelling units and Type B sleeping accommodations shall not apply. * * *

1107.5.7 Group R–4. In Group R–4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. In addition, in R–4 occupancies in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

Note: See other changes to Exceptions 4 and 5 under new Recommendations 5, 6 and 7 later in this report.

Transient Housing—(Draft Recommendation Number 2)

In its Draft Recommendation 2, HUD proposed that the IBC be revised to make clear that certain types of housing that the IBC viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, and homeless shelters. The IBC uses a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to the Act or chapter 11.

A 30-day measure is inappropriate in determining whether a building is covered by the Act. The IBC's 30-day test of transience is inappropriate because it misleads designers, builders and other readers of the code that such housing need not meet the requirements of the Act. Length of stay is only one factor in determining whether a building is a ''covered multifamily dwelling. Other factors to be considered include: (1) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) Whether the terms and length of occupancy will be established through a lease or other written agreement; (3) What amenities will be included inside the unit, including kitchen facilities; (4) How the purpose of the property is marketed to the public; (5) Whether the resident possesses the right to return to the property; and (6) Whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet IBC Chapter 11 requirements for dwelling units, the IBC is not consistent with the Act, the regulations and the Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the IBC and the Department's regulations. Therefore, the Department is withdrawing Draft Recommendation Number 2. The Department will continue to work with ICC and other interested organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, developers, designers and architects in determining whether the requirement of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Ground Floor—(Draft Recommendation Number 4)

The regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.'' 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines question number 6. 59 FR at 33364.

The IBC defines a Dwelling Unit, Ground Floor as: ''A dwelling unit with a primary entrance and habitable space at grade.'' (1102.1)

IBC 2000 Exception 1, Section 1107.5.4, Accessible dwelling units, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor. The IBC's definition of ''dwelling unit, ground floor'' does not specifically provide that a building can have more than one ground floor. For example, if a building is built into a hill, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. The proposed IBC 2000 is not clear that there may be more than

one ground floor or ground floor units on different levels of a building.

In its draft report for public comment, the Department offered a recommendation that the IBC 2000 define ground floor to match the regulations and the Guidelines, and delete the definition of ''dwelling unit, ground floor'' from Section 1102. In addition, the Department recommended that Exception 1 to Section 1107.5.4 be modified to recognize that there may be more than one ground floor. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the IBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the IBC scoping language, in combination with the definition of ''dwelling unit, ground floor,'' makes it clear that there must be at least one ground floor, and (2) Whether the language at Exception 2 of 1107.5.4 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.''

The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction. In the meantime, builders, developers, owners, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of ''ground floor'' when making decisions about the applicability of the accessibility requirements of the Act.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1107.5.4 use the term ''structure'' instead of ''building.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, IBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments the Department received on this recommendation, the Department has withdrawn this recommendation.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 6)

The regulations define a building as ''a structure, facility or portion thereof that contains or serves one or more dwelling units.'' 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under the IBC, two structures that are connected by a breezeway or stairway and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the IBC's accessibility provisions.

It appears, however, that in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not this design is considered one building must be determined under the IBC on a case-by-case basis. In addition, in some cases, the IBC considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. As a result, the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 3 (Draft Recommendation 6)

It is recommended that the proposed IBC 2000 be modified to include a revision to Section 3104.2, Separate structures, as follows:

3104.2. Separate structures. Connected buildings shall be considered to be separate structures. For purposes of calculating the number of Type B dwelling units and Type B sleeping accommodations required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—Draft Recommendation Number 7

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit'' is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The IBC defines ''Dwelling Unit, multistory'' as a dwelling unit with habitable or bathroom space located on more than one story. IBC 1102.1. The IBC defines ''habitable space'' as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. The IBC does not define the term ''single-story dwelling unit.'' IBC 202.8.

According to the IBC's definition of ''dwelling unit, multistory'', a unit would be considered multistory if one level contains living or ''habitable'' space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. 56 FR at 9500–01. The IBC's definition of ''dwelling unit, multistory'' does not meet the Department's interpretation of what constitutes a ''multistory dwelling unit'' under the Act, the regulations and the Guidelines.

Recommendation Number 4 (Draft Recommendation 7)

It is recommended that the reference to ''or bathroom space'' in the IBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions—Dwelling unit, multistory: For purposes of accessibility, this term shall mean a dwelling unit with habitable space located on more than one story.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. At the time the Act was passed and the

Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The proposed IBC 2000 utilizes the technical criteria contained in ICC/ANSI A117.1–1998. As stated in the Department's policy statement and the Introduction to this final report, the Department reviewed the technical standards in the CABO/ANSI A117.1–1992 and the ICC/ANSI A117.1–1998 for consistency with the requirements of the Act, the regulations, the Guidelines, and the 1986 edition of ANSI A117.1. The Department recognizes that the 1992 and 1993 editions of ANSI have been adopted by several of the model code organizations, and under many building codes. The purpose of the Department's review was to identify any instances where the technical criteria in the later editions of ANSI A117.1 did not provide the same level of accessibility described in the Guidelines, or as mandated under the Act, so that the Department could conclude whether the model codes that adopted the ANSI A117.1 technical criteria were consistent with the Act. In this review, the Department was mindful that the Act states that compliance with the ANSI A117.1 standards constitutes compliance with the Act. The Department found no such instances where a difference between ANSI A117.1–1992 or 1998 standard was inconsistent with the Guidelines or the Act.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics; however, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 FR at 9504.

The IBC's provisions relating to the requirement of an accessible building entrance on an accessible route are consistent with the Act, the regulations, and the Guidelines except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to Step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test—(Draft Recommendation Number 8)

Section 1107.5.4, Exception 4, of the proposed IBC 2000 provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be ''less than 10%''. In addition, the Exception fails to provide equivalent language to Step C, i.e., it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the IBC does not meet this aspect of the Guidelines.

Moreover, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. The IBC does not include any language that reflects these requirements. As a result, the IBC does not meet these provisions of the Guidelines.

Recommendation Number 5 (Draft Recommendation 8)

In order to address these inconsistencies, we recommend the following modification to 1107.5.4, Exception 4:

The number of Type B dwelling units and Type B sleeping accommodations provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units and sleeping accommodations intended to be occupied as a residence which is equal to the percentage of the entire site

having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling units and Type B sleeping accommodations be less than 20 percent of the ground floor dwelling units and ground floor sleeping accommodations intended to be occupied as a residence on the entire site. In addition to the percentage established, all ground floor units and ground floor sleeping accommodations intended to be occupied as a residence in a building, or ground floor units and ground floor sleeping accommodations intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units and the sleeping accommodations intended to be occupied as a residence and a pedestrian or vehicular arrival point is no greater than 8.33%; or 4.2 An elevator provides access to the ground floor only; or 4.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings with Elevators—(Draft Recommendation Number 9)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503. The IBC 2000 does not reflect this requirement in Section 1107.5.4, Exception 5.

Recommendation Number 6 (Draft Recommendation 9)

It is recommended that Exception 5, Section 1107.5.4 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units and Type B sleeping accommodations shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings are required to be at or above the base floor elevation resulting in * * *

Variance Related to Sites with Unusual Characteristics—(Draft Recommendation Number 10)

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and ALL vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 FR at 9504.

The IBC's corresponding provision at Section 1107.5.4, Exception 5, states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 7 (Draft Recommendation 10)

It is recommended that Section 1107.5.4, Exception 5, paragraph 5.1, be revised as follows:

5.1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to, and usable by, people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205 (c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes, Protruding objects, Ground and floor surface treatments, Parking and passenger loading zones, Curb ramps, Ramps, Stairs, Elevators, Platform lifts, Drinking fountains and water coolers, Toilet rooms and bathing facilities, Seating, tables, or work surfaces, Places of assembly, Common-use spaces and facilities, Laundry rooms.

56 FR at 9505. When a variance is identified in the IBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

Accessible Route(s)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

Vehicular Route—(Draft Recommendation Number 11)

IBC 2000 Section 1107.5.5 contains language that is comparable to the Guidelines with one exception. That section states:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The IBC does not include language making it clear that accessible parking must be available at each public or common use facility if access is provided by a vehicular route.

Recommendation Number 8 (Draft Recommendation 11)

It is recommended that the proposed IBC 2000 1107.5.5, Accessible route, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking in accordance with 1106, at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 12)

Based on the public comments received, the Department has determined that the IBC adequately addresses this issue.

Stairs—(Draft Recommendation Number 13)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the proposed IBC 2000, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the proposed IBC 2000 and the Guidelines' requirements for stairs located along accessible routes not connected by an elevator.

Recommendation Number 9 (Draft Recommendation 13)

It is recommended that the IBC include a provision for stairways under Section 1108, Other Features and Facilities as follows:

Stairways

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with ICC/ANSI A117.1–1998.

Parking and Passenger Loading Zones—(Draft Recommendation Number 14)

The Questions and Answers About the Guidelines (Question and Answer 14c) states that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The IBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, there be * * * *accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings,* and *accessible parking at facilities.* The Guidelines also require accessible parking on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) which clarifies that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department is not recommending that the IBC revise any of its broader scoping requirements for parking. However, the IBC does not include comparable language in Section 1106, Parking and Passenger Loading Facilities, with respect to the above variances. Therefore, the IBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 10 (Draft Recommendation 14)

In order to address these inconsistencies, it is recommended that the proposed IBC 2000 add the following language to Section 1106.2, Group R–2 and R–3.

Where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, at least 2% of parking garages provided for Type B dwelling units and Type B sleeping accommodations must be at least 14′2″ wide and have a vehicular door at least 10′ wide * * *

* * * Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps'' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The IBC Section 1108.14.1 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each serving different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and the regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604

(f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. 56 FR at 9506. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

56 FR at 9506. The Department has determined that the IBC meets the requirements of the Act, the regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. The proposed IBC 2000 meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 4, except the following:

Multistory Units Served by Elevators—(Draft Recommendation Number 15)

Among the criteria for Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

The IBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the IBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 11 (Draft Recommendation 15)

It is recommended that the IBC modify Section 1107.5.4, Exception 3 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided.

Requirement 5: Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 FR at 9507. The IBC meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specify that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and the Guidelines.

Requirement 7: Usable Kitchens and Bathrooms

The Act and the regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205(c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and Guidelines.

Chapter 4: Uniform Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1997 edition of the Uniform Building Code (UBC), published by the International Conference of Building Officials (ICBO) that do not meet the requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, the Department recommends how they may be revised to meet the requirements of the Act, the regulations, or the Guidelines.

II. Methodology

The analysis of the UBC by the Department and Steven Winter Associates, Inc. SWA, its contractor, consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the regulations at 24 CFR 100.201 and 205, the Guidelines, 56 FR at 9472–9515, and the June 28, 1994 ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' 59 FR 12 33362–33368 (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), Buildings Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis, consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three model building codes and the UBC. SWA began its analysis of the UBC by reviewing the column of the matrix that includes the UBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent

variances between the UBC's accessibility requirements and those of the Act, regulations, and Guidelines.

—A review of the accessibility provisions of the UBC, 1997 edition and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the UBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Paul Armstrong, ICBO Senior Staff Engineer, to gain insight into how the UBC responds to variances that SWA identified. SWA found it necessary to understand ICBO's interpretations of its own requirements that may not be apparent when reviewing code text.

The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U.S. Department of Justice also participated on the Working Group. The Working Group met with SWA on September 29, 1999, asked questions and made comments and suggestions about the analysis.

The draft report was published for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The Uniform Building Code

The ICBO administers the UBC series of model regulatory construction codes.

Unlike the Fair Housing Act, the UBC is a model building code and not a law. It provides minimum standards for public safety, health, and welfare as they are affected by building construction. Compliance with the UBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

The 1997 UBC, published January 1, 1997, includes provisions for accessibility intended to reflect the intent of the Guidelines. Previous editions of the code include provisions for accessibility, but not as required by the Act. The 1997 UBC, Chapter 11, Accessibility, is the first attempt at codifying the accessibility provisions of the Act. Any jurisdiction that adopts the 1997 UBC code must follow these accessibility provisions.

In the past, some model building codes, including the UBC, have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117.1. These dwelling units are referred to in the UBC in Section 1102 as a ''Type A dwelling unit.'' It is important to note, however, that CABO/ANSI A117.1–1992, adopted by the UBC, does not contain scoping provisions, discussed below. The UBC also includes scoping and technical provisions for a ''Type B dwelling unit,'' which is intended to reflect the requirements of the Act, the regulations, and the Guidelines, in Section 1106.

It is the Department's understanding that ICBO will no longer publish subsequent updates to the latest version of the UBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the UBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, regulations, or the Guidelines. This analysis of the scoping provisions of the UBC included an examination of the following:

UBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

UBC's classification of residential buildings according to use and occupancy; and

UBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that the UBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, the Department has concluded that, with respect to buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, and modular units are covered. Additions of four or more units to existing buildings are also included within the UBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of the UBC do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, regulations or Guidelines.

UBC Classification of Residential Use Groups

The UBC Section 310.1 defines residential occupancies (Group R occupancies) as follows:

Division 1: Hotels and apartment houses. Congregate residences (each accommodating more than 10 persons). Section 204, Chapter 2, defines congregate residences as follows: any building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging houses.

Division 2: Not used.

Division 3: Dwellings and lodging houses. Congregate residences (each accommodating 10 persons or less). Includes detached one- and two-family dwellings.

The reference to ''detached one- and two-family dwellings'' under Division 3 refers to structures that are physically detached.

The UBC requires that in Group R, Division 1 occupancy apartments containing four or more dwelling units, and in Group R, Division 3 occupancies where there are four or more dwelling units in a single structure, all dwelling units shall be Type B dwelling units. Section 1103.1.9. In Section 1102, Type B dwelling units are defined as units that are designed and constructed for accessibility in accordance with Section 1106. Section 1106 provides the design and construction requirements for Type B units.

Congregate Residences—(Draft Recommendation Numbers 1 and 2)

The regulations define the term ''dwelling unit'' as:

A single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons. 24 CFR 100.201.

It is clear from the discussion in the preamble to the regulations, found at 54 FR at 3244 (Jan. 23, 1989), that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home,'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of this Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The UBC defines the term ''dwelling unit'' in Section 205, Chapter 2, Definitions and Abbreviations, as follows:

Dwelling Unit is any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by this code, for not more than one family, or a congregate residence for 10 or less persons.

According to Section 1103.1.9.3, Multi-unit dwellings, the UBC's accessibility provisions apply to Group R, Division 1 and 3 occupancies. In order to determine whether or not dwelling units covered by the regulations are covered in the same way by the UBC, one must examine the UBC's classification of each type of unit.

According to Section 310.1 of the UBC, Group R, Division 1 occupancies include hotels, apartment houses, including residential condominiums, and congregate residences accommodating more than 10 persons. Group R, Division 3 occupancies include dwellings, lodging houses (containing not more than five guest rooms where rent is paid in money, goods, labor, or otherwise), and congregate residences accommodating 10 persons or less.

The accessibility requirements for congregate residences are covered under UBC Section 1103.1.9.2, hotels, lodging houses, and congregate residences as follows:

In hotels, lodging houses and congregate residence occupancies containing six or more guest rooms, multi-bed rooms or spaces for more than six occupants, one for the first 30 guest rooms or spaces and one additional for each additional 100 guest rooms or space, or fraction thereof, shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in-type showers shall be provided in one half, but not less than one, of the required accessible sleeping rooms or suites.

Congregate residences that accommodate less than six guest rooms for less than six occupants are required to provide accessibility according to 1103.1.9.3, Multi-unit dwellings. However, if a congregate residence accommodates between six and nine occupants, it can be covered by either Sections 1103.1.9.3, Multi-unit dwellings or Section 1103.1.9.2, Hotels, lodging houses and congregate residences. According to ICBO staff interviews, in these cases the UBC requires that the stricter provision apply.

To the extent that the UBC does not require in congregate residences that all ground floor sleeping rooms occupied by a separate household in buildings without an elevator, or all sleeping rooms occupied by a separate household in elevator buildings, meet the requirements of a Type B dwelling unit, it does not meet the requirements of the regulations.

Continuing Care Facilities—(Draft Recommendation Number 3)

Continuing care facilities are covered by the Act. 59 FR at 33364. The UBC Section 308.1 classifies these types of facilities as Group I, Division 1.1 and 2 occupancies. These occupancies are defined as follows:

Group I, Division 1.1: Nurseries for the full-time care of children under the age of six (each accommodating more than five children). Hospitals, sanitariums, nursing homes with nonambulatory patients and similar buildings (each accommodating more than five patients).

Group I, Division 2: Nursing homes for ambulatory patients, homes for children six years of age or over (each accommodating more than five patients or children).

The UBC's accessibility provisions for Group R occupancies of four or more dwelling units do not apply to UBC's Group I occupancies. However, they are required to provide accessibility as follows:

Section 1103.1.7 Group I Occupancies. Group I occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows:

In Group I, Division 1.1 and 2 nursing homes and long-term care facilities, at least one in every two patient rooms, or fraction thereof, including associated toilet rooms and bathing rooms.

Under the definition of ''dwelling unit'' contained in the regulations, a sleeping room in a nursing home or a home for juveniles occupied by an individual as a residence in a building with four or more such dwelling units would be covered under the accessibility requirements of the Act. To the extent therefore that sleeping rooms in Group I, Division 1.2 occupancies are not covered under the requirements for Type B dwelling units under the UBC, the UBC does not meet the requirements of the Act.

Recommendation Number 1 (Draft Recommendation Numbers 1, 2 and 3)

To ensure that the UBC covers the same dwelling units and sleeping rooms required to provide accessibility according to the Act, it is recommended that the UBC be revised to modify Sections 1103.1.7, 1103.1.9.2, and 1103.1.9.3. 1103.1.7 Group I Occupancies. Group I Occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows:

3. In Group I, Divisions 1.1 and 2 nursing homes and long-term care facilities, at least one in every two patient rooms, or fraction thereof, including associated toilet rooms and bathrooms. In addition, in structures with four or more patient rooms intended to be occupied as a residence, all patient rooms intended to be occupied as a residence shall comply with the requirements for Type B dwelling units required by 1103.1.9.3 with the same exceptions as provided for in Section 1103.1.9.3.

Section 1103.9.2 Hotels, lodging houses and congregate residences.

In addition to the accessible guest rooms required above, and in addition to the accessible guest rooms for persons with hearing impairments required above, in congregate residences in structures with four or more guest rooms intended to be occupied as a residence, all guest rooms intended to be occupied as a residence shall comply with the requirements for Type B dwelling units required by 1103.1.9.3 with the same exceptions as provided for in Section 1103.1.9.3. Section 1103.1.9.3 Multi-unit dwellings.

In Group R, Division 1 Occupancy apartments, and guest rooms intended to be occupied as a residence containing four or more dwelling units or guest rooms intended to be occupied as a residence, and Group R, Division 3 Occupancies where there are four or more dwelling units in a single structure, or where there are four or more guest rooms intended to be occupied as a residence, all dwelling units and guest rooms intended to be occupied as a residence shall be Type B. In Group R, Division 1 apartment occupancies containing more than 20 dwelling units, at least 2 percent, but not less than one, of the dwelling units shall be Type A dwelling units. All dwelling units on a site shall be considered to determine the total number of accessible dwelling units. All guest rooms intended to be occupied as a residence shall be considered to determine the total number of accessible guest rooms intended to be occupied as a residence on the entire site.

Exceptions:

1. Where no elevator service is provided in a building, Type B dwelling units and Type B guest rooms intended to be occupied as a residence need not be provided on floors other than the ground floor.

2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units or guest rooms intended to be occupied as a residence, only those dwelling units and guest rooms intended to be occupied as a residence located on the first floor containing dwelling units or guest rooms intended to be occupied as a residence above the floor at grade of either Group R, Division 1 apartment occupancies or guest rooms intended to be occupied as a residence, or Group R, Division 3 Occupancies need comply with the requirements of this section.

3. A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

4. The number of Type B dwelling units and Type B guest rooms provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor dwelling units and ground floor guest rooms intended to be occupied as a residence, that is equal to the percentage of the entire site having grades, prior to development, that are less than 10%; but in no case shall the number of Type B dwelling units or Type B guest rooms be less than 20% of the ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence, on the entire site. In addition to the percentage established, all ground floor units and ground floor guest rooms intended to be occupied as a residence in a structure, or ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units or guest rooms intended to be occupied as a residence, and a pedestrian or vehicular arrival point is no greater than 8.33%; or

4.2 An elevator provides access to the ground floor only; or

4.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.3%.

5. The required number of Type A and Type B dwelling units and Type B guest rooms shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base floor elevation resulting in:

5.1 NO CHANGE

5.2 NO CHANGE

6. Single family detached houses with four or more sleeping rooms occupied by a single household of related or unrelated persons.

Note: See Recommendations later in this report regarding explanations for modifications made to some of the exceptions to 1103.1.9.3 above.

Ground Floor Dwelling Unit—(Draft Recommendation Number 4)

The regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.'' 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. 59 FR at 3364.

Since, according to the example above, both levels of the building have entrances to dwelling units at grade, the UBC requires accessibility to these units.

In Section 1102, the UBC defines Ground Floor Dwelling Unit as ''a dwelling unit with a primary entrance and habitable space at grade.'' However, it is unclear from the UBC's definition of ''ground floor dwelling unit'' that there can be more than one ground floor, or ground floor units on different levels of a building. Exception 1, Section 1103.1.9.3, Multi-unit dwellings, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor.

In its draft report for public comment, the Department offered a recommendation that the UBC define ground floor to match the regulations and the Guidelines, and delete the definition of ''ground floor dwelling unit'' from Section 1102 (Draft Recommendation Number 4). In addition, the Department recommended that Exception 1 to Section 1103.1.9.3 be modified to recognize that there may be more than one ground floor. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the UBC is

inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the UBC scoping language, in combination with the definition of ''ground floor dwelling unit,'' makes it clear that there must be at least one ground floor, and (2) Whether the language at Exception 2 of 1103.1.9.3 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.'' The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In the meantime, the Department believes that owners, builders, developers, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of ''ground floor'' when making decisions about the applicability of the accessibility requirements of the Act.

First Level of Living—(Draft Recommendation Number 5)

The Department considers the first level of dwelling units above retail, parking, commercial space, etc. in buildings without elevators as the ground floor and all units on that floor must be designed with an accessible entrance on an accessible route. 56 FR at 9500. The UBC intends on covering these same units by stating the following in Exception 2, Section 1103.1.9.3, Multi-unit dwellings:

Where no elevator service is provided in a building and the ground floor does not contain dwelling units, only those dwelling units located on the first floor of either Group R, Division 1 apartment occupancies or Group R, Division 3 occupancies need comply with the requirements of this section.

The reference to ''first floor'' in Exception 2 above may be misleading because floor numbers can vary from one building to the next. For example, what is considered the first floor in one building may be considered the second floor in another. Although the UBC intends on covering the first level of living above retail, parking, commercial space, or private garages if the level at grade does not contain dwelling units, its intention can be made more clear.

Recommendation Number 2 (Draft Recommendation 5)

It is recommended that 1103.1.9.3, Exception 2 be modified as follows:

1103.1.9.3 Multi-unit dwellings:

Exception: 2 Where no elevator service is provided in a building and the ground floor does not contain dwelling units or guest rooms intended to be occupied as a residence, only those dwelling units and guest rooms intended to be occupied as a residence located on the first floor containing dwelling units or guest rooms intended to be occupied as a residence above the floor at grade of either Group R, Division 1 apartment occupancies or guest rooms intended to be occupied as a residence, or Group R, Division 3 Occupancies need comply with the requirements of this section.

Multistory Dwelling Units—(Draft Recommendation Number 6)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit'' is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The UBC Defines ''Multistory dwelling unit'' as a dwelling unit with habitable or bathroom space located on more than one story. (UBC Chapter 11, Section 1102.) The UBC defines ''habitable space'' as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable spaces. (UBC 209)

According to the UBC's definition of ''multistory dwelling unit,'' a unit is considered multistory if one level contains living or ''habitable'' space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space.

Therefore, the UBC's definition of ''multistory dwelling unit'' does not meet the Department's interpretation of the Act, the regulations and the Guidelines of what constitutes a ''multistory dwelling unit.''

Recommendation Number 3 (Draft Recommendation 6)

It is recommended that the reference to ''or bathroom space'' in the UBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions:

Multistory dwelling unit: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

Definition of Building and Structure—(Draft Recommendation Number 7)

In this recommendation, the Department recommended that the Exceptions to 1103.1.9.3 be modified to eliminate any reference to the term ''building'' and replacing it with the term ''structure.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, UBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments the Department received on this recommendation, the Department has withdrawn this recommendation.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer editions of the ANSI A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping

requirements. The Department believes that code officials may rely on the edition of ANSI A117.1 that has been adopted by the model code organization or state or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The UBC utilizes the technical criteria contained in CABO/ANSI A 117.1–1992. Therefore, the Department has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on CABO/ANSI A117.1–1992, even where those criteria differ from the ANSI A117.1–1986 criteria or the Guidelines.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, *regardless* of terrain or unusual characteristics of the site.

The UBC's provisions are consistent with the Act, the regulations, and the Guidelines, except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A) 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test—(Draft Recommendation Number 8)

Section 1103.1.9.3, Exception 4, of the UBC provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be ''less than 10%''. 56 FR at 9504. In addition, the Exception fails to provide equivalent language to Step C—*i.e.,* it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the UBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. The UBC does not include any language that reflects these requirements. As a result, the UBC does not meet these provisions of the Guidelines.

In order to address these inconsistencies, it is recommended the UBC include a modification to Section 1103.1.9.3, Exception 4 as follows:

Recommendation Number 4 (Draft Recommendation 8)

1103.1.9.3 Multi-unit dwellings:

Exception 4: The number of Type B dwelling units and Type B guest rooms provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor dwelling units and ground floor guest rooms intended to be occupied as a residence, that is equal to the percentage of the entire site having grades, prior to development, that are less than 10%; but in no case shall the number of Type B dwelling units or Type B guest rooms be less than 20 percent of the ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence on the entire site. In addition to the percentage established, all ground floor units and ground floor guest rooms intended to be occupied as a residence, in a structure, or ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units or guest rooms intended to be occupied as a residence and a pedestrian or vehicular arrival point is no greater than 8.33%; or

4.2 An elevator provides access to the ground floor only; or

4.3 An elevated walkway with a slope not exceeding 10 percent is planned

between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.3%.

Variance Related to Buildings with Elevators—(Draft Recommendation Number 9)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503.

The UBC, Exception 5, Section 1103.1.9.3, states in relevant part that:

The required number of Type A and Type B dwelling units shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base floor elevation resulting in * * *

Recommendation Number 5 (Draft Recommendation 9)

It is recommended that Section 1103.1.9.3, Exception 5 be modified to exempt buildings with elevators from site impracticality as follows:

Section 1103.1.9.3 Multi-unit dwellings:

Exception 5. The required number of Type A and Type B dwelling units and Type B guest rooms shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base floor elevation resulting in * * *

Variance Related to Sites with Unusual Characteristics—(Draft Recommendation Number 10)

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 FR at 9504.

The UBC does not reflect this requirement in Section 1103.1.9.3 Exception 5. The UBC's corresponding provision states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 6 (Draft Recommendation 10)

It is recommended that Section 1103.1.9.3, Exception 5, be modified as follows:

5.1 A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205(c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505.

Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes
Protruding objects
Ground and floor surface treatments
Parking and passenger loading zones
Curb ramps
Ramps
Stairs
Elevators
Platform lifts
Drinking fountains and water coolers
Toilet rooms and bathing facilities
Seating, tables, or work surfaces
Places of assembly
Common-use spaces and facilities
Laundry rooms

56 FR at 9505. When a variance is identified in the UBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

Preliminarily, it is noted that Section 1103.1.9.1, General, provides that rooms and spaces available to the general public and spaces available for the use of residents that serve Group R, Division 1 occupancy accessible dwelling units shall be accessible. This section does not require accessibility in rooms and spaces available to the general public in Group R, Division 3 occupancies which are covered by Section 1103.1.9.3, Multi-unit dwellings. This is not equivalent to the accessibility provisions of the Guidelines.

Recommendation Number 7 (Draft Recommendation 11)

It is recommended that the UBC modify Section 1103.1.9.1, General, by including Group R, Division 3 occupancies as follows:

Section 1103.1.9.1, General:

Group R Occupancies shall be accessible as provided in this chapter. Rooms and spaces available to the general public and spaces available for the use of the residents that serve accessible dwelling units and accessible guest rooms in Group R, Division 1 and Division 3 occupancies shall be accessible.

Accessible Route(s)

Vehicular Route—(Draft Recommendation Number 12)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

The UBC Section 1103.2.2 contains language which is comparable to the Guidelines with one exception. That section states:

For Group R, Division 1 apartment occupancies, when the slope of the finished grade between accessible buildings and facilities exceeds 1 unit vertical in 12 units horizontal (8.33% slope), or when physical barriers of the site prevent the installation of an accessible route, a vehicular route with parking at each accessible building or facility may be provided in place of the accessible route.

The UBC does not include language making it clear that accessible parking must be available at the accessible facility if access is provided by a vehicular route.

Recommendation Number 8 (Draft Recommendation 12)

It is recommended that the UBC Section 1103.2.2, Accessible route, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking spaces in accordance with Appendix Chapter 11 at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 13)

Based on the public comments received, the Department has determined that the UBC adequately addresses this issue.

Parking and Passenger Loading Zones—(Draft Recommendation Numbers 14, 15 and 16)

Division I of Appendix Chapter 11 includes the only provisions for accessible parking and passenger loading zones. These provisions do not apply if the appendix is not specifically adopted. Therefore, a jurisdiction that adopted the UBC 1997 without the Appendix would not meet the accessibility requirements of the Act, regulations and Guidelines.

Recommendation Number 9 (Draft Recommendation 14)

It is recommended that Appendix Chapter 11 be automatically adopted by a jurisdiction that adopts UBC 1997.

The Questions and Answers About the Guidelines (Question and Answer 14c) state that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but include a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The UBC does not provide minimum requirements for these garages, and therefore, does not meet provision of the Guidelines.

The Guidelines provide that if provided at the site, there must be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. The Guidelines also require accessible parking on the same terms and with the full range of choices (*e.g.*, surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) by stating that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds 2%.

The Department is not recommending that the UBC revise any of its broader scoping requirements for parking. However, the UBC does not include comparable language in Appendix Chapter 11 with respect to the above variances. Therefore, the UBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 10 (Draft Recommendation 15)

In order to address the inconsistencies outlined above, it is recommended that the UBC add the following language to Section 1108:

At least 2% of parking garages provided for R–2 and R–3 occupancies required to have Type B dwelling units or Type B guest rooms, where there are several individual garages grouped together, either in a separate area of a building or in a detached building, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide.

Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided. Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

and modify the third provision under Section 1108 as follows:

3. For Group R, Division 1 and Group R, Division 3 occupancies containing accessible or adaptable dwelling units or guest rooms intended to be occupied as a residence, where parking is provided, 2 percent of the parking spaces shall be accessible * * *

In addition, Section 1108.3, Signs, provides an exception which states that accessible parking space signs need not be provided in parking garages or parking facilities that have five or less total parking space. This exception does not meet the requirements of the Guidelines which requires signage at all accessible parking space.

Recommendation Number 11 (Draft Recommendation 16)

It is recommended that the UBC delete this exception. If this exception is deleted from the charging paragraph, then signs will be required at all accessible parking spaces.

Elevators—(Draft Recommendation Numbers 17 and 18)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1, Section 4.10, Elevators. 56 FR at 9505. Section 1105.3 of the UBC, Elevators and Stairway and Platform Lifts, states that elevators on an accessible route shall be accessible. It also states that elevators required to be accessible shall be designed and constructed to comply with CABO/ANSI A117.1–1992. The technical specifications for elevators required by both the Guidelines and the UBC are equivalent.

However, the UBC provides an exception to Section 1105.3 which states that private elevators serving only one dwelling unit need not be accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 12 (Draft Recommendation 17)

It is recommended that the exception under Section 1105.3 be deleted.

The UBC provides an exception to Section 1104.1.3, Elevators, which states that elevators need not be provided to floors provided with a horizontal exit and located at or above the level of exit discharge in fully sprinklered buildings. This exception does not meet the requirements of the Guidelines that requires elevators, if provided to units other than the ground floor, provide access to all floors.

Recommendation Number 13 (Draft Recommendation 18)

It is recommended that the exception under Section 1104.1.3 be deleted.

Laundry Rooms—(Draft Recommendation Number 19)

The Guidelines state that if provided in the facility or at the site, at least one of each type of appliance provided in each laundry area shall be accessible.

UBC Section 1103.1.9.1, General, states that Group R Occupancies shall be accessible as provided in Chapter 11. Rooms and spaces available to the general public and spaces available for the use of residents that serve Group R, Division 1 Occupancy accessible dwelling units, which includes laundry facilities, shall be accessible. The UBC does not include Group R, Division 3 occupancies in Section 1103.1.9.1, which does not meet the requirements of the Guidelines.

Recommendation Number 14 (Draft Recommendation Number 19)

It is recommended that Section 1103.1.9.1 be modified to include Group R, Division 3 occupancies.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where multiple recreational facilities (*e.g.*, tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible.'' The UBC Section 1103.1.9.1 requires 25%, but not less than one, of recreational facilities of each type in each group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the UBC with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each of which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

The Department has determined that the UBC meets the requirements of the Act, regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. The UBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following.

Multistory Units Served by Elevators—(Draft Recommendation Number 20)

Among the criteria for Requirement 4 is the provision that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

One of the UBC's exceptions to the requirement for Type B units provides, in Section 1103.1.9.3, as follows:

A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

The UBC does not mention in this exception that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the UBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 15 (Draft Recommendation 20)

It is recommended that the UBC modify Section 1103.1.9.3, Exception 3 as follows:

1103.1.9.3 Multi-unit dwelling: A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

Requirement 5: Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205. Requirement 5 of the Guidelines sets forth criteria to meet these requirements. The UBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and

shower seat, where such facilities are provided. 56 FR at 9509–10.

Although it is the intent of the UBC at Section 1106.6.3 to require grab bar reinforcement at fixtures located away from walls, sunken or raised tubs for example, the UBC is not clear on this issue.

Recommendation Number 16 (Draft Recommendation 21)

It is recommended that the UBC modify Section 1106.6.3, Toilet and bathing fixtures by adding the following:

Where fixtures are located away from walls alternative reinforcement complying with CABO/ANSI A117.1 4.24.2.5 and 4.24.3 shall be provided for the mounting of grab bars.

Requirement 7: Usable Kitchens and Bathrooms

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205. Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

Usable Kitchens—(Draft Recommendation Number 22)

The Guidelines address a parallel approach to kitchen sinks in Requirement 7 at 56 FR at 9511. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9514. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1 1986, Fig.32 on page 50.) The Department's Guidelines allowed a departure from the ANSI standard. 56 FR at 9511–12. The Guidelines permit the clear floor space to be designed for a parallel position. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

UBC Section 1106.5.2, Clear floor space, requires that a 30-inch-by-48-inch minimum clear floor space be provided at the sink and at each appliance. Provision 1, under Section 1106.5.2, states that the clear floor space at the sink shall be positioned for a parallel approach which must extend 15 inches minimum from each side of the sink centerline. This does not meet the requirements of the Guidelines. The Guidelines require the centering of the parallel approach on the sink.

Recommendation Number 17 (Draft Recommendation 22)

It is recommended that the UBC delete the 15-inch offset requirement and modify Provision 1, Section 1106.5.2, Clear floor space as follows:

1. The clear floor space at the sink shall be positioned for a parallel approach. The clear floor space shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Number 23)

The Guidelines provide two options for designing accessible bathrooms. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the door and exit. 56 FR at 9511.

The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option. The second option requires that they have reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures. 56 FR at 9511.

According to the Guidelines, for covered multistory dwellings in elevator buildings, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit, it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The UBC requires an offset of 15 inches which does not meet the Guidelines' requirement.

Recommendation Number 18 (Draft Recommendation 23)

It is recommended that the reference to 15 inches be deleted from Sections 1106.6.4.1.1, Lavatory, and Section 1106.6.4.2.1, Lavatory, and replaced with the following:

* * * Clear floor space positioned for a parallel approach shall be centered on the lavatory.

Chapter 5: Standard Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1997 edition of the Standard Building Code (SBC), published by the Southern Building Code Congress International (SBCCI) that do not meet the requirements of the Fair Housing Act (Act), the Fair Housing Act regulations, or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, Steven Winter Associates, Inc. (SWA) recommends how they may be revised to meet the requirements of the Act, the Fair Housing Act regulations, or the Guidelines. The 1999 edition of the SBC was published on January 29, 1999. A review of the 1999 edition of the SBC is not part of the scope of the following analysis.

II. Methodology

The analysis of the SBC consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the Fair Housing Act regulations at 24 CFR 100.201 and 205, the Fair Housing Accessibility Guidelines, 56 FR at 9472–9515, and the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 FR at 33362–33368 (the Questions and Answers About the Guidelines);

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), Building Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three model building codes and the SBC. SWA began its analysis of the SBC by reviewing the column of the matrix that includes the SBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between SBC's accessibility requirements and those of the Act, regulations, and Guidelines.

— A review of the accessibility provisions of the 1997 edition of the Standard Building Code (herein referred to as the SBC); and a review

of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992, the title of the standard referenced by the SBC. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the SBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with John Battles, Vice-President, Technical Services, to gain insight into how the SBC responds to variances that SWA identified. SWA found it necessary to understand SBCCI's interpretations of its own requirements that may not be apparent when reviewing code text.

The original analysis of the SBC was submitted to HUD on September 27, 1999. HUD formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel; and the Office of Housing. A representative of the U.S. Department of Justice also participated on the Working Group. The Working Group met with SWA on September 29, 1999, and asked questions and made comments and suggestions about the analysis.

The draft report was made available for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The Standard Building Code

The SBCCI administers the SBC series of model regulatory construction codes. Compliance with the SBC model building code is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body.

The 1997 SBC includes provisions for accessibility intended to reflect the intent of the Guidelines. The 1994 SBC was the first attempt at codifying the Fair Housing Act accessibility requirements. Type B dwelling units accessibility criteria was codified in the 1997 SBC.

Unlike the Fair Housing Act, the SBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the SBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117.1. These dwelling units are referred to in the SBC in Section 202 as a ''Type A dwelling unit.'' A ''Type B dwelling unit,'' which is defined in Section 202 as ''a dwelling unit designed and constructed for accessibility in accordance with 1110'' is an attempt to incorporate the requirements of the design and construction requirements of the Act, the regulations, and the Guidelines. The SBC refers to CABO/ANSI A117.1–1992 for the technical provisions for Type B units.

It is the Department's understanding that SBCCI will no longer publish subsequent updates to the latest version of the SBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the SBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the SBC included an examination of the following:

SBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

SBC's classification of residential buildings according to use and occupancy; and

SBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that the SBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, and modular units are covered. Additions of four or more units to existing buildings are included within the SBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of the SBC do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, regulations, or Guidelines. 42 U.S.C. § 3604 (f)(7); 24 CFR 100.201; 56 FR at 9500.

SBC Classification of Residential Use Groups

The SBC defines residential occupancies (Group R occupancies), in section 311.2 of the code, as follows:

R1: Residential occupancies where the occupants are primarily transient in nature including:
Boarding houses (transient)
Hotels
Motels

R2: Multiple dwellings where the occupants are primarily permanent in nature, including:
Apartment houses
Convents
Dormitory facilities which accommodate six or more persons of more than 2½ years of age who stay more than 24 hours
Fraternities
Monasteries
Rectories
Rooming houses (not transient)

R3: Residential occupancies including the following:
Child care facilities which accommodate five or less children of any age for any time period
One and two family dwellings where the occupants are primarily permanent in nature and not classified as R1, R2, or I
Rooming houses (transient)

R4: Residential Care/Assisted Living Facilities housing six or more occupants on a 24 hour bases; these occupancies include the following:
Alcohol and drug abuse centers
Assisted living facilities
Congregate care facilities
Convalescent facilities
Halfway houses

Group homes
Residential board and care facilities
Social rehabilitation facilities

According the SBC, Group R2 occupancies containing four or more dwelling units and Group R3 occupancies where there are four or more dwelling units in a single structure, all dwelling units shall be Type B dwelling units. Type B dwelling units are defined as units that are designed and constructed for accessibility in accordance with Section 1110, Chapter 11, Accessibility. Section 1110, Type B dwelling units provides the design and construction requirements for Type B units.

Definition of Dwelling Unit—(Draft Recommendation Number 1)

The regulations define the term ''dwelling unit'' as:

a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 CFR 100.201.

It is clear from the discussion in the Preamble to the Regulations, found at 54 FR at 3244, that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by *one* household is *not* considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The SBC defines the term ''dwelling unit'' in Chapter 2, Definitions, as follows:

A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

As a result, many of the examples of R2 and R3 residences provided by the SBC are not covered by the accessibility provisions in Section 1105.4.2 because they do not fall under the SBC's definition of ''dwelling unit.'' A dwelling unit, according to interviews with John Battles, Vice-President, Technical Services at SBCCI, cannot have sleeping rooms with shared common facilities. For example, the SBC lists convents, dormitory facilities which accommodate six or more people who stay more than 24 hours, fraternities, sororities, monasteries, rectories, and rooming houses (not transient), as examples of R2 occupancies. However, if these uses are composed of sleeping rooms with shared toileting or cooking, they do not fall under the SBC's definition of ''dwelling unit.'' Mr. Battles confirmed that the only occupancy examples that fall under the SBC's definition of ''dwelling unit'' are apartment houses (R2) and one and two family dwellings (R3).

In its draft report, SWA proposed revising the SBC definition of ''dwelling unit'' to be consistent with the regulations, to include sleeping rooms occupied by separate households. In response to comments on the draft report, the Department has determined that it would withdraw this recommendation. Instead, the Department proposes that the SBC be revised to include a new term; ''sleeping unit.'' The scoping requirements of Chapter 11 have been revised to add references to both dwelling and sleeping units. Therefore, the former Recommendation Number 1 has been eliminated.

Recommendation Number 1 (Draft Recommendation Number 1)

It is recommended that the SBC be revised to add a definition to 202 as follows:

Sleeping unit: A room in which people sleep intended to be occupied as a residence.

Transient Housing—(Draft Recommendation Number 2)

In Draft Recommendation 2, it was recommended that the SBC be revised to make clear that certain types of housing that may be viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, boarding houses, and homeless shelters. The SBC does not define what ''transient'' means, though it uses this term in specifying what occupancies come within the R1 Use Group. According to Section 1105.4.2, the SBC accessibility provisions apply to Group R2 and R3 occupancies, but not Group R1. Since transient boarding houses and non-transient hotels and motels are classified as R1, they are not covered by Chapter 11. The SBC classifies transient rooming houses as R2 but classifies transient boarding houses as R1. The basis for this distinction in the code is unclear. However, according to Mr. Battles, hotels and boarding houses would not be covered under the provisions of Section 1105.4.2, apparently under any circumstances. Therefore, the SBC does not meet the requirements of the Act, the regulations, or the Guidelines. To make clear that boarding houses, hotels and motels that are not transient are subject to the Act's design and construction requirements and should meet chapter 11's requirements as well, it was suggested that the SBC be revised. Accordingly, draft Recommendation 2 suggested that these three occupancies and non-transient homeless shelters be added to the list of occupancies in the R2 Use Group.

Factors that should be considered in determining whether an occupancy is transient or not are: (1) Length of stay; (2) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (3) Whether the terms and length of occupancy will be established through a lease or other written agreement; (4) What amenities will be included inside the unit, including kitchen facilities; (5) How the purpose of the property is marketed to the public; (6) Whether the resident possesses the right to return to the property; and (7) Whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet the SBC's Chapter 11 requirements, the SBC is not consistent with the Act, its regulations and the

Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the SBC and the Department's regulations. Therefore, the Department is withdrawing its draft recommendation on this issue. However, HUD will continue to work with the SBC and other interested code organizations to develop language that appropriately conveys to builders and designers that certain short-term residencies must meet the Act's accessibility requirements. In the meantime, the Department believes the above factors must be considered by owners, builders, and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Continuing Care Facilities—(Draft Recommendation Number 3)

The Act defines a ''dwelling'' as ''any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families* * *''. 42 U.S.C. 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

As mentioned in the discussion of transient residential uses above, the Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

> The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a ''dwelling'' under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to: (1) The length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project.

59 FR at 33364.

As a result of the application of these factors, and the regulations' definition of ''dwelling unit,'' the Department considers that residential care/assisted living facilities with four or more dwelling units, including sleeping rooms occupied by separate households with shared toileting or kitchen facilities, and nursing homes, to be ''covered multifamily dwellings'' for purposes of the accessibility requirements of the Act.

The SBC classifies residential care/assisted living facilities as R4 residential uses. Section 202 of the Code defines Residential Care/Assisted Living Occupancies as follows:

> A building or part thereof housing six or more persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care and supportive services. The occupants are mostly capable of responding to an emergency situation without assistance from staff. And this occupancy subclassification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.

There are no scoping provisions in Chapter 11 related to the R4 classification. R4 occupancies are not covered under Section 1105.4.2. It is unclear whether this is an oversight, or whether all R4 occupancies are covered under some other accessibility standard.

Recommendation Number 2 (Draft Recommendation Number 2)

It is recommended that the definition of ''sleeping unit'' contained in Recommendation Number 1 be adopted and Section 1105.4 be modified to add a new section, that provides the following, in addition to any other applicable accessibility criteria under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990:

> In R4 occupancies, all ground floor dwelling and sleeping units in structures of four or more dwelling or sleeping units that are not served by elevators, and all dwelling and sleeping units in structures of four or more dwelling and sleeping units served by elevators shall be Type B.

Nursing homes occupied by six or more persons (both intermediate care facilities and skilled nursing facilities) are classified in section 309.1 of the code as Group I Unrestrained Occupancy. This classification is defined below:

> Group I Unrestrained Occupancy. Group I Unrestrained included buildings or portions thereof used for medical, surgical, psychiatric, nursing, or custodial care on a 24 hour basis of six or more persons who are not capable of self-preservation. Facilities with five or less persons not ancillary to other uses are classified as a residential occupancy.

The relevant accessibility standards required for Group I (Unrestrained, Section 1105.3.3, 1105.3.5) are as follows:

> Group I Institutional
>
> 1105.3.3: In Group I Unrestrained nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.
>
> 1105.3.5: In Group I Unrestrained occupancies, at least one accessible entrance shall include a passenger loading zone complying with CABO/ANSI A117.1–1992.

Recommendation Number 3 (Draft Recommendation Number 4)

To ensure that the SBC covers the same dwelling units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the SBC be revised as follows:

> Modify Sections 1105.3.3, 1105.4.1, 1105.4.2, 1105.4.3 as follows:
>
> 1105.3.3: Group I Unrestrained nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in unrestrained nursing homes of Group I, in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.
>
> 1105.4.1: In Group R1 occupancies containing 6 or more guest rooms, one for the first 30 guest rooms and one additional for each additional 100 guest rooms or fraction thereof shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible sleeping rooms or suites. In addition, in Group R1 occupancies in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.
>
> 1105.4.2: In Group R2 occupancies containing four or more dwelling or sleeping units and Group R3 occupancies where there are four or more dwelling or sleeping units in a single structure, all dwelling and sleeping units shall be Type B. In Group R2 occupancies containing more than 20 dwelling units, at least 2%, but not less than one, of the dwelling units shall be Type A dwelling units. All dwelling and sleeping units on a site shall be considered to determine the total number of accessible dwelling and sleeping units.
>
> 1. Requirements for Type B dwelling and sleeping units shall not apply to dwelling or sleeping units that are both located above the

first level containing dwelling or sleeping units and that are not provided with elevator access thereto.

2. A multistory dwelling unit * * *

3. The required number of Type B dwelling and sleeping units provided in multiple nonelevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10 percent, but in no case shall the number of Type B dwelling and sleeping units be less than 20% of the ground floor dwelling and sleeping units on the entire site.

4. The required number of Type A and Type B dwelling and sleeping units * * *

1105.4.3 Rooms and spaces available for the use of residents and which serve accessible dwelling or sleeping units shall be accessible. Exception: Group homes intended to be occupied by a single household and detached single-family homes occupied by a single household.

Note: See other changes to Exceptions 2, 3, and 4 under new recommendations 6, 7, 8, and 14 later in this report.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1105.4 use the term ''structure'' instead of ''building.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, SBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments received on this recommendation, the Department has withdrawn its recommendation.

Ground Floor—(Draft Recommendation Number 6)

The Fair Housing Act regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.'' 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines, question number 6. 59 FR at 33364.

Exception 1, Section 1105.4.2, states that the requirements for Type B dwelling units shall not apply to dwelling units that are both located above the first level containing dwelling units and that are not provided with elevator access thereto. This implies that if a building is built into a hill, for example, and the front and the back of the building have entrances at grade but at different elevations, the first level containing dwelling units could be considered the level at the lowest elevation. Since a ground floor is a floor of a building with a building entrance on an accessible route and there can be more than one ground floor, it is clear in the example above that both levels of that building built into the hill are considered ''ground floors'' and must comply with the Guidelines.

The SBC defines the term ''ground floor dwelling unit'' in Chapter 2 as a dwelling unit with a primary entrance and habitable space at grade. However, the SBC does not refer to the term in its provisions for accessible dwelling units (Section 1105.4.2). The definition of ''ground floor dwelling unit'' does not indicate that there can be more than one ground or grade levels and therefore more than one level of ground floor dwelling units. According to the SBC, in the example given above, the level at the lowest elevation is the only level required to have accessible dwelling units. Therefore, the SBC definition of ''ground floor dwelling unit'' does not meet the requirements of the Act, regulations, and the Guidelines.

In its draft report for public comment, the Department offered a recommendation that the SBC define ground floor to match the regulations and the Guidelines, and delete the definition of ''dwelling unit, ground floor'' from Section 1102. As the Department stated in the preamble to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the SBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the SBC's scoping language, in combination with the definition of ''dwelling unit, ground floor,'' makes it clear that there must be at least one ground floor, and (2) whether the language at Exception 1 of 1105.4.2 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.'' The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In the meantime, the Department believes that owners, builders, developers, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of ''ground floor'' when making determinations whether dwelling units or sleeping units in a non-elevator building with four or more such units are required to comply with the Act.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 7)

The regulations define a building as ''a structure, facility or portion thereof that contains or serves one or more dwelling units.'' 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

According to the SBC, buildings that are structurally connected by a breezeway or stairway are considered two separate buildings. However, there are instances when two buildings connected by a stairway that provides the only means of egress to dwelling units are considered one building. However, this must be determined on a case-by-case. As a result, the SBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 4 (Draft Recommendation Number 7)

It is recommended that the SBC be modified to include an additional provision under Section 3104, Covered and Enclosed Walkways and Tunnels, as follows:

3104.2.1. Separate structures. For purposes of calculating the number of Type B dwelling and sleeping units required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—(Draft Recommendation Number 8)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit'' is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The SBC defines ''multistory dwelling units'' as a dwelling unit with habitable or bathroom space located on more than one story. The SBC defines ''habitable space (room)'' as a space in structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

According to the SBC's definition of ''multistory dwelling unit'', a unit would be considered multistory if one level contains living or ''habitable'' space and the floor next above or below contained only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. The SBC's definition of ''dwelling unit, multistory'' does not meet the Department's interpretation of the Act, the regulations and the Guidelines of what constitutes a ''multistory dwelling unit.''

Recommendation Number 5 (Draft Recommendation Number 8)

It is recommended that the reference to ''or bathroom space'' in the SBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions:

Dwelling unit, multistory: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer versions of the ANSI–A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that Code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or State or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The SBC utilizes the technical criteria contained in CABO/ANSI A117.1–1992. Therefore, the Department has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on CABO/ANSI A117.1–1992, even where those criteria differ from the ANSI A117.1–1986 criteria or the Guidelines.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. 56 FR at 9503. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. 56 FR at 9503. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, *regardless* of terrain or unusual characteristics of the site. 56 FR at 9504.

The SBC's provision related to Requirement 1 are consistent with the Act, the regulations, and the Guidelines, except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance

on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance shall be made accessible if the entrance to the units is on an accessible route.

Variances Related to Site Analysis Test—(Draft Recommendation Number 9)

Section 1105.4.2, Exception 3, of the SBC provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines requires the grades to be ''less than 10%''. 56 FR at 9504. In addition, the Exception fails to provide equivalent language to Step C, *i.e.,* it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the SBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. The SBC does not include any language that reflects these requirements. As a result, the SBC does not meet these provisions of the Guidelines.

Recommendation Number 6 (Draft Recommendation Number 9)

In order to address these inconsistencies, we therefore recommend the following changes and additions to Section 1105.4.2, Exception 3, of the SBC:

The number of Type B dwelling and sleeping units provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling and sleeping units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling and sleeping units be less than 20 percent of the ground floor dwelling and sleeping units on the entire site. In addition to the percentage established, all ground floor dwelling and sleeping units in a building, or ground floor dwelling and sleeping units served by a particular entrance shall be Type B if any one of the following applies:

3.1 The slope between the entrance to the dwelling and sleeping units and a pedestrian or vehicular arrival point is no greater than 8.33%; or

3.2 An elevator provides access to the ground floor only; or

3.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variances Related to Buildings With Elevators—(Draft Recommendation Number 10)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503.

The SBC does not reflect this requirement in Section 1105.4.2, Exception 4.

Recommendation Number 7 (Draft Recommendation Number 10)

It is recommended that Exception 4, Section 1105.4.2 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units and Type B sleeping units shall not apply to a site where the lowest floor or the lowest structural member of a structure not provided with elevator service is required to be at or above the base floor elevation resulting in * * *.

Variance Related to Sites With Unusual Characteristics—(Draft Recommendation Number 11)

In addition, the criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 FR 9504.

The SBC does not reflect this requirement in Section 1105.4.2, Exception 4. The SBC's corresponding provision states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building member is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 8 (Draft Recommendation Number 11)

It is further recommended that Section 1105.4.2, Exception 4, be modified to read:

1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *.

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(c)(i); 24 CFR 100.205(c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes
Protruding objects
Ground and floor surface treatments
Parking and passenger loading zones
Curb ramps
Ramps
Stairs
Elevators
Platform lifts
Drinking fountains and water coolers
Toilet rooms and bathing facilities
Seating, tables, or work surfaces
Places of assembly
Common-use spaces and facilities
Laundry rooms

5656 FR at 9505

When a variance is identified in the SBC that does not meet or exceed the

requirements of the Guidelines for each of the 15 elements or spaces above, they are noted below.

Accessible Route(s)

Vehicular Route—(Draft Recommendation Number 12)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

The Exception in SBC Section 1105.4.4 contains language which is comparable to the Guidelines with two omissions. That section states:

If the slope of the finished grade between accessible facilities and buildings exceeds 1:12, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The SBC does not include language making it clear that accessible parking and curb ramps must be available at the accessible facility if access if provided by a vehicular route.

Recommendation Number 9 (Draft Recommendation Number 12)

It is recommended that SBC, Section 1105.4.4, Exception, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking , in accordance with 1104, at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 13)

Based on the public comments received, the Department has determined that the SBC adequately addresses this issue.

Stairs—(Draft Recommendation Number 14)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the SBC, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the SBC and the Guidelines' requirements for stairs along accessible routes regarding handrail extensions and projections, for example.

Recommendation Number 10 (Draft Recommendation Number 14)

It is recommended that the SBC include a provision for stairways under Section 1106, other Features and Facilities as follows:

Stairways.

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with CABO/ANSI A117.1–1992.

Elevators—(Draft Recommendation Number 15)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1–1986, Section 4.10, Elevators. 56 FR at 9505. This applies to elevators located within multistory dwellings. SBC section 1106.3, Elevators, Lifts, states that all passenger elevators on an accessible route shall be accessible. However, the SBC provides an exception to Section 1106.3 which states that elevators within a dwelling unit are not required to be accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 11: (Draft Recommendation Number 15)

It is recommended that this exception be deleted.

Parking and Passenger LoadinG Zones—(Draft Recommendation Numbers 16 and 17)

The Questions and Answers About the Guidelines (Question and Answer 14c) state that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The SBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, there be accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings, and accessible parking at facilities. The Guidelines also require accessible parking on the same terms and with the full range of choices (*e.g.,* surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) which clarified that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department does not recommend that the SBC revise any of its broader scoping requirements for parking. However, the SBC does not include comparable language in Section 1104, Parking Facilities, with respect to the above variances. Therefore, the SBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 12 (Draft Recommendation Number 16):

In order to address these inconsistencies, it is recommended that

the SBC add the following language to Section 1104.1:

Two percent of parking spaces provided for R2 and R3 occupancies required to have accessible/adaptable dwelling or sleeping units shall be accessible * * *

At least 2% of parking garages provided for R2 and R3 occupancies required to have accessible dwelling or sleeping units where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide * * *

Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

In order to ensure that passenger loading zones comply with the requirements of the Guidelines, it is recommended that SBC add a provision under Section 1104 which states the following:

When provided, passenger loading zones shall be located on an accessible route. Passenger loading zones shall be designed and constructed in accordance with CABO/ANSI A117.1–1992.

Table 1104.3, Accessible Parking Spaces includes a note that states ''the accessible space shall be provided but need not be designated as reserved for the physically disabled.'' In addition, Section 1107, Signs, indicates that elements shall be identified by the International Symbol of Accessibility at four locations, the first of which states that it is required at accessible parking spaces required by 1104.1 (Parking Facilities) but not where the total parking spaces provided are five or less. This does not meet the requirements of the Guidelines that requires signage at all accessible parking space.

Recommendation Number 13 (Draft Recommendation Number 17)

It is recommended that this language from provision 1 under Section 1107.1, Signs, be deleted.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps'' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The SBC Section 1105.4.5 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement. 56 FR at 9506.

The Department has determined that the SBC meets the requirements of the Act, the regulations, and the Guidelines with respect to usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. 3604(f)(3)(C)(iii)(I), 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement 56 FR at 9509–10. The SBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following.

Multistory Units Served by Elevators—(Draft Recommendation Number 18)

Among the criteria for Requirement 4 is the provision that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

The SBC provides the following exceptions to the requirement for Type B units as follows (Section 1105.4.2):

A multistory dwelling unit which is not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with the elevator service shall comply with the requirements for a Type B dwelling unit and a toilet facility shall be provided.

The SBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the SBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 14 (Draft Recommendation Number 18)

It is recommended that the SBC modify Section 1105.4.2, Exception 2 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a

Type B dwelling unit, and a toilet facility shall be provided.

Requirement 5: Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. 3604(f)(3)(C)(iii)(II); 24 CFR 100.205. Requirement 5 of the Guidelines sets forth criteria to meet these requirements. The SBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars—(Draft Recommendation Number 19)

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10.

The SBC Section 1110.9.3, Grab bar and seat reinforcement, states that where walls are located so as to permit installation of grab bars and seats complying with Section 4.17.4, 4.21.4, 4.22.4, 4.23.3, of CABO/ANSI A117.1–1992, reinforcement shall be provided for the installation of grab bars and seats meeting those requirements. The SBC does not include any provisions for the installation of grab bars for fixtures, sunken or raised tubs for example, that are located away from walls, which does not meet the requirements of the Guidelines.

Recommendation Number 15 (Draft Recommendation Number 19)

It is recommended that the SBC modify Section 1110.9.4, Toilet and bathing fixtures, as follows:

Section 1110.9.4 Toilet and bathing fixtures:

Toilet and bathing fixtures shall comply with either Section 1110.9.4.1 Option A or 1110.9.4.2 Option B. Where fixtures are located away from walls alternative reinforcement complying with CABO/ANSI A117.1 4.24.2.5 and 4.24.3 shall be provided for the mounting of grab bars.

Requirement 7: Usable Kitchens and Bathrooms

Usable Kitchens—(Draft Recommendation Number 20)

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205. Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

The Guidelines address a parallel approach to kitchen sinks in Requirement 7. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9511. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1–1986, Fig. 32 on page 50.) The Department's Guidelines allowed a departure from the ANSI standard. The Guidelines permit the clear floor space to be designed for a parallel position. 56 FR at 9511–12. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

SBC, Section 1110.8.2.2, states that the clear floor space at the sink shall be positioned for a parallel approach. The offset of the centerline of the clear floor space and sink is required to be 9 inches which does not meet the requirements of the Guidelines. The Guidelines require the centering of the parallel approach on the sink.

Recommendation Number 16 (Draft Recommendation Number 20)

It is recommended that the SBC delete the 9-inch offset requirement and modify, Section 1110.8.2.2, Clear floor space, as follows:

Section 1110.8.2.2 Clear floor space:

The clear floor space at the sink positioned for a parallel approach shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Numbers 21 and 22):

The Guidelines provide two options for designing accessible bathrooms. 56 FR at 9511. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the doors and exit. 56 FR at 9511. The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option.

The second option for designing accessible bathrooms requires that they have reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures. 56 FR at 9511.

According to the Guidelines, for covered multifamily dwelling units in elevator buildings, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit; it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The SBC clear floor space requirements for lavatories under Option A, Section 1110.9.4.1.1, does not require centering of the clear floor space on the lavatory which does not meet the requirements of the Guidelines.

Recommendation Number 17 (Draft Recommendation Number 21)

It is recommended that Section 1110.9.4.1.1 be modified as follows:

Section 1110.9.4.1.1 Lavatory:

A 30 inch by 48 inch minimum clear floor space positioned for a parallel approach shall be provided and centered on the lavatory.

Section 1110.9.4.2.1, Lavatory, under Option B provisions requires a 9-inch maximum offset of the centerline of the clear floor space and lavatory that does not meet the requirements of the Guidelines.

Recommendation No. 18 (Draft Recommendation Number 22)

It is recommended that Section 1119.9.4.2.1, Lavatory, be modified as follows:

Section 1110.4.2.1 Lavatory:

A 30 inch by 48 inch minimum clear floor space positioned for parallel approach shall be centered on the lavatory.

Chapter 6: BOCA National Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1996 edition of the National Building Code (herein referred to as BNBC), published by the Building Officials & Code Administrators International (BOCA)

that do not meet the requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, the Department recommends how they may be revised to meet the requirements of the Act, the regulations, or the Guidelines. The 1999 edition of the BNBC was published in January, 1999. A review of the 1999 edition of BNBC is not part of the scope of the following analysis.

II. Methodology

The analysis of the BNBC by the Department and its contractor, Steven Winter Associates, Inc., consisted of the following:

—A review of the language of the Act, 42 U.S.C. § 3604 (f)(3)(C), the regulations at 24 CFR 100.201 and 205, the Fair Housing Accessibility Guidelines, 56 FR at 9472–9515, and the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines,'' 59 FR at 33362–33368 (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), BOCA, International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the model building codes. The analysis of BNBC began by a review of the column of the matrix that includes BNBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between BNBC's accessibility requirements and those of the Act, regulations, and Guidelines.

—A review of the accessibility provisions of the 1996 edition of BNBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992, and the International Plumbing Code—1995, which are referenced by BNBC. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and BNBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the BOCA responds to variances identified by SWA. SWA found it necessary to understand BOCA's interpretations of its own requirements that may not be apparent when reviewing code text.

The original analysis of the BNBC was submitted to the Department by SWA on August 5, 1999. The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel; and the Office of Housing. A representative of the U.S. Department of Justice also participated in the Working Group. The Working Group met with SWA on September 8, 1999, and asked questions and made comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between HUD staff and BOCA staff.

The draft report was published for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The BOCA National Building Code

The Building Officials & Code Administrators International (BOCA), Inc., is a nonprofit organization that administers the BNBC series of model regulatory construction codes. The code provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the BOCA model building code is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body.

The 1996 BNBC, Thirteenth Edition, published January 1, 1996, includes provisions for accessibility intended to reflect the intent of the Act. Previous editions of the code include provisions for accessibility, but not as required by the Act. The 1996 BNBC, Chapter 11, Accessibility, is the first attempt at codifying the accessibility provisions of the Act. Any jurisdiction that adopts the 1996 BNBC must follow these accessibility provisions.

Unlike the Fair Housing Act, BNBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with BNBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as ''model codes.''

In the past, some model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117. These dwelling units are referred to in BNBC, 1107.4.2, and defined in Section 1102, as a ''Type A dwelling unit.'' Section 1107.4.2 of the code, adopts standards for a ''Type B dwelling unit.'' A ''Type B dwelling unit'' is defined in Section 1102 as a dwelling unit that is designed and constructed to provide a minimal level of accessibility in accordance with the applicable provisions of Chapter 11 and CABO/ANSI A117.1 listed in Chapter 35. The purpose of the Type B dwelling unit is to incorporate the requirements of the design and construction requirements of the Act, the regulations, and the Guidelines. BOCA adopts CABO/ANSI A117.1–1992 and refers to the International Plumbing Code (IPC) for the technical provisions for toileting and bathing facilities, kitchens, and bathrooms. It is important to note, however, that neither CABO/ANSI–A117.1–1992 nor the IPC contain scoping provisions, as discussed below.

It is the Department's understanding that BOCA will no longer publish subsequent updates to the latest version of the BNBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure

to which the technical standards are applied. The provisions in this second component are referred to as ''scoping'' provisions. This section of the analysis sets forth areas where the scoping provisions of the BNBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of BNBC included an examination of the following:

BNBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

BNBC's classification of residential buildings according to use and occupancy; and

BNBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that BNBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, the Department concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, modular units are covered, and additions of four or more units to existing buildings, are included within BNBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of BNBC do not or may not include ''covered multifamily dwellings'' as they are defined in the Act, regulations, or Guidelines.

BNBC Classification of Residential Use Groups

BNBC stipulates that all structures in which sleeping accommodations are provided, excluding those that are classified as institutional occupancies, shall be classified as Use Group R–1, R–2, R–3, or R–4 and defined as follows (Section 310.0):

—Use Group R–1 structures include hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations for more than five occupants who are primarily transient in nature, occupying the facilities for a period of less than 30 days.

—Use Group R–2 structures include all multiple-family dwellings having more than two dwelling units, except as provided for under Use Group R–3 structures, and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature.

—Use Group R–3 structures include all buildings arranged for occupancy as one-or two-family dwelling units, including not more than five lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a 2-hour fire separation assembly.

—Use Group R–4 structures include all detached one-and two-family dwellings not more than three stories in height, and the accessory structures as indicated in the one-and two-family dwelling code.

The reference to ''detached one-and two-family dwellings'' under Use Group R–4 refers to structures that are physically detached. According to BNBC, buildings separated by firewalls are not considered separate structures (see the discussion about BNBC's definition of ''building'' and ''structure'' below).

Definition of ''Dwelling Unit''—(Draft Recommendation Number 1 and 2)

The regulations define the term ''dwelling unit'' as: ''a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.''

24 CFR.100.201.

It is clear from the discussion in the Preamble to the regulations, found at 54 FR 3244 (Jan. 23, 1989), that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are ''covered multifamily dwelling units'' for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by *one* household is *not* considered to be a ''covered multifamily dwelling'' under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a ''group home'' would not be considered to be a ''covered multifamily dwelling'' for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

BNBC defines the term ''dwelling unit'' in Section 310.2, Definitions, as follows:

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

In general, BNBC (1107.4.2) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R–2 containing four or more dwelling units and in occupancies in Group R–3 where there are four or more dwelling units in a single structure. According to BOCA representatives, there is no circumstance in which BNBC includes a separate sleeping room as a ''dwelling unit.''

Because sleeping accommodations for separate households in a structure are not covered under BNBC's definition of ''dwelling unit,'' BNBC's scoping provisions do not meet the requirements of the Act, the regulations, or the Guidelines because they do not include all of the dwelling units or residential structures that are covered under the Act, the regulations and Guidelines.

In its draft report, SWA recommended that the definition of dwelling unit be modified in the BNBC. Based on public comments received on the SWA draft report on the BNBC, the Department is withdrawing this recommendation. Instead, SWA recommends that the BNBC adopt a new definition of ''sleeping unit'' as stated below, and add that language as appropriate to the scoping provisions of Chapter 11, as reflected in subsequent recommendations.

Recommendation Number 1 (Draft Recommendation Number 1 and 2)

It is recommended that BNBC be revised to add a definition to 310.2 as follows:

Sleeping unit: A room in which people sleep intended to be occupied as a residence.

BNBC does not require that common use spaces that serve accessible sleeping units must be accessible.

Recommendation Number 2 (New Recommendation)

It is recommended that BNBC add the following provision to 1107.4:

Rooms and spaces available for the use of the residents of accessible sleeping units shall be accessible. Accessible spaces shall include toilet and bathing rooms, kitchen, living and dining areas and any exterior spaces, including patios, terraces and balconies.

Transient Housing—(Draft Recommendation Number 3)

In Draft Recommendation 3, SWA proposed that the BNBC be revised to make clear that certain types of housing that the BNBC viewed as transient are dwellings subject to the requirements of the Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, boarding houses, dormitories, and homeless shelters. The BNBC uses a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to the Act or Chapter 11.

A 30-day measure is inappropriate in determining whether a building is covered by the Act. The BNBC's 30-day test of transience is inappropriate because it misleads designers, builders and other readers of the code that such housing need not meet the requirements of the Act. Length of stay is only *one* factor in determining whether a building is a ''covered multifamily dwelling.'' Other factors to be considered include: (1) whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) whether the terms and length of occupancy will be established through a lease or other written agreement; (3) what amenities will be included inside the unit, including kitchen facilities; (4) how the purpose of the property is marketed to the public; (5) whether the resident possesses the right to return to the property; and (6) whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet BNBC's Chapter 11 requirements, the BNBC is not consistent with the Act, its regulations and Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the BNBC and the Department's regulations. Accordingly, the Department is withdrawing Draft Recommendation 3. The Department will continue to work with BOCA and other interested code organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Continuing Care Facilities—(Draft Recommendation Number 4)

The Act defines a ''dwelling'' as ''any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.'' 42 U.S.C. 3602(b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

The Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states in part:

The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a ''dwelling'' under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings.

59 FR at 33364.

According to BNBC, continuing care facilities may fall under Use Group I if they have more than five occupants. As a result, they may not be covered under Section 1107.4.2, Accessible dwelling unit, of the BNBC.

Section 308.2, Use Group I–1, is defined by BNBC as follows:

This use group shall include buildings and structures which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I–1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Section 308.3, Use Group I–2, is defined by BNBC as follows:

This use group shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of six or more persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I–2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Recommendation Number 3 (Draft Recommendation 4)

To ensure that the BNBC covers the same dwelling and sleeping units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the definition of ''*sleeping unit*'' contained in Recommendation Number 1 be adopted and that BNBC be revised as follows:

Modify Sections 1107.3.1, 1107.3.2, 1107.4.1.1 AND 1107.4.2 as follows:

1107.3.1 Use Group I–1: In occupancies in Use Group I–1, at least 4 percent, but not less than one, of the resident sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, board and care facilities, group homes, and convalescent facilities of Group I–1 occupancies with four or more sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.3.2 Use Group I–2: In nursing homes of Use Group I–2, at least 50 percent, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in nursing homes of Group I–2 in structures with four or more sleeping units, all sleeping units shall comply with the requirements for Type B sleeping units required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.1 Accessible guestrooms: In occupancies in Use Group R–1 containing six or more guestrooms, not less than one accessible guestroom for the first 30 guestrooms shall be provided, and one additional accessible guestroom for each additional 100 guestrooms or fraction thereof shall be provided. In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms. In addition, in occupancies in Use Group R–1 sleeping units in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.1.1 Boarding houses: Lodging houses and congregate residences with multiple bedrooms or spaces for more than six occupants shall be provided with the minimum number of accessible guestrooms as required by Section 1107.4.1. The guestrooms shall be accessible in accordance with CABO A117.1 listed in Chapter 35. In addition, lodging houses and congregate residences with four or more sleeping units for more than six occupants shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.2 Accessible dwelling and sleeping units: In occupancies in Use Group R–2 containing four or more dwelling or sleeping units and in occupancies in Use Group R–3 where there are four or more dwelling or sleeping units in a single structure, all dwelling and sleeping units shall be Type B. In occupancies in Use Group R–2 containing more than 20 dwelling units, at least 2 percent, but not less than one, of the dwelling units shall be Type A dwelling units in accordance with CABO A117.1 listed in Chapter 35. In occupancies in Use Group R–2 and R–3, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling and sleeping units shall be accessible.

Exceptions:

1. In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B dwelling units.

2. The requirement for Type B dwelling and sleeping units shall not apply to dwelling or sleeping units that are both located above the first level containing dwelling or sleeping units and that are not provided with elevator access thereto.

3. Where multiple buildings on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling and sleeping units shall be equal to the percentage of buildings on the entire site having grades of less than 10 percent. The site grade shall be based on the site conditions prior to development. In no case shall the number of Type B dwelling or sleeping units be less than 20 percent of the ground floor dwelling or sleeping units on the entire site.

4. In areas where buildings are required to be constructed in accordance with Section 3107.0, the required number of Type A and Type B dwelling units and Type B sleeping units shall not apply * * *

5. Recreational facilities in accordance * * *

6. Dwelling and sleeping units required to be Type B dwelling or sleeping units shall be permitted to be designed and constructed as Type A dwelling units.

7. Group homes intended to be occupied by a single household and detached single family homes occupied by a single household.

Note: See other changes to 1107.4.2 including Exceptions 1, 3, and 4 below under Recommendation numbers 7, 8, 9, and 17.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1107.4.2 use the term ''structure'' instead of ''building.'' This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, BNBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the public comments the Department received on this recommendation, the Department has withdrawn this recommendation.

Ground Floor—(Draft Recommendation Number 6)

BNBC defines Ground Floor Dwelling Unit as follows:

Ground Floor Dwelling Unit (Section 1102.0)—For application of the accessibility requirements, a ground floor dwelling unit is a dwelling unit with a primary entrance and habitable space at ground level or the lowest floor containing dwelling units, whether that floor is at or above grade.

The regulations define ''ground floor'' as a ''floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.'' 24 CFR 100.202. The Guidelines further state: ''Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor. 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines question number 6. 59 FR at 33364.

In Section 1107.4.2, BNBC requires that all dwelling units in Use Group R–2 containing four or more dwelling units, and in Use Group R–3 where there are four or more dwelling units in a single structure be Type B dwelling units. However, this section provides the following exception to this requirement:

The requirement for Type B dwelling units shall not apply to dwelling units that are both located above the first level containing dwelling units and that are not provided with elevator access.

According to BNBC, in the example above, the level at the lowest elevation is the only level required to have accessible dwelling units. Because the Guidelines clearly state that a ground floor is a floor of a building with a building entrance on an accessible route and that there can be more than one ground floor, it is clear in the example above that both levels of that building built into the hill are considered ''ground floors'' and must comply with the Guidelines.

BNBC, Section 1102, defines the term ''ground floor dwelling unit'' as a dwelling unit with a primary entrance and habitable space at ground level or the lowest floor containing dwelling units, whether that floor is at or above grade. However, BNBC does not refer to the term in its provisions for accessible dwelling units (Section 1107.4.2, Accessible dwelling units). It is clear that ground floor units can be at or above grade, but it is unclear that there can be more than one ground floor, or ground floor units on different levels of a building.

In its draft report, the Department offered a recommendation that the BNBC modify its definition of ''ground floor dwelling unit'' and refer to the revised term ''ground floor'' in Exception 2, Section 1107.4.2, Accessible dwelling units. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is,

therefore, withdrawing this recommendation. However, the Department maintains that the BNBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. The Department will work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the BNBC scoping language, in combination with the definition of ''ground floor dwelling unit,'' makes it clear that there must be at least one ground floor, and (2) whether the language at Exception 2 of 1107.4.2 results in requiring builders to make the first level containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not ''at grade.'' The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In the meantime, the Department believes that owners, builders, developers, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of ''ground floor'' when making determinations whether dwelling units or sleeping units in a non-elevator building with four or more such units are required to comply with the Act.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 7)

The regulations define a building as ''a structure, facility or portion thereof that contains or serves one or more dwelling units.'' 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under BNBC, two structures that are connected by a breezeway or stairway, for example, and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the BNBC's accessibility provisions.

It appears, however, that in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not it is considered one building must be determined by BOCA on a case-by-case basis. In addition, in some cases, BOCA considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. As a result, BNBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 4 (Draft Recommendation 7)

It is recommended that BNBC be modified to include a revision to Section 3106.1.1, Separate structures, as follows:

3106.1.1 Separate structures. Connected buildings shall be considered to be separate structures. For purposes of calculating the number of Type B dwelling and sleeping units as required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—(Draft Recommendation Number 8)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a ''covered multifamily dwelling'' because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a ''multistory dwelling unit'' as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A ''single-story dwelling unit is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

BNBC includes the following definitions in Section 1102.1:

Multistory dwelling unit. For application of the accessibility requirements, this term shall mean a dwelling unit with habitable or bathroom space located on more than one story.

BNBC defines ''habitable space'' (Section 1202) as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

According to BNBC's definition of ''multistory dwelling unit,'' a unit is considered multistory if one level contains living or ''habitable'' space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, and the factors outlined above that the Department would consider in making a determination as to whether or not the unit is a multistory unit, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. 56 FR at 9500–01. Neither bathroom space alone nor a combination of bathroom space and storage space constitute living space. BNBC's definition of ''multistory dwelling unit'' does not meet the Act, regulations or Guidelines.

Recommendation Number 5 (Draft Recommendation 8)

As a result, it is recommended that the reference to ''or bathroom space'' in the BNBC's definition of ''multistory dwelling unit'' be deleted as follows:

Section 1102, Definitions:
Multistory dwelling unit: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

Single-Story Unit With a Loft/Mezzanine—(Draft Recommendation Number 9)

Under Requirement 4 of the Guidelines, a single-story unit may have a loft without the requirement that there be an accessible route to the loft; *provided that all other parts of the dwelling unit are on an accessible route.* 56 FR at 9507. Only one loft, or raised or sunken area, can be provided within a room and it cannot interrupt the accessible route throughout the remainder of the dwelling unit. These ''special design features'' cannot contain toilet facilities. 56 FR at 9507.

BNBC does not define or use the term loft, and instead uses the term ''mezzanine,'' and defines this term as follows:

Section 502: ''Mezzanine'' means an intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

BNBC Section 1107.4.3, Accessible route, includes an exception that states that mezzanines, and raised or sunken floors in Type B dwelling units are not required to be accessible provided they do not contain or interrupt the accessible route to the only bathing facility, lavatory, water closet or living,

eating, sleeping or cooking areas in the dwelling unit. This provision implies that if there are two bathrooms or sleeping areas within a Type B unit, a mezzanine or raised or sunken area is permitted to interrupt the route to one bathroom or sleeping area, which does not meet the Guidelines.

BNBC does not state that only one of these ''special design features'' is permitted within a room in a Type B dwelling unit, and does not require that if a mezzanine has an enclosed area or a toilet or bathing facility then it must be located on an accessible route.

Recommendation Number 6 (Draft Recommendation 9)

To address these inconsistencies it is recommended that BNBC delete Exception 2, Section 1107.4.3 as currently written and replace it with the following language:

Within Type B dwelling units one of the following is not required to be on an accessible route:

1. A raised floor area in a portion of a living, dining, or sleeping room; or
2. A sunken floor area in a portion of a living, dining, or sleeping room; or
3. A mezzanine that does not have plumbing fixtures or an enclosed habitable space.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer editions of the ANSI–A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or state or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

BNBC utilizes the technical criteria contained in CABO/ANSI A117.1–1992, and thus, HUD considers any BNBC requirements that reflect that criteria to meet the requirements of the Act, even where they differ in small part from the ANSI–1986 criteria.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. 56 FR at 9503–04. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 FR at 9504.

BNBC's provisions relating to an accessible building entrance on an accessible route are consistent with the Guidelines with the following exceptions.

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503–04.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503–04.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variances Related to the Site Analysis Test—(Draft Recommendation Number 10)

Section 1107.4.2, Exception 3, attempts to correspond to Steps A and B of the site analysis test. However, it provides that where multiple buildings on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling units shall be equal to the percentage of buildings on the entire site having site grades of 10 percent or less, and not the percentage of buildable area having site grade of less than 10 percent which is required by the Guidelines. 56 FR at 9504. Thus, BNBC does not meet the specifications of the Guidelines.

BNBC also fails to provide equivalent language to Step C—*i.e.,* it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground

floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, BNBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. BNBC does not include any language that reflects these requirements. As a result, BNBC does not meet the provisions of the Guidelines on these issues as well.

Recommendation Number 7 (Draft Recommendation 10)

In order to address these inconsistencies, it is recommended that Exception 3, Section 1107.4.2 be revised as follows:

Where multiple structures on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling and sleeping units shall be equal to the percentage of the entire site having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling and sleeping units be less than 20 percent of the ground floor dwelling and sleeping units on the entire site. In addition to the percentage established, all ground floor dwelling and sleeping units in a structure, or ground floor dwelling and sleeping units served by a particular entrance shall be Type B if any one of the following applies:

3.1 The slope between the entrance to the dwelling or sleeping units and a pedestrian or vehicular arrival point is no greater than 8.33%; or

3.2 An elevator provides access to the ground floor only; or

3.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings With Elevators—(Draft Recommendation Number 11)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9504. BNBC does not reflect this requirement in Section 1107.4.2, Exception 4.

Recommendation Number 8 (Draft Recommendation 11)

It is recommended that Exception 4, Section 1107.4.2 be modified so that the Exception does not apply to buildings with elevators.

In areas where buildings are required to be constructed in accordance with Section 3107.0, the required number of Type A and Type B dwelling units and Type B sleeping units shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base flood elevation resulting in * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205 (c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes,
Protruding objects,
Ground and floor surface treatments,
Parking and passenger loading zones,
Curb ramps,
Ramps,
Stairs,
Elevators,
Platform lifts,
Drinking fountains and water coolers,
Toilet rooms and bathing facilities,
Seating, tables, or work surfaces,
Places of assembly,
Common-use spaces and facilities,
Laundry rooms.

56 FR at 9505

When a variance is identified in the BNBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, they are noted below.

Scoping of Accessibility Requirements for Public and Common Use Facilities—(Draft Recommendation Number 12)

As stated above, the Act, regulations, and Guidelines require accessible public and common use areas for all covered multifamily dwellings. 42 U.S.C. § 3604 (f)(3)(c)(i); 24 CFR 100.205 (c) (1); Section 1107.4.2 of the BNBC states that in occupancies in Use Group R–2, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling units shall be accessible. This provision does not include Use Group R–3 in that sentence. However, in Section 1107.4.3, Accessible Route, BNBC states the following:

In occupancies in Use Group R–2 and R–3, at least one accessible route shall connect accessible building or facility entrances with all accessible dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible dwelling units.

It is clear from Section 1107.4.3 that accessible routes to public and common areas are intended to be required in both Use Groups R–3 and R–2.

Recommendation Number 9 (Draft Recommendation 12)

For clarity, it is recommended that Section 1107.4.2 be modified to include Use Group R–3 as follows:

Section 1107.4.2, Accessible dwelling units:

In occupancies in Use Group R–2 and R–3, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling and sleeping units shall be accessible.

Accessible Route(s)—(Draft Recommendation Number 13)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

BNBC, Section 1107.4.3 contains language that is comparable to the Guidelines with one exception. That section states:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

BNBC does not include language making it clear that accessible parking must be available at the accessible

facility if access is provided by a vehicular route. In addition, reference must be made to ''structures'' and not ''buildings'' (see discussion of the definition of ''building'' above.)

Recommendation Number 10 (Draft Recommendation 13)

It is recommended that BNBC, Section 1107.4.3, Exception 1, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and structures exceeds one unit vertical in 12 units horizontal (1:12), or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking in accordance with Section 1105 at each public and common use facility is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 14)

Based on the public comments received, the Department has determined that the BNBC adequately addresses this issue.

Parking and Passenger Loading Zones—(Draft Recommendation Numbers 15, 16, 17 and 18)

The Guidelines provide that accessible parking on a route accessible to persons in wheelchairs be provided for at least 2% of the covered dwelling units, and that there be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. 56 FR at 9505.

Section 1105, Parking Facilities, of the BNBC requires that, where parking is provided, accessible parking spaces complying with CABO/ANSI A117.1 be provided in compliance with Table 1105.1, except as required by Sections 1105.2 and 1105.3.

Section 1105.2, Use Group R–2, of Section 1105, Parking Facilities, requires that 2% of parking spaces provided for occupancies in use Group R–2 which are required to have accessible dwelling units shall be accessible. Section 1105.3 does not apply to Use Groups R–2 or R–3 and is not applicable. Table 1105.1 stipulates the minimum number of accessible spaces required according to the total number of parking spaces provided. Since 1105.2 clearly applies to Use Group R–2 and not R–3, one must refer to Table 1101.1 for the required minimum number of accessible spaces required for Use Group R–3.

Recommendation Number 11 (Draft Recommendation 15)

It is recommended that Section 1105.2, Use Group R–2, be modified to include R–3 occupancies, as follows:

Section 1105.2, Use Group R–2 and R–3

Two percent of parking spaces provided for occupancies in Use Group R–2 and Use Group R–3 which are required to have accessible dwelling or sleeping units shall be accessible.

Section 1105.1, Required, should be modified to:

Where parking is provided, accessible parking spaces complying with CABO/ANSI A117.1–1992 listed in Chapter 35 shall be provided in compliance with Sections 1105.2 and 1105.3.

By modifying Section 1105.2 to include the reference to the R–3 Use Group, Table 1105.1 (required minimum number of accessible spaces for R–3 dwellings) and any reference to it may be eliminated.

The Questions and Answers About the Guidelines (Question and Answer 14c) states that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The BNBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities must be provided. The Guidelines also require accessible parking on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b), which clarified that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department is not recommending that the BNBC revise any of its broader scoping requirements for parking. However, the BNBC does not include comparable language in Section 1105, Parking Facilities, with respect to the above variances. Therefore, the BNBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 12 (Draft Recommendation 16)

In order to address these two inconsistencies, it is recommended that BNBC include a reference to R–3 in Section 1105.2, Group R–2, as indicated in Recommendation 11 above, and modify that Section as follows:

At least 2% of parking garages provided for R–2 and R–3 occupancies required to have accessible dwelling or sleeping units where there are several individual garages grouped together, either in a separate area of a building or in a detached building, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide. * * *

* * * Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

It is not clear in BNBC whether passenger loading zones are required to comply with the requirements of the Guidelines.

Recommendation Number 13 (Draft Recommendation 17)

In order to ensure that passenger loading zones comply with the requirements of the Guidelines, it is recommended that BNBC add a provision under Section 1105 which states the following:

When provided, passenger loading zones shall be located on an accessible route. Passenger loading zones shall be designed and constructed in accordance with CABO/ANSI A117.1–1992.

Table 1105.1, Accessible Parking Spaces includes a note that states ''the

accessible space shall be provided but is not required to be designated as reserved for physically disabled.'' In addition, Section 1109.2, Signs, indicates that elements shall be identified by the International Symbol of Accessibility at four locations, the first of which states that it is required at accessible parking spaces required by 1105.1 (Parking Facilities) except where the total parking spaces provided are five or less. This does not meet the requirements of the Guidelines which require signage at all accessible parking spaces.

Recommendation Number 14 (Draft Recommendation 18)

It is recommended that BNBC delete this language from provision 1 under Section 1109.2. If deleted, the note in Table 1105.1 will no longer apply.

Stairs—(Draft Recommendation Number 19)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

There are variances between the provisions of BNBC and the Guidelines' requirements for stairs along accessible routes regarding tread and riser measures, and handrails for example.

Recommendation Number 15 (Draft Recommendation 19)

It is recommended that BNBC include a provision for stairways under Section 1108, Building Features and Facilities as follows:

Stairways

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with CABO/ANSI A117.1–1992.

Alternatively, the Department recommends that BOCA consider adopting the technical requirements for residential elevators found in ICC/ANSI A117.1–1998.

Elevators—(Draft Recommendation Number 20)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1, Section 4.10, Elevators. Section 1108.4 of BNBC, Elevators and Stairway and Platform Lifts, states that all passenger elevators on an accessible route shall be accessible. It also states that elevators required to be accessible shall be designed and constructed to comply with Section 3006 which references conformance with CABO/ANSI A117.1–1992.

The technical specifications for elevators required by both the Guidelines and BNBC are equivalent. However, BNBC provides an exception to Section 1108.4, Elevators, that exempts elevators within dwelling units from being accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 16 (Draft Recommendation 20)

It is recommended that the exception to 1108.4 be eliminated.

Recreational Facilities

The Guidelines, in Requirement 2, state that: ''If provided in the facility or at the site; (a) where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps'' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The BNBC Section 1107.4.4 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of ''sufficient to provide equitable opportunity for use'' may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered ''sufficient'' by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

The Department has determined that BNBC meets the requirements of the Act, regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. BNBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following:

Multistory Units in Elevator Buildings—(Draft Recommendation Number 21)

Among the criteria in Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is

served by the building elevator is the primary entry to the unit. 56 FR at 9507.

BNBC, Section 1107.4.2, provides the following exceptions to the requirement for Type B units as follows:

In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit and a toilet facility shall be provided on that floor.

Recommendation Number 17 (Draft Recommendation 21)

It is recommended that BNBC modify Section 1107.4.2, Exception 1, as follows:

In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for Type B dwelling units and a toilet facility shall be provided on that floor.

Requirement 5: Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 FR at 9507. BNBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars—(Draft Recommendation Number 22)

Requirement 6 of the Guidelines sets forth technical specifications to meet 42 U.S.C. 3604(f)(3)(C)(iii)(III), 24 CFR 100.205(c)(3)(iii) which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10. BNBC refers to the International Plumbing Code, 1995, for the technical specifications for reinforcement in walls for grab bars.

Although it is the intent of the International Plumbing Code, 1995, to require grab bar reinforcement at fixtures located away from walls, sunken or raised tubs for example, one cannot make that clear determination.

Recommendation Number 18 (Draft Recommendation 22)

It is recommended that BNBC add an exception under section 1108.2, Toilet and bathing facilities as follows:

Section 1108.2 Toilet and bathing facilities: Within dwelling and sleeping units required by 1107.4.2 to be accessible, alternative reinforcement complying with CABO/ANSI A117.1–1992 4.24 2.5 and 4.24.3 shall be provided for the mounting of grab bars where fixtures are located away from walls.

Requirement 7: Usable Kitchens and Bathrooms

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205 (c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

Usable Kitchens—(Draft Recommendation Number 23)

The Guidelines address a parallel approach to kitchen sinks in Requirement 7 at 56 FR 9511. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9514. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1–1986, Fig.32 on page 50). The Department's Guidelines allowed a departure from the ANSI standard. The Guidelines permit the clear floor space to be designed for a parallel position. 56 FR at 9511–12. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

The International Plumbing Code, 1995 which provides the technical provisions for Type B kitchens does not require that the parallel approach to sinks shall be centered on the sink which does not meet the requirements of the Guidelines.

Recommendation Number 19 (Draft Recommendation 23)

It is recommended that BNBC add an exception to Section 1108.3, Kitchens, as follows:

Exception: If a parallel approach is provided at the sink, it shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Number 24)

The Guidelines provide two options for designing accessible bathrooms. 56 FR at 9511. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the doors and exit. 56 FR at 9511.

The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option. 56 FR at 9511. The second option requires reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures.

According to the Guidelines, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit; it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars. 56 FR at 9511.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The International Plumbing Code, 1995, does not require the centering of the parallel approach on the lavatory basin which does not meet the requirements of the Guidelines.

Recommendation Number 20 (Draft Recommendation 24)

It is recommended that BNBC add an exception under Section 1108.2 as follows:

Exception: If a parallel approach is provided at the lavatory, it shall be centered on the lavatory.

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Federal Register

Thursday,
March 23, 2000

Part IV

The President

Presidential Determination No. 2000–16 of February 29, 2000—Presidential Determination on Major Illicit Drug Producing and Drug Transit Countries

Presidential Determination No. 2000–17 of March 2, 2000—Drawdown Under Section 506(a)(2) of the Foreign Assistance Act of 1961, as Amended, To Provide Emergency Disaster Assistance in Southern Africa

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Vol. 65, No. 57
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–16 of February 29, 2000

Presidential Determination on Major Illicit Drug Producing and Drug Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby determine and certify that the following major illicit drug producing and/or major illicit drug transit countries (and certain jurisdictions) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

The Bahamas, Bolivia, Brazil, China, Colombia, Dominican Republic, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Mexico, Pakistan, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in me by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following major illicit drug producing and/or major illicit drug transit countries:

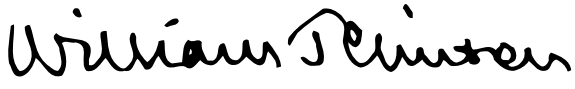
Cambodia, Haiti, Nigeria, and Paraguay.

I have determined that the following major illicit drug producing and/or major illicit drug transit countries do not meet the standards set forth in section 490(b) for certification:

Afghanistan, Burma.

In making these determinations, I have considered the factors set forth in section 490 of the Act, based on the information contained in the International Narcotics Control Strategy Report of 2000. Analysis of the relevant U.S. vital national interests, as required under section 490(b)(3) of the Act in the case of the countries certified on this basis, is attached. Given that the performance of all of these countries/jurisdictions has differed, I have also attached an explanatory statement for each of the other countries/jurisdictions subject to this determination.

You are hereby authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 29, 2000.

Billing code 4710–10–M

Statements of Explanation

Afghanistan

In 1999 Afghanistan cultivated a larger opium poppy crop and harvested more opium gum than any other country by a wide margin. U.S. sources estimate a 23 percent increase in the opium harvest, while United Nations Drug Control Program (UNDCP) data point to a more dramatic 70 percent increase. There were also increases in the refining of opium into heroin and in drug trafficking from Afghanistan into neighboring countries. The largest of Afghanistan's factions, the Taliban, which controls 85–90 percent of Afghanistan and 97 percent of the area where opium is cultivated, derives significant income from every phase of drug production and trafficking. In spite of its own 1997 ban on the cultivation of opium poppy, the Taliban acknowledge they tax the crop at about 10 percent, and allow it to be sold in open bazaars. Crop taxation imparts legitimacy to opium cultivation and distribution, and means that the Taliban benefits directly from the entire opium business. The Taliban also receives payments directly from traffickers.

The United States Government (USG) has spoken about the drug problem directly with Taliban officials and indirectly through the UNDCP. We have repeatedly urged the Taliban to enforce its 1997 ban on opium poppy cultivation. The Taliban response was at least a 23 percent increase in opium production over 1998. We also urged the Taliban to honor its commitments to reduce poppy cultivation in exchange for the delivery of alternative development assistance. But in a Non-Governmental Organization (NGO) project area receiving generous USG funding, poppy cultivation surged 68 percent, according to a UNDCP survey. Heroin labs are proliferating throughout Afghanistan, particularly near international borders.

The Taliban claims success for some counter-drug measures. According to the UNDCP, the Taliban destroyed 34 drug laboratories. The Taliban also has made unverified claims of seizures of 500 kg of opium, 70 kg of heroin, and 1200 liters of acetic anhydride and other heroin production chemicals. The Taliban Leader, Mullah Omar, who promulgated the 1997 ban on opium cultivation, ordered a one-third nation-wide reduction in poppy cultivation for the 1999–2000 growing season but, as noted, past commitments were not honored.

Overall, there was a sharp increase in poppy cultivation, in refining of opium into heroin, and in trafficking of illicit opiates in Afghanistan. There is a growing body of evidence that the largest of Afghanistan's factions, the Taliban, is fully complicit in every phase of drug production and trafficking. Sharp increases in large-scale opium cultivation and trafficking in Afghanistan, plus the failure of the authorities to initiate an appropriate law enforcement response, preclude a determination that Afghanistan has taken adequate steps on its own or that it has sufficiently cooperated with USG counter-drug efforts to meet the goals and objectives of the UN 1988 Drug Convention, to which Afghanistan is a party. In the absence of verifiable and unambiguous steps by the Taliban to stop the promotion of poppy cultivation (such as an end to the opium crop tax), the United States and other concerned countries are compelled to redirect their counter-drug efforts to interdiction and border control strategies in surrounding countries.

The Bahamas

The Bahamas is a major transit country for drugs en route to the United States from South America and the Caribbean. The Government of the Commonwealth of The Bahamas (GCOB) and the USG continue to enjoy a productive counter-drug working relationship.

The Bahamas is a party to the 1988 UN Drug Convention, and the GCOB works to meet its goals and objectives as well as those of U.S.-Bahamas bilateral drug control agreements. The GCOB places a high priority on combating drug transshipments through its archipelago and works closely with

the USG on Operation Bahamas and Turks and Caicos (OPBAT). The USG looks forward to assisting The Bahamas to improve its maritime end-game capability, without which sustained drug interdiction, arrest and conviction of traffickers, and the forfeiting of their assets is improbable. Given the volume of commercial shipping through The Bahamas, the GCOB needs to rigorously implement its chemical control laws to prevent illegal diversion of precursor and essential chemicals.

Bahamian authorities continue monitoring bank compliance and investigating suspicious financial transactions under the 1996 money laundering law. Increased supervision of the offshore banking sector and training of all financial sector employees, however, will be necessary in order to increase the number of suspicious activity reports, which is still very small given the size of The Bahamas financial services sector. Despite several public statements of commitment, the GCOB has not established a financial intelligence unit (FIU) or to seek membership in the Egmont Group. In 1999, the GCOB passed legislation which allows designation of the United States under Bahamian asset forfeiture laws, based on reciprocity. This will allow Bahamian courts to enforce U.S. forfeiture orders in many cases.

The GCOB took further steps in 1999 to strengthen its judicial system, with USG assistance. Despite these efforts, no major Bahamian drug trafficker has been convicted in The Bahamas and sent to prison, due largely to continuing delays in the courts. In addition, weak bail laws allow arrested drug traffickers to obtain bail and continue transshipping drugs while awaiting trail. Notwithstanding committed and talented judicial leadership, The Bahamas needs to improve the effectiveness of its court system and its Attorney General's office in gaining convictions against major drug traffickers. The Bahamas also needs to improve its responsiveness to U.S. requests under the mutual legal assistance treaty (MLAT) and to speed the processing of extradition cases.

In October 1999, for the first time in recent history, a Bahamian law enforcement official was assassinated, allegedly by Bahamian drug dealers in retaliation for his stand against a corrupt official or to prevent his testimony. The GCOB should ratify the Inter-American Convention against Corruption and assure that corrupt public officials are effectively prosecuted. Finally, the GCOB needs to move quickly to complete and adopt a comprehensive national drug strategy containing goals and objectives as well as measures of effectiveness.

Bolivia

Exceeding the schedule of its own five year plan to eliminate all illicit coca from Bolivia, in 1999 the Banzer administration eradicated an unprecedented 16,999 hectares of coca, for a net reduction of 43 percent.

Although Bolivia remains the world's third largest producer of cocaine, with the ability to produce a potential 70 metric tons, Bolivian cocaine became less marketable in 1999 due to a very successful law enforcement effort to prevent precursor chemicals from being smuggled in from neighboring countries. As a result of significant law enforcement pressure, Bolivian cocaine producers were forced to use less efficient means of processing with substitute or recycled chemicals, and cutting agents, such as manitol. The purity of finished Bolivian cocaine hydrochloride (HCl) dropped to as low as 47 percent, causing Brazilian and other traffickers to buy only Bolivian cocaine base and finish the processing in Brazil.

The GOB began preparations for an eradication program in the Yungas in 2000 to eliminate the coca exceeding the legally allowable 12,000 hectares. There is evidence that Yungas coca is being diverted to the illicit market for conversion to cocaine products.

Despite a slight downturn in the Bolivian export sector in 1999, export volumes of nearly all alternative development crops improved. Banana exports to Chile and Argentina increased 20 percent over 1998. Demand for

alternative development assistance by former coca farmers, however, is exceeding supply.

In 1999, the Bolivian legislature enacted the final portion of the judicial reform package, the new code of criminal procedures. It establishes an accusatory, adversarial, oral, public criminal trial system that may also help to diminish corruption and improve the credibility of the judicial system. The new code permits the police to use undercover agents and to make controlled deliveries of illicit drugs and other contraband. The Judicial Council, created in 1998 to depoliticize the selection of judges and to serve as a mechanism for disciplining members of the judiciary, had some of its powers to administratively remove corrupt judges diminished by the Constitutional Tribunal, which ruled that members of the judiciary can only be removed subsequent to a final judgement by a criminal court.

For the third year since the passage of the anti-money laundering law, no action was taken against money laundering. The legal ambiguities regarding asset seizure and forfeiture have not been resolved, and the system remains inefficient.

Brazil

Brazil is a significant transit country for illicit drugs en route to the United States, and a major producer of precursor chemicals and synthetic drugs. Since taking office in 1995, the administration of President Fernando Enrique Cardoso has demonstrated a firm commitment to countering the flow of illegal drugs through Brazilian territory, and to establishing an effective law enforcement infrastructure capable of taking action against the domestic and international criminal syndicates engaged in drug trafficking. In 1999, the Government of Brazil (GOB) worked closely with regional neighbors and U.S. law enforcement agencies in pursuit of mutual counterdrug objectives, achieving particularly impressive results against corruption and money laundering.

The most visible initiative in 1999 was the formation in April of the Congressional Panel of Inquiry (CPI) on drug trafficking. The Panel's high-profile investigations into the country's organized drug networks have led to over 115 arrests, including many tainted government officials. Through its actions, the CPI has illustrated the drug trade's corrosive effect on public institutions and energized previously isolated voices against corruption and trafficker impunity.

Criminal interests have long exploited Brazil's highly developed financial sector, particularly as a haven for illicit-drug profits. In 1999 the GOB demonstrated a firm commitment to fighting the problem of money laundering, and implemented regulations to increase the effectiveness of Brazil's anti-money laundering regime. The Brazilian Central Bank created a special internal agency to trace money laundering, and Brazil joined the Financial Action Task Force (FATF) and the Egmont Group, two international bodies charged with improving anti-money laundering efforts.

Brazilian authorities seized more cocaine in 1999 than in 1998, and cannabis seizures increased by six-fold. As in past years, Brazilian authorities identified no opium or coca production in 1999. The GOB acted vigorously against cannabis production in the country's northeast, eradicating over three times as many hectares as in 1998.

Burma

Burma is the world's second largest source of illicit opium and heroin, exceeded only by Afghanistan, and currently accounts for approximately 80 percent of the total production of Southeast Asian opium. Largely due to severe drought conditions in poppy growing areas, production and cultivation continued to decline significantly in 1999 for the third year in a row. In 1999 there were an estimated 89,500 hectares under opium poppy cultivation, down 31 percent from 1998. This hectarage yielded a maximum of 1,090 metric tons of opium gum, 38 percent lower than in 1998 and less

than half the average production during the last decade. The Government of Burma (GOB) maintained most of its opium crop-eradication efforts and expanded the program to an additional 9,800 acres.

Seizures of methamphetamine in 1999 exceeded 1998's record figures, although opium and heroin seizures were well below 1998 levels. Burma made its first airport seizures of illicit drugs in 1999. While there were cases of drug interdiction and arrests of members of some cease-fire groups for drug trafficking, the GOB has been unwilling or unable to take on the most powerful groups directly. Cease-fire agreements with insurgent ethnic groups dependent on the drug trade implicitly tolerate continued involvement in drug trafficking for varying periods of time. The ethnic armies, such as the United Wa State Army and the Myanmar National Democratic Alliance Army, remain armed and heavily involved in the heroin trade.

The GOB expressed support for eradication efforts, crop substitution, and development assistance, but allocated few resources to such projects. GOB policy is to force the leaders in the ethnic areas to spend their own revenues, including from the drug trade, on social and physical infrastructure. The approach limits the GOB's ability to continue or expand its counter-drug efforts.

Burma's 1993 Narcotic Drugs and Psychotropic Substances Law conforms to the 1988 UN Drug Convention and contains useful legal tools for addressing money laundering, seizing drug-related assets, and prosecuting drug conspiracy cases. GOB officials, claiming they lack sufficient expertise, have been slow to implement the law, targeting few, if any, major traffickers and their drug-related assets. Money laundering in Burma and the return of drug profits laundered elsewhere are thought to be significant factors in the overall Burmese economy, although the extent of this problem is impossible to measure accurately. The cease-fire agreements condone money laundering, as the government encouraged these groups to invest in ''legitimate'' businesses as an alternative to trafficking, thus extending to them the opportunity to sanitize past illicit proceeds with investments in hotels and construction companies, for example.

The Burmese continued to refuse to render drug lord Chang Qifu on grounds that he had not violated his 1996 surrender agreement. The 1988 UN Drug convention obligates parties, including Burma, to prosecute such traffickers.

The GOB's counter-drug efforts in 1999 showed progress in a number of areas: methamphetamine and ephedrine seizures increased; crop eradication continued with modest expansion; anti-drug forces conducted more vigorous law-enforcement efforts; and members of some cease-fire groups were arrested for drug trafficking. Such efforts must be stepped up, however, if they are to have a significant impact on the overall trafficking problem.

On balance, the USG remains concerned that Burma's efforts are not commensurate with the extent of the drug problem within its borders. Large-scale poppy cultivation and opium production continue, decreasing in the last few years largely because of severe drought conditions rather than eradication programs. The GOB's effective toleration of money laundering, its unwillingness to implement its drug laws, and its failure to render notorious traffickers under indictment in the United States all continue to be serious concerns.

Cambodia

In view of Cambodia's geographic location and general state of lawlessness, it is likely that drugs transited Cambodia en route the West, including the United States. For that reason, Cambodia was designated a major drug transit country in 1999. Political turmoil in Cambodia has effectively precluded a fully credible anti-drug effort for the last two years. Although Cambodia has taken some positive steps to improve drug enforcement in 1999, these steps were insufficient to qualify for full certification.

Steps forward included increased emphasis on eradication of illicit marijuana plantations. Prime Minister Hun Sen and others have publicly threatened provincial governors with dismissal if they tolerate marijuana cultivation. At least one large (160 hectare, or about 400 acre) plantation was eradicated as the deadline for certification approached. There were also several first-time drug seizures at Phnom Penh's international airport. The President and the Chief Prosecutor of the Phnom Penh Municipal Court were removed for corruption; other judges are under investigation. A police commander, suspected of dealing in illicit drugs was removed, and Cambodia reorganized a supervisory coordinating agency called the National Drug Policy Board, replacing officials generally viewed as ineffective with more respected officials. High level government officials made statements emphasizing their opposition to synthetic drug production in Cambodia, and pressed efforts to confiscate unauthorized weapons, both positive steps in countering a drift towards lawlessness. Cooperation with the U.S. Drug Enforcement Administration (DEA) was excellent.

Corruption remains an endemic problem in Cambodia, however, and this problem adversely affects drug law enforcement. Poorly paid and ill-trained police and judicial officials have frequently looked the other way in drug and other criminal cases. Cambodia remains a refuge for criminal elements because enforcement is ineffective and corrupt officials can be paid to release those that may be apprehended. The combination of incompetence and venality, even at high levels in government and the police, pose an ongoing challenge to improved drug law enforcement. In short, there has been no fundamental institutional reform to meet the law enforcement challenge Cambodia faces from drug traffickers and other lawless elements. Thus, despite some improvements, Cambodia still failed to meet the legal standards for full certification.

A vital national interests certification is necessary this year in order to protect U.S. vital national interests in Cambodia, including promoting democracy in Cambodia and stability in the region. Democracy in Cambodia is not yet firmly established. The democratically-elected coalition government, which came to power in Cambodia last year continues to face enormous challenges on all fronts, including the formation of an international tribunal to try former leaders of the Khmer Rouge. Cambodia also remains vulnerable to drug trafficking and other crime upsurges. Should counter-drug sanctions be imposed, it would not be possible for the United States to provide strategically-placed assistance to respond to potential crises or to strengthen Cambodia's economic and institutional bases for a democratic system. On balance, the risks to U.S. interests in promoting democracy and stability in the region if counter-drug sanctions were imposed would outweigh the risks posed by Cambodia's failure to fully implement effective drug control.

Colombia

Colombia remains the world's largest cocaine producer: over three-quarters of the world's cocaine hydrochloride is processed in Colombia. Still, Colombia met the certification criteria in 1999 due to important strides made in combating illicit drugs and its full cooperation with USG counter-drug efforts. The Pastrana administration has demonstrated a clear commitment to combating the illegal drug industry in Colombia. That commitment led to a number of very concrete achievements in 1999.

In September, the Government of Colombia (GOC) unveiled its ''Plan Colombia,'' a comprehensive strategy to address the many interrelated challenges facing the country. The USG supports the work of the GOC in formulating and beginning to implement this comprehensive strategy. Importantly, both ''Plan Colombia'' and the Pastrana administration's National Drug Control Strategy couple alternative development with aerial eradication of illicit crops.

Colombian authorities continued to cooperate with the USG on a variety of specific projects. In October, Operation Millennium, a coordinated operation among Colombian, Mexican and U.S. law enforcement agencies, resulted in the arrest of more than 30 suspects.

The Colombian National Police (CNP) continued its outstanding counter-drug tradition. The CNP received increased support from the Colombian armed services and is poised to begin joint operations in southern Colombia with the army's first special counter-drug battalion. Such joint operations are vital for the future of the program due to the threat to counter-drug operations from heavily armed traffickers and other illegal armed groups that are involved in many aspects of drug trafficking.

The GOC made particularly strong advances in combating maritime trafficking. A port security program is now operating in all of the nation's major ports, and in the past year resulted in the seizure of 16 metric tons of cocaine. In September, a standing interdiction operations plan was signed to augment an existing maritime agreement, leading to three U.S.-Colombian combined maritime interdiction patrols. Also in September, U.S. and Colombian authorities reached an accommodation concerning the volume of evidence required by Colombian prosecutors and other evidentiary concerns.

GOC efforts have also focused on drug trafficking by air. The percentage of successful Colombian Air Force (FAC) interdiction attempts has increased from 25 percent in 1997 to nearly 40 percent in 1999. At the same time, the number of suspicious aircraft which radar has detected flying to or from Colombia has fallen from 231 in 1997 to fewer than 100 in 1999. The CNP's civil aviation registration program inspected 343 aircraft in 1999, seizing 50 of these for violations.

The aerial eradication program succeeded in treating more than 50,000 hectares of illicit crops in 1999, although totals were less than last year's record level. The CNP also had a strong year in terms of seizures, totaling 30 metric tons of cocaine hydrochloride and base, 140 metric tons of coca leaf, and 644 kilos of heroin, morphine and opium.

The level of cooperation between the Colombian military and police continued to improve in 1999. Information sharing advanced to a higher level with the inclusion of both military and CNP personnel at the Joint Intelligence Center (JIC), while interdiction and eradication efforts both received a boost with the creation of the new counter-drug battalion. Created to work hand-in-glove with the CNP's anti-drug units, the battalion will provide the police with needed support as operations move into high-risk, coca-rich areas such as Putumayo Department.

In November, the GOC extradited alleged heroin trafficker Jaime Orlando Lara Nausa, the first Colombian citizen extradited to the United States in nine years. Behind the very public leadership of President Pastrana, Colombian officials proceeded despite drug traffickers' attempted legal roadblocks and bombings possibly linked to the extraditions. This commitment demonstrated the GOC's willingness to send drug traffickers to justice in the United States regardless of citizenship.

GOC officials also enacted important institutional changes in 1999. The National Judicial Police Council adopted a unified training curriculum and made it mandatory for all Colombian investigators after January 2000. For the first time, all Colombian law enforcement investigators will receive the same training.

Overall, Colombian counter-drug efforts continued to improve in 1999, demonstrating the true commitment of the Pastrana administration to cooperate fully with the United States in combating the illegal traffic in drugs.

Dominican Republic

The Dominican Republic is a significant transit country for South American drugs, mostly cocaine, moving to the United States. Drugs are transported

into the Dominican Republic by air, sea, and across the land border with Haiti. They are then moved onward by air and sea to Puerto Rico and mainland United States.

During 1999, the Government of the Dominican Republic (GODR) continued to cooperate fully with the USG on counter-drug goals and objectives.

The GODR extradited nine Dominicans to the United States in 1999, and kept several other fugitives in custody awaiting decisions on extradition requests. The National Drug Council (CND) drafted a National Drug Strategy. A group of private attorneys energetically promoted the passage of a newly drafted anti-money laundering bill modeled on current Organization of American States (OAS) standards. The GODR began the process of developing an anti-corruption bill. The draft strategy and both bills are scheduled for submission to congress in 2000.

A ministerial-level bilateral meeting with Haiti achieved historic border control accords, which were subsequently approved at the highest levels of the GODR. In 1999, the GODR activated a fourth border control unit, deployed its drug detection dog unit to the Haitian border, and took steps to double the size of the dog unit in 2000.

Dominican forces participated in combined operations under the bilateral Maritime Counter-drug Interdiction Agreement. The GODR extended for one-year temporary overflight authority for USG anti-drug aircraft and vessels. In cooperation with the U.S. military, the Dominican Navy and Army engaged in joint counter-drug exercises.

The National Drug Control Directorate (DNCD) worked closely with its counterpart, the DEA, on drug, fugitive, and special investigations, drug operations, and border interdiction during 1999. DNCD has begun to require its special unit personnel to take polygraphs, and has also initiated pre-employment and periodic random drug testing for its employees.

For the first time, the GODR authorized wiretaps for use in drug prosecutions. It also arrested and jailed on passport fraud charges the top money manager for the Coneo family, the dominant Colombian drug trafficking organization operating on Hispaniola.

We will continue to encourage the Dominican Republic to regularize its extradition process. GODR should also: act on a pending amendment to enhance the bilateral maritime agreement; increase cocaine seizures, which amounted to less than half the amount seized in 1998; and strengthen its weak judicial system, which continues to hamper law enforcement efforts.

Ecuador

Ecuador continues to serve as a major transit route for cocaine destined for the United States, and for precursor chemicals destined for drug processing labs in Colombia and Peru. Despite suffering under the effects of the country's worst economic crisis in seventy years, the Government of Ecuador (GOE) pursued an active counter-drug agenda in 1999 to considerable effect, and cooperation between the GOE and the USG was excellent.

The Ecuadorian National Police (ENP) seized a record 10 metric tons of cocaine and coca base in 1999, more than doubling 1998's total of 3.9 metric tons. Heroin seizures also increased significantly, from 58 kilograms in 1998 to 81 kilograms in 1999. The ENP also seized a record amount of methyl ethyl ketone (MEK) and other precursor chemicals.

Along with these tactical successes, the GOE implemented structural reforms to their judicial system and law enforcement agencies that have the potential to enhance the country's law enforcement infrastructure. A unified anti-drug division was established within the ENP, consolidating various specialized interdiction units into a coherent organization for the first time. The customs service was privatized to maximize efficiency and bolster interdiction efforts. In November 1999, the Ecuadorian Congress passed a new criminal procedural code, intended to alter the country's criminal justice

system from a secretive, inquisitorial to an open, accusatorial system similar to the U.S. model. In addition, the GOE published a five-year counter-drug strategy which clearly identifies the roles and responsibilities of relevant GOE agencies in the fight against international drug trafficking.

The GOE also increased its commitment to regional interdiction efforts, most visibly in November 1999 when the GOE and the USG completed a 10-year agreement permitting U.S. regional counter-drug detection and monitoring missions to operate from an Ecuadorian air force base in Manta. The GOE also completed a Joint Information Coordination Center (JICC) in Guayaquil, and plans to integrate this center with the national anti-drug division headquarters.

Guatemala

In 1999, President Arzu continued to implement the peace accords that ended 36 years of internal conflict. Government of Guatemala (GOG) efforts are now focused on combating violent crime, organized crime and other domestic problems. The GOG fully cooperated with the United States in combating counter-drug trafficking in Guatemala and elsewhere in the region. Guatemala has taken steps to implement, at the operational level, the provisions of the 1988 UN Drug convention. However, legislative support for ratification of a full maritime counter-drug agreement and adoption of money laundering legislation has not yet been obtained.

Guatemala's location, scarce law enforcement resources, and a weak judiciary and penal system permitted its continued use by traffickers as a transshipment and storage point for cocaine destined for the United States via Mexico. Along with increased use of motor vehicle and container shipments, there has been an increase in airdrops of illicit drugs over Guatemalan territory for consolidation and transshipment. With USG assistance, the Department of Anti-Narcotics Police (DOAN) has stepped up training to develop air interdiction and related capabilities. The expanding self-funded port security program and the trained DOAN agents have made impressive seizures in the past year.

The consolidation of the National Civilian Police (PNC) continues on track with full integration of the DOAN. The USG-trained DOAN seized over 10 metric tons of cocaine in 1999. This year the drug prosecutor assistance program maintained its 90 percent conviction rate, with some traffickers receiving sentences of up to 20 years. Somewhat disturbing, however, were several cases in which judges released suspected drug traffickers on questionable grounds. The new drug prosecutor's field office opened this year in Quetzaltenango accounted for 110 successful prosecutions in 1999.

Guatemala is a party to the 1988 UN Drug Convention, and most GOG law enforcement activities are fully consistent with its goals and objectives. However, some of the convention's provisions have not been codified into law and regulations, including provisions on extradition and money laundering. The GOG does not encourage or facilitate illicit production or distribution of illicit drugs or controlled substances.

In 1999 the GOG began implementation of its national drug policy, the anti-drug master plan and national strategy which incorporates both demand and supply reduction objectives to be accomplished by specified ministries. The GOG provided additional funding to the plan's implementers to attack the alarming increase in drug abuse documented last year. The GOG also took major steps in implementing assets seizure and precursor chemicals regulations.

Haiti

Haiti is a significant transshipment point for drugs, primarily cocaine, moving through the Caribbean from South America to the United States. The USG cannot certify Haiti as having fully cooperated with the United States on drug control, or as having taken adequate steps on its own, to

meet the goals and objectives of the 1988 UN Drug Convention, to which Haiti is a party. However, U.S. vital national interests require that foreign assistance continue to be provided to Haiti.

The USG recognizes that because Haiti had no Parliament during 1999, no legislation could be enacted or international agreements ratified. However, Haiti failed to make sufficient progress on many anti-drug objectives that did not require parliamentary action, but only implementation by the Government of Haiti (GOH). The GOH failed to: draft or update any pending anti-money laundering or anti-corruption legislation; revise and implement the draft national drug control strategy; create mechanisms to enforce standards of conduct and liabilities for GOH officials in accordance with the Declaration of Principles signed by Haiti at the 1997 Bridgetown Summit; vigorously investigate and prosecute drug-related corruption involving GOH officials; resolve and report on the ''450 kilo affair'' in which policemen were allegedly involved in the 1998 theft of a large cocaine shipment; set up a special financial analysis unit to combat money laundering; and join the Caribbean Financial Action Task Force (CFATF).

Haiti also failed to make sufficient progress in the area of law enforcement. Part of its overall lack of success in this area is due to Haiti's inadequate judicial system; the still limited capabilities of the five-year-old Haitian National Police (HNP); and the inexperience of the three-year-old police anti-drug unit (BLTS). In addition, the HNP currently does not have the ability to intercept drug airdrops. The GOH failed to increase its drug seizure rate over 1998's performance; the amount of cocaine seized in 1999 was one-third that of 1998, although the estimated flow of cocaine increased by nearly one-quarter. The GOH also failed to double the size of the BLTS as planned, or to enforce interagency cooperation between the HNP and the customs and immigration services. This lack of cooperation continues to impede counter-drug efforts inside the customs control areas at the airport and other ports of entry in Haiti.

GOH's international cooperation in 1999 was significant, including ongoing implementation of the 1997 U.S.-Haiti maritime counter-drug interdiction agreement even though parliamentary action to bring the agreement into force has not yet been accomplished. GOH cooperated with several international counter-drug operations, one of which resulted in the arrest and expulsion from Haiti of two key members of a major international drug operation. Haitian authorities also continued to work with their counter-drug counterparts in the Dominican Republic to stem the flow of illicit drugs over the land border.

U.S. vital national interests require that Haiti be certified. A cutoff of bilateral assistance mandated by denial of certification would threaten security and democratic stability in Haiti, both of which bear immediately and directly on U.S. ability to disrupt the flow of both illicit drugs and undocumented Haitian migrants into the United States. A cutoff would require termination of important USG initiatives, including programs targeting electoral support, police development, economic growth, education, social stability, hunger and environmental degradation. These programs attack the roots of Haitian poverty and hopelessness, chief catalysts for Haitian involvement in the drug trade and illegal immigration into the United States. The programs also address the underlying problems in the Haitian law enforcement and judicial system, especially endemic corruption and the lack of a strong professional tradition, both of which contribute to weak counter-drug performance. If critical U.S. aid is withdrawn, and U.S. support for the electoral process and public security is curtailed, assistance to illicit traffickers of drugs and migrants will be an unintended consequence.

The risks posed to U.S. vital national interests by a cutoff of bilateral assistance outweigh the risks posed by Haiti's failure to cooperate fully with the USG, or to take adequate steps on its own, to combat the illicit drugs. Accordingly, Haiti is granted a vital national interests certification.

Hong Kong

Although the USG continued to view Hong Kong as a major drug transit center in 1999 because of its location and developed infrastructure, Hong Kong's role as a major transit/staging area for the shipment of heroin and methamphetamine to the United States appears to have diminished over the last three years.

In 1999 Hong Kong continued its exemplary efforts to stop illicit drugs from being trafficked across its border with China and through its port. Through October 1999, Hong Kong officials seized 205 kilograms of heroin (nearly the amount seized in all of 1998), 35.8 kilograms of cannabis, 16.7 kilograms of cocaine, and 9,811 kilograms of methamphetamine. In the same period, 7,620 individuals were arrested for drug-related offenses. Drug-detection capabilities were enhanced in several important areas: the number of drug-sniffing dogs at the border and airport increased from 124 to 133; and high-tech equipment was procured to detect illicit drugs in packages, facilitate the inspection of baggage and cargo, and use in clearing air and sea cargo.

With respect to precursor chemicals, Hong Kong amended legislation to tighten control of the transshipment, removal, and storage of potassium permanganate and to require a license from the Commissioner of Customs and Excise before potassium permanganate can be imported, exported, or manufactured. Control of several additional chemicals was also tightened in 1999 in response to resolutions passed by the UN Commission on Narcotic Drugs. The legislature also began working to amend legislation to enhance control of norephedrine.

Hong Kong also introduced new legislation to strengthen the anti-money-laundering regime and laws affecting drug profits and organized crime. New reporting requirements for financial transactions went into effect, and sentences for money laundering have been lengthened.

Hong Kong and U.S. law enforcement agencies continued to cooperate effectively on investigations into the movement of illegal drugs and on money-laundering cases. The Mutual Legal Assistance Agreement received legislative approval in Hong Kong and will enter into force in early 2000. The Transfer of Sentenced Persons Agreement with the United States and with Sri Lanka came into force. Hong Kong also concluded similar agreements with other countries and the European Union.

In 1999 Hong Kong continued to implement new initiatives to strengthen its already outstanding counter-drug efforts, and Hong Kong authorities at all levels continued their close cooperation with the United States and other countries to defeat drug trafficking.

India

India is the world's largest producer of licit opium. Located between Afghanistan and Burma, the two primary world sources of illicitly grown opium, India also is a transit point for heroin, generally destined for Europe. Heroin is produced in and trafficked through India, but evidence to indicate that significant quantities of heroin from India reach the United States is scant. The Government of India (GOI) has a cooperative working relationship with DEA, and India is a party to the 1988 UN Drug Convention.

The GOI uncovered a trafficking network operating in several Indian cities to ship locally-produced heroin to Sri Lanka, and seized a related heroin lab and over 100 kg of heroin. The GOI also broke up and arrested an international trafficking operation routing Afghan heroin to North America and seized 77 kilograms of heroin. Overall, heroin seizures rose 7 percent. More importantly, two well-organized trafficking operations were disrupted.

The GOI tightened controls on the precursor ephedrine hydrochloride by listing it as a controlled substance under its Narcotic Drugs and Psychotropic Substance Act. The GOI traced 9 tons of acetic anhydride intended

for Afghanistan and had it seized in Dubai. The GOI enacted money-laundering legislation at the end of 1999.

The GOI annually takes forceful steps to prevent illicit cultivation and production. The GOI appears to have had genuine success in reducing illicit poppy cultivation, which in 1999 was just a fraction of what it was five years ago. India met formally with Pakistan in 1999 to discuss drug matters and is committed to continuing the process and to developing practical results, which have been limited to date. In 1999 India also met with Burmese officials to discuss cross-border counter-drug issues.

Production and stockpile of licit opium in India has clearly not exceeded licit demand. On the contrary, India's stockpile has been barely adequate for some time. The GOI did not make as much progress as hoped for this year in rebuilding its depleted buffer stock of licit opium. With excellent weather, the harvest should have been 1300 metric tons, but at least in part due to some diversion from licit production, the harvest was only 971 tons, too small to rebuild stocks to levels recommended by the International Narcotics Control Board (INCB). The GOI did boost opium production from 260 to 971 metric tons, sufficient to satisfy international demand for licit opium, even if carry-over stocks remain inadequate.

India is the only licit opium producing country with a notable diversion problem. However, the exact extent of this diversion is unclear. India has had an elaborate and expensive-to-maintain system in place to counter this threat of diversion for years, and India took important additional steps to avert diversion this year. For example, to discourage diversion of licit opium, the GOI raised prices paid to farmers, and added other incentives for higher yields. The GOI also threatened stiff penalties for those convicted of diversion. Licit opium diversion controls expanded in 1998–1999 and have been continued in 1999–2000. Still, credible reports suggest that diversion may have increased during the 1998–1999 growing season despite GOI actions. Although India is taking adequate steps to prevent significant diversion, there are additional measures India could take to improve its control regime. The GOI has not yet agreed to USG suggestions to undertake a comprehensive joint licit opium yield survey, which would provide a firmer scientific basis for the GOI to set Minimum Qualifying Yields (MQY) for farmers. Setting these yields correctly, by region, helps limit diversion.

Jamaica

Jamaica is a major transit point for South American cocaine en route to the United States as well as the largest Caribbean producer and exporter of marijuana. During 1999, the Government of Jamaica (GOJ) made progress towards meeting the goals and objectives of the 1988 UN Drug Convention. At regional meetings, GOJ officials actively supported counter-drug initiatives. Bilateral counter-drug cooperation is good and improving. In the area of maritime law enforcement, Jamaican forces continued to participate in combined operations under the U.S.-Jamaica bilateral maritime agreement.

In March 1999, Jamaica took an important step in its effort to create an anti-money laundering regime which meets international standards by amending the 1996 Money Laundering Act to require the reporting of suspicious transactions. However, further amendment to the law is required to address the critical issue of money laundering in relation to the proceeds of other serious crime. The GOJ has stated that, as a first step, it has drafted amendments to the money-laundering act that will add fraud and firearms offenses as predicate offenses. The GOJ is in the process of establishing a financial analysis unit to identify money-laundering activities, but has not yet provided staff for the unit. Jamaica's current asset forfeiture regime does not permit the GOJ to take full advantage of the forfeiture mechanism to augment the resources of its anti-drug agencies and deprive criminals of the proceeds of their crime. Current law requires the conviction of a criminal drug defendant prior to commencing a forfeiture action. In

1999, Parliament passed legislation permitting the GOJ to enter into agreements with other governments to share assets confiscated from drug traffickers and other criminals. The GOJ enacted a Precursor Chemicals Act and has budgeted for implementation of chemical controls. In late 1999, the GOJ introduced a bill in Parliament establishing drug courts; the bill passed both houses and now awaits the Governor General's signature.

Transparency International and other organizations have reported that corruption is viewed as a grave problem in Jamaica—drug trafficking adds to the problem. The GOJ's anti-corruption legislation, introduced in Parliament in 1998, passed the House and Senate in different versions; a compromise bill is currently being crafted by a joint select committee of Parliament. The GOJ's position is that passage of the Anti-Corruption Act must occur before it can ratify the Inter-American Convention Against Corruption, which Jamaica signed in March 1996. The GOJ has a policy of investigating credible reports of police corruption, including those related to drugs, but more needs to be done to root out corruption in the public sector.

The GOJ extradited four people to the United States in 1999; there are sixteen active pending extradition requests. In 1999, the GOJ developed, with USG assistance, a special fugitive apprehension team to target and apprehend fugitives from justice. The team has thus far located three fugitives and provided information for several U.S.-based investigations. The GOJ arrested 6,718 drug offenders in 1999. Nevertheless, no major drug traffickers were arrested or convicted during 1999, and they continue to operate with apparent impunity. The GOJ agreed in 1998 to develop a vetted special investigative unit to target drug kingpins, but the unit is not yet in existence. While the GOJ has stated its intention to enact wiretap legislation, the proposal for such legislation is still under discussion in the Cabinet.

The GOJ exceeded the marijuana eradication goal of 800 hectares set out in the Fiscal Year 1998 Letter of Agreement (LOA) with the USG. In addition, the GOJ agreed in the LOA to pay a share of the marijuana eradication teams' salaries, currently funded by the USG, beginning in June 2000. While the GOJ made some progress in implementing the recommendations contained in a 1997 assessment, security at Jamaica's ports remains a concern. The GOJ needs to take steps to improve security at its ports, including implementation of the remaining recommendations from the 1997 assessment. Additionally, the GOJ should consider providing the means to admit evidence obtained by ion scan technology in Jamaican courts. The GOJ has in place a national drug control strategy that covers both supply and demand reduction; the GOJ should add to its strategy specific goals and objectives and measures of effectiveness. Jamaica is a party to the 1988 UN Drug Convention.

Laos

Laos is a major drug-producing country; it remains the world's third largest producer of illicit opium, behind Afghanistan and Burma. Although opium cultivation fell 16 percent in 1999, the USG estimates Laos' opium production for that year at 140 metric tons, identical to the 1998 estimate. Somewhat improved weather conditions increased estimated average yields, allowing total production to remain unchanged. Crop substitution project areas funded by the USG continued to show no commercial opium cultivation, only low level production sufficient for some local addict consumption.

Laos cooperates with the USG and the UNDCP on crop control/substitution projects designed to eliminate opium cultivation. The administration of Phongsali Province is providing enthusiastic support for the new USG-funded project there. The province administration assigned support personnel, held a meeting of district directors from throughout the province, and is expressing full support for the project to village headmen. In May 1999, the Government of Laos (GOL) agreed to a joint goal with the UNDCP to eliminate opium cultivation in Laos within six years; efforts to raise the estimated $80 million needed to reach this goal are underway. The highland farmers who grow opium now have no other viable option. Even if the farmers understood

how to grow other crops and had the wherewithal to do so (neither of which is the case) they would lack accessible markets for their products. An ambitious project, requiring years of careful planning and implementation, is essential to create an alternative to opium. Such a plan would need alternative development, law enforcement, and demand reduction elements. Once developed, the plan would replace the previous GOL counter-drug master plan, which dates from 1993 and was also developed with UNDCP assistance.

Law enforcement efforts continue. USG-funded counter-drug offices law enforcement offices were opened in two more provinces. These offices, now in six provinces, along with other provincial police offices, reported 143 drug-related criminal cases in 1999, resulting in the arrests of 348 suspects (including 10 foreign nationals). Most arrests were of small-scale traffickers. These cases involved the seizure of 14.7 kilograms of heroin, 225.8 kilograms of opium, 806,700 methamphetamine tablets, and 2.2 metric tons of marijuana. Opium and heroin seizures fell significantly from record 1998 levels, as there was no case to match the 1998 destruction of a heroin laboratory. The number of arrests and quantity of opium seized are roughly equal to last year's totals, but the quantity of heroin seized has fallen significantly from the past two years. Methamphetamine seizures rose slightly. The quantity of heroin has dropped, in part, because none of the seizures was a very large shipment. Furthermore, it is believed traffickers have changed their routes and methods. For example, seizures in the United States of opium-filled parcels from Laos have jumped.

The GOL works very closely with its foreign assistance partners to combat drug trafficking and has registered steady progress this past year. The GOL also continues its important efforts to address the socio-economic problems underlying poppy cultivation. Corruption and inefficiency remain significant challenges to Lao counter-drug efforts. The GOL should continue to work with its foreign assistance partners to improve the administration of justice and to find alternatives to growing poppy.

Mexico

In 1999, the Government of Mexico (GOM) made substantial efforts to confront the major threats to public health and democratic institutions posed by transnational drug-trafficking organizations. Agreement on unprecedented, bilaterally negotiated Performance Measures of Effectiveness (PMEs) enhanced maritime cooperation, and performance improvements in the interdiction/eradication realm were encouraging. Corruption and judicial obstacles to the swift extradition of fugitives, however, remained impediments to a more productive counter-drug relationship.

A new $500 million public security plan, including establishment of the new Federal Preventative Police, complemented close bilateral counter-drug cooperation in 1999. That undertaking, which will take several years to implement fully, restructures several existing law enforcement agencies, and has already begun to improve police coverage and crime investigation. Steps are underway to acquire new technology, such as aerial radar platforms and upgraded telecommunications, and redistribute land, air, and maritime assets to improve coverage of priority areas. An interagency interdiction operation disrupted a major cartel's operations on the Yucatan Peninsula as part of a broad-based effort to reduce the flow of drugs into Mexico from Central and South America.

Marijuana eradication was up 39 percent over 1998 and net production down 19 percent for the year. Eradication of opium poppy, while down 10 percent from 1998, combined with reduced cultivation to yield a more than 25 percent drop in net opium gum production. The GOM made over 8,000 drug-related arrests, including: major cartel co-founder Juan Quintero Payan and key associates Oscar Benjamin Garcia Davila and Jaime Aguilar Gastelum. The Mexican Congress passed a new law codifying the use of seized/forfeited assets and creating a new office in the treasury ministry to manage these assets.

Mexico's achievements continued to be undermined by chronic institutional weaknesses, particularly drug-related corruption. The GOM has taken steps to strengthen internal controls, including expanding the mandate of the Attorney General's Office's (PGR) confidence control center and investigating numerous individual cases of suspected corruption. One such investigation implicated former Quintana Roo Governor Mario Villanueva, currently a fugitive from justice. President Zedillo has made combating corruption a national priority, but he acknowledged success will take time.

The USG and GOM cooperated closely on a wide range of law enforcement and drug abuse prevention efforts in 1999, guided by a National Drug Strategy agreed to in 1998 and accompanying PMEs. The first formal evaluation of the PMEs was completed in December 1999. Significant maritime seizures in the final seven months of year demonstrated enhanced U.S.-Mexican cooperation, as did agreement by the two countries in November to establish a new interdiction working group under the binational High-Level Contact Group on Drug Control (HLCG). The USG provided technical and material support and training to Mexican agencies in furtherance of the GOM's justice sector modernization initiative, demand reduction programs and other efforts.

In 1999, the USG and GOM continued to work closely on fugitive issues. The GOM extradited 14 fugitives to the United States, including two Mexican national drug traffickers, one of whom was also sought for the murder of a U.S. Border Patrol agent. In keeping with its historic 1996 decision to begin approving Mexican nationals for extradition in appropriate cases, the GOM appealed, with mixed results, several Mexican appellate court decisions barring extradition. The GOM has appealed to the Mexican Supreme Court a case which could resolve conflicting decisions by lower appellate courts and, thus, expedite delivery of fugitives in the future. Regrettably, Mexico has yet to extradite a major Mexican national drug trafficker.

The USG and GOM are committed at the highest levels to continued cooperation in efforts to defeat and dismantle heavily armed and well-financed trans-border drug trafficking organizations. In recent years, the two governments have constructed an unprecedented framework for coordination, a mechanism for evaluation, and fora for regular consultation on counter-drug issues. Through daily working-level interaction between counterpart agencies, policy-level discussions in the HLCG and other bilateral entities, and collaboration in multilateral groups, the two governments are finding increasingly productive ways to work together against the formidable threat drug trafficking poses to both nations.

Nigeria

Nigeria has failed to fully meet the criteria for cooperation with the United States on counter-drug matters and has not taken adequate steps on its own to meet the goals of the 1988 UN Drug Convention. U.S. vital national interests, however, require that Nigeria be certified so that the assistance that would otherwise be withheld remains available to support the continuing transition to democratic civilian rule and the increased efforts to improve cooperation on drug and other crime issues evident under the democratic government.

Nigeria remains the hub of African drug trafficking. Nigerian poly-crime organizations operate extensive global trafficking networks, dominate the Sub-Saharan drug markets, and account for a large part of the heroin imported into the United States. They also transport South American cocaine to Europe, Asia and elsewhere in Africa, especially South Africa, and export marijuana to Europe and West Africa.

The counter-drug efforts of the Government of Nigeria (GON) remain unfocused and lacking in material support. The new democratic government of President Obasanjo's strong public denunciation of drug trafficking and financial crimes is a welcome change from the high-level indifference that characterized most of Nigerian military rule. However, there have been no new actions or policies to bring about change.

The year 1999 saw the continuation of efforts limited largely to interdiction of low-level couriers and destruction of cannabis crops. Although the new government signaled its willingness to work with the USG on extradition issues, Nigeria did not extradite anyone in response to outstanding U.S. extradition requests. Well-drafted counter-drug legislation is already on the books, but remains largely un-enforced.

Nigerian law enforcement agencies did not significantly improve their counter-drug performance in 1999. There were no major trafficker prosecutions or arrests by the National Drug Law Enforcement Agency (NDLEA) in 1999. Total heroin seizures increased, due primarily to a large seizure at Kano Airport. The NDLEA has signaled a willingness to increase its professional expertise, but institutional limitations make it difficult for Nigerian law enforcement officials to make progress against increasingly sophisticated criminals. Asset seizures did not become a useful counter-drug tool. Awareness of the local drug abuse problem is growing, but demand reduction efforts have been limited in scope and success.

Nigerian money launderers operate sophisticated global networks to repatriate illicit proceeds from drug trafficking, financial fraud, and other crimes. In 1995, the GON enacted a decree to combat illicit drug-derived money laundering, but enforcement has been uneven, yielding few seizures and no convictions. Nigeria is a party to the 1988 UN Drug Convention.

Newly-elected President Obasanjo retired 143 military officers tainted by positions they held during the military government. Anti-corruption legislation has been proposed, but is stalled in the senate. Sporadic progress against corruption within the NDLEA contributed to its reputation as Nigeria's most professional law enforcement body. The NDLEA made regular arrests of individual drug couriers in 1999, but did not arrest or prosecute any major traffickers. Assets have been seized, but no forfeitures, which require convictions, have been made. The NDLEA chairman was briefly held in contempt for refusing to release several hundred thousand dollars worth of vehicles while their owner's case proceeds slowly through the legal system. The DEA received good cooperation from the NDLEA, but rampant corruption prevents sharing of sensitive information. NDLEA actions at airports, including breaking up a ring that involved airline and government employees, have made trafficking through airports more risky. There is an active cannabis eradication program, but figures are not available and supply easily meets demand. NDLEA has opened well-publicized anti-drug clubs at the universities, supplying them with anti-drug literature and videos.

Nigeria is one of the most important countries in Africa. What happens in Nigeria politically and economically will, to a large degree, determine whether there is stability and progress toward democracy and economic reform in West Africa. If Nigeria's ongoing transition fails, the result might easily be an implosion of government and the collapse of the economy, triggering a humanitarian disaster in Africa's most populous country (over 100 million people) and a destabilizing exodus of Nigerians to neighboring states. Such an upheaval could also disrupt the movement of high-quality Nigerian oil, which accounts for more than seven percent of total U.S. petroleum imports.

If, on the other hand, Nigeria's transition succeeds, it will be an example to all of Africa, and that success has the potential to promote economic growth and greater transparency in government. Nigeria could become an engine for growth in West Africa. A stable and democratic Nigeria will permit greater cooperation between law enforcement agencies, and the opportunity to reduce the impact of the Nigerian criminals who prey on the American people.

The military's acceptance of its appropriate role in a functioning democracy, and the new civilian government's ability to govern, will be critically impaired if Nigeria is deprived of the full range of USG support. Building a political consensus and meeting the challenges of a collapsing economy will also depend in no small part on outside assistance and expertise.

Denial of certification would block assistance the new democratically-elected government needs to meet these challenges, seriously damaging the prospects for success of stable, transparent democracy in Nigeria. U.S. vital national interests require providing humanitarian, economic and security assistance to Nigeria as well as counter-drug assistance from all sources. The risk of not doing so now would jeopardize not only Nigeria's fledgling democracy, but also Nigeria's attempts to reinvigorate its failing economy and support for democracy and peacekeeping throughout the region. Further, any new civilian government's ability to work with the USG on all issues, including counter-drug and other law enforcement, will depend on its access to multilateral lending and U.S. technical and economic assistance. The risks posed by the cutoff of assistance clearly outweigh the risks associated with GON's inadequate counter-drug performance over the past year.

Pakistan

In 1999, Pakistan made progress towards eliminating opium production by the year 2000 by reducing poppy cultivation by 48 percent. The poppy crop fell to a record-low of 1570 hectares. Cooperation on drug control with the USG has been excellent and the formation with DEA assistance of a Special Investigative Cell (SIC) within the Anti-Narcotics Force (ANF) was a major achievement. The overall record on drug interdiction was encouraging, with heroin seizures up 57 percent and several arrests of high-profile traffickers. The resolve of the Government of Pakistan (GOP) to prevent the reemergence of heroin/morphine laboratories remained firm. Pakistan extradited four drug fugitives to the United States and arrested six others, a significant improvement on previous years. Efforts to extend application of the Control of Narcotic Substances Act (CNSA) and the Anti-Narcotics Force Act (ANFA) to tribal areas in North West Frontier Province (NWFP) are continuing.

Pakistan's cabinet approved the drug control master plan in early 1999, but implementation has been slowed by a lack of funds. The GOP's counter-drug policies and cooperation with the USG were unaffected by the October 1999 coup. Pakistan is a party to the 1988 UN Drug Convention.

Pakistani law enforcement tripled opium seizures from 3.65 to 11.50 metric tons, and increased heroin seizures by 57 percent, from 2.36 to 3.90 metric tons. Pakistan's illicit drug seizures were up significantly compared to the same period in 1998. The ANF is Pakistan's principal drug law enforcement agency. In 1999 the GOP began to examine ways to strengthen the institutional capacity and performance of the ANF. With DEA assistance, the ANF formed a vetted unit, or Special Investigative Cell, thereby improving intelligence collection and investigative capacity, and took steps toward recruiting new personnel. The ANF also arrested two politically powerful traffickers, one a prominent journalist and influential politician, the other a member of the then-ruling party, leading to the break-up of a gang of corrupt officials posted at Islamabad airport. All are awaiting trial.

1999 was a record setting year for ANF seizures of heroin and opium recovered in individual raids (a 213 percent increase in heroin seizures), with ANF Baluchistan making major contributions. Particularly noteworthy were a 760 kilogram heroin seizure in Kharan District of Baluchistan and a seizure in Turbat District of Baluchistan of 2951 kilograms of opium, 2580 kilograms of hashish and 111 kilograms of heroin. Apart from the ANF, the law enforcement agencies most actively engaged in drug seizures include the police, customs and the Frontier Corps.

In a major improvement over previous years, in 1999 the GOP arrested six drug fugitives and extradited four defendants to the United States. There are 15 pending extradition requests. In Baluchistan the ANF and Frontier Corps detected and challenged a number of Afghan convoys, resulting in firefights and seizures of 5.8 metric tons of opium, 1.1 tons of heroin, and seven vehicles. The killing of three traffickers and serious wounding of one ANF soldier may reflect the increased challenges posed by well-armed traffickers.

There were no convictions of major drug traffickers in 1999. Prosecution continued to drag out in the courts. However, the GOP has funded the establishment of five special drug courts to process drug cases more efficiently. Chemical controls are adequate, but there is still diversion of acetic anhydride from licit imports. Pakistan is not a major money laundering country, but, given the level of drug trafficking, smuggling, and official corruption, money laundering almost certainly occurs, mostly by means of unofficial, traditional money transfer facilities, known as ''hawala.''

The USG believes that Pakistan made an excellent contribution to international drug control efforts. We will support GOP efforts to target major heroin trafficking organizations and increase seizures of large shipments of opiates and precursor chemicals.

Panama

The Government of Panama (GOP) continues to demonstrate its willingness to combat transnational drug trafficking. The GOP seized significant amounts of illicit drugs in 1999, despite apparent changes in trafficking routes. The new Mireya Moscoso administration has demonstrated its commitment to combat drug trafficking, money laundering, and other transnational crimes. Immediately after taking office, the new administration set up an anti-corruption unit in the Ministry of Economy and Finance. Panama's law enforcement agencies continue to maintain excellent relations with their U.S. counterparts.

Panama is a major transshipment point for illicit drugs smuggled from Colombia. Cocaine is stockpiled in Panama prior to being repackaged for passage to the United States and Europe. Panama's location, largely unpatrolled coastlines, advanced infrastructure, underdeveloped judicial system, and well-developed financial services sector make it a crossroads for transnational crime, such as drug trafficking, money laundering, illicit arms sales and alien smuggling. According to USG statistics, GOP agencies seized 2,576 kilograms of cocaine, 1,558 kilograms of marijuana, 46 kilograms of heroin, and 600 liters of acetic anhydride; they also made 131 arrests for international drug-related offenses in 1999.

The GOP continued to implement its own national counter-drug plan, the ''National Drug Strategy 1996–2001.'' Panama also made significant progress in implementing its comprehensive chemical control program.

The highest U.S. priorities in the coming year will be signing a full six part bilateral counter-drug maritime agreement, expanding anti-money laundering legislation, increasing efforts to control the Black Market Peso Exchange, and improving prosecutions of money launderers and drug traffickers. Other U.S. priorities in Panama include: supporting the GOP's efforts to build a highly-professional, interagency, counter-drug task force; developing the capabilities to control sea lanes, rivers, island and coastal regions, and the Canal area; and limiting cross-border criminal influence. With the seriousness and commitment of the new Moscoso administration, the USG is hopeful that there will be measurable progress in these areas in 2000.

Paraguay

Paraguay is a major drug-transit country for significant amounts of largely Bolivian cocaine and is also a major money-laundering center in Latin America (although it remains unclear what portion of money laundering can be attributed to drug trafficking).

USG experts estimate that between 15 and 30 metric tons of cocaine may transit Paraguay annually en route to Argentina, Brazil, the United States and Europe. Of this estimated amount, only 95 kilos of cocaine were seized in 1999; moreover, only 211 arrests of low-level marijuana and cocaine traffickers were effected, mostly prior to April 1999. Paraguay is a source country for high-quality marijuana. Although none of it enters the United States, the Government of Paraguay (GOP) seized record amounts of marijuana and eradicated 900 of the estimated 2,500 hectares of marijuana fields.

In July 1999, a new penal code was enacted that criminalizes conspiracy. This will allow the prosecution of those who benefit from criminal activity, but who are not the material perpetrators of the crime. However, extensive training of prosecutors and judges will be required before this new law can be fully implemented. One major Brazilian trafficker, arrested in 1997, was extradited to Brazil. The legislature approved the bilateral extradition treaty signed in 1998.

However, the GOP failed to accomplish the majority of counter-drug goals for 1999 in a manner sufficient for full certification. Since 1995, legislation has been pending to provide police and prosecutors with modern legal tools, such as use of informants, controlled deliveries, and undercover investigations. The Gonzalez Macchi administration submitted another draft of the legislation to the Paraguayan Congress, but it is the third administration to do so without the legislation being passed. The GOP did not investigate, arrest or prosecute any major drug traffickers, nor did it take sufficient measures to prevent or punish public corruption in general, or specifically with respect to drug trafficking. The GOP did not implement the 1996 money laundering law by arresting or prosecuting violators. Furthermore, the GOP did not provide operational funding or adequate resources for the anti-money laundering secretariat, SEPRELAD, to enable it to function as an independent organization (although in December 1999 a budget was approved for 2000). The GOP also failed to show progress toward development of an effective anti-drug and organized crime investigative and operational capability for the border regions.

Denial of certification would, however, cut off civilian and military assistance programs designed to strengthen Paraguay's democratic institutions and promote modern civil-military relations. Strengthening democracy in Paraguay is a U.S. vital national interest, and failure in this effort would affect negatively all other U.S. interests, including cooperation with respect to illicit drugs, terrorism, intellectual-property piracy, and environmental preservation. The events of 1999—which included defiance by then-President Cubas of the Supreme Court, the assassination of Vice President Argana, the killing of student demonstrators, the impeachment and resignation of Cubas, drought, rural unrest, and the reported presence of fugitive former general and coup plotter Lino Oviedo—demonstrate the many challenges facing Paraguayan democracy. They also contributed to the GOP's unsatisfactory counter-drug performance. Denial of certification would undermine the U.S. ability to strengthen Paraguay's democratic institutions and would put at risk all other U.S. vital national interests.

The risks posed to the totality of U.S. interests (e.g., promotion of democracy and transnational crime cooperation) by a cutoff of bilateral assistance outweigh at this point the risks posed by the GOP's failure to cooperate fully with the USG, or to take fully adequate steps on its own, to achieve the goals and objectives of the 1988 UN Drug Convention.

In 2000, the GOP needs to translate its oft-stated political will into concrete action against major drug traffickers, money laundering, and official corruption.

People's Republic of China

The People's Republic of China (PRC) continued to take strong, effective steps to combat the use and trafficking of illicit drugs in 1999. Although preliminary figures indicate that seizures of heroin declined significantly from 1998's record level (possibly because of a decline in production in Burma), China's heroin seizures still accounted for the great majority of heroin seized in all of Asia. Seizures of methamphetamine and other amphetamine-type stimulants soared, while those of precursor chemicals and opium remained at previous years' levels. China cooperated with the United States and other countries in providing pre-export notification of dual-use precursor chemicals. Government officials estimate that more than ten percent of China's 1.3 billion citizens viewed a nationwide anti-drug exhibition. DEA

opened an office in Beijing. China continues to cooperate actively on operational issues with U.S. drug-enforcement officials. Domestically, China began a ''Drug Free Communities'' program to eliminate drug trafficking and abuse as well as drug-related crime.

During 1999, China cooperated with the UNDCP and regional states on a number of projects to reduce demand for illicit drugs. China also supported effective crop-substitution programs in Burma and Laos.

The United States and the PRC signed a Customs Mutual Assistance Agreement that will enhance communications and accelerate the flow of counter-drug-related intelligence. China is a party to the 1988 UN Drug Convention as well as to the 1961 UN Single Convention and its 1972 Protocol, and the 1971 Convention on Psychotropic Substances.

U.S.-PRC cooperative law enforcement has advanced over the last two years, but China frequently does not respond to USG requests for information, and when it does, the responses often arrive too late to be of operational value. China has also failed to enforce vigorously and to strengthen anti-money-laundering legislation. For a number of reasons, China has also continued its non-engagement in the Asia-Pacific Group on Money Laundering and did not pursue membership in the Financial Crimes Task Force.

Despite those shortcomings, the PRC has acted forcefully to stop the production, trafficking in, and use of illicit drugs within its borders and within the region, and is committed to achieving the goals and objectives of the 1988 UN Drug Convention.

Peru

In 1999, the Government of Peru (GOP) made excellent progress in achieving its goal of eliminating illegal coca cultivation. Despite the rehabilitation of some previously abandoned coca fields, an additional 24 percent of coca cultivation was eliminated in 1999, for an overall reduction of 66 percent over the last four years. Contributing to this reduction was a 1999 manual coca cultivation eradication total of 15,000 hectares. The GOP counter-drug alternative development program, working through 103 local governments, almost 700 communities, and more than 15,000 farmers, significantly strengthened social and economic infrastructure in these areas and helped shift the economic balance in favor of licit activities. In January 2000, the GOP held a conference in Paris to promote alternative development support among major donor countries.

However, there is also increasing evidence that traffickers are processing cocaine hydrochloride within Peru's borders, setting up laboratories near the borders with Brazil, Colombia, and/or Bolivia, so that they can leave the country quickly without risk of interception. There were no interceptions or forcedowns of trafficker aircraft by the Peruvian Air Force (FAP) airbridge denial program in 1999—a tribute to the strong deterrent effect this program has had on the aerial transport of drugs. Recent seizures provide evidence that drug traffickers are using maritime shipment of cocaine from Callao and other Peruvian ports, riverine transport, and overland transport to move drugs out of Peru to evade aerial interdiction of trafficking aircraft. Private shipping companies, encouraged by the GOP, monitored sea cargo container activities during 1999, which led to the seizure by the Peruvian National Police of over five tons of cocaine base and cocaine hydrochloride bound for Europe.

Reliable reports and eradication campaigns indicate that Peru has an emerging opium poppy cultivation problem. Cultivation of opium poppy is illegal in Peru; whenever such plantings are identified, the GOP takes prompt action to destroy them. Reliable reports indicate that 55 kilograms of latex gum were seized in 1999, and 34,000 plants were eradicated.

In December, the Peruvian National Police arrested major drug trafficker Segundo Cachique Rivera. The Peruvian National Police chemical control unit conducted over 1,500 regulatory and criminal investigations of suspect

businesses in 1999, making 58 arrests and seizing over 112 tons of controlled chemicals and two chemical companies. The GOP also passed new legislation to enhance the control of precursor chemicals.

Peru's significant reduction of coca under cultivation proves that its strategy is working. However, with higher prices being paid for coca, many farmers will be tempted to abandon licit crops. It is essential that manual eradication of illegal coca crops, counter-drug related alternative development, reinvigoration of the airbridge denial program, and land and maritime/riverine interdiction all continue as complementary programs. The GOP should also refine relevant laws, especially as they pertain to money laundering, asset seizure, and chemical controls.

Taiwan

The United States considers Taiwan a major transit point for drugs affecting the United States due to its geographic location, its role as a regional transportation/shipping hub, and the activities of organized crime groups. Taiwan in 1999 continued its aggressive domestic counter-drug program and its effective cooperation with the United States, through the American Institute in Taiwan (AIT). Through October 1999, Taiwan authorities investigated 68,612 new drug cases, an increase of 48.9 percent over the same time period in 1998. The authorities seized more illicit drugs, primarily methamphetamine-type stimulants, in the first ten months of 1999 than all of 1998. Although indictments and convictions for drug-related offenses on Taiwan continued to fall in 1999, the decline reflects the first full year in which a law, allowing first-time addicts to participate in drug treatment programs in lieu of imprisonment, has been in force.

Taiwan cannot be a signatory to the 1988 Drug Convention because it is not a UN member. Taiwan authorities, nonetheless, have passed and implemented laws bringing Taiwan into compliance with the Convention's goals and objectives. Taiwan also continued to expand counter-drug cooperation with U.S. law enforcement agencies, through AIT.

Encouraged by AIT and DEA, Taiwan authorities passed two key drug laws to control both the manufacture and sale of phenylpropanolamine (PPA). The laws allow pre-export notification on shipments of PPA to other countries and establishes a new agency to monitor the production, use, and sale of drugs. Taiwan has continued to strengthen its efforts to stop drug trafficking and is addressing domestically and in conjunction with the international community the problem of money laundering.

Through AIT, Taiwan and U.S. law-enforcement agencies cooperated closely on investigations and joint operations concerning drug trafficking and related crimes. Taiwan authorities worked with the United States and other countries on anti-money laundering efforts. Taiwan is an active participant in the Asia-Pacific Group on Money Laundering and the Egmont Group.

Thailand

At the time that the List of Major Drug Producing and Transiting Countries was prepared at the end of last year, information then available indicated that in excess of 1000 metric tons of opium was cultivated in Thailand. However, success with eradication programs during the current crop year seems to have reduced cultivation to well under that figure. Thailand remains a major drug transit country as a significant amount of heroin transits Thailand on its way to the United States. Indeed, Thai authorities recently made a number of large seizures of heroin headed for the United States.

Thailand continued its long tradition of cooperation with the United States and the international community in anti-drug programs. The Royal Thai Government (RTG) added to its leadership role in transnational crime issues by co-managing the International Law Enforcement Academy (ILEA) with the USG in Bangkok. Thailand is one of the top three countries in the world in cooperating with the United States on extradition requests. Additional defendants arrested in 1994's operation ''Tiger Trap'' were extradited and extensive cooperative law enforcement programs continued to bear fruit.

Thailand has one of the most effective crop substitution and opium eradication operations in the world. 1999 poppy cultivation was down 38 percent from 1998 and opium production was down 62 percent. Eradication destroyed 50 percent of the crop leaving an estimated 6 metric tons remaining. Cultivated acreage has been slashed 91 percent since the onset of the eradication program in 1984. With DEA support, the Royal Thai Police (RTP) established the second in a series of specially-trained drug law enforcement units to target major trafficking groups. Overall, RTG efforts to target trafficking organizations have proceeded well, with numerous cases involving organizations with trafficking links opened in 1999.

More elements of the new Constitution came into force further strengthening rule of law and the judicial system, and providing a firm basis for further modernization and institutionalization of Thai society. Thai civil society is developing rapidly and a press with few restraints and the plethora of NGOs bring increasingly strong public attention to official corruption. A significant number of low and middle-ranked officers in the military and police were disciplined for corruption, although arrests for corruption continued to focus on lower-ranking officers and officials.

The RTG is close to deciding whether to accede to the 1988 UN Drug Convention. Passage of money laundering legislation was the last main requirement. Passage is expected in the March 2000 parliamentary session.

The USG considers Thailand an important ally in combating the production and flow of illicit drugs. Our two countries have been working together to fight production and trafficking of narcotics with great success for over three decades, and DEA considers its cooperation with Thailand to be one of its most successful overseas partnerships anywhere in the world.

Venezuela

By some estimates, over 100 metric tons of cocaine transit Venezuela annually en route to destinations in the United States and Europe. Venezuela is also a transit route for precursor chemicals used in the production of illicit drugs in the Andean source countries, and its financial sector is a prime destination for laundering proceeds from Colombian cocaine trafficking organizations.

Venezuelan law enforcement agencies had increased success in drug interdiction in 1999, particularly on land and at major ports. Cocaine seizures rose to 13.1 metric tons from 8.6 metric tons in 1998. This improvement reflects both the increase in drug transshipment through the country in 1999 and the high level of tactical cooperation between Venezuelan and U.S. law enforcement agencies. The Government of Venezuela (GOV) also augmented its efforts to interdict chemical precursors, after establishing in 1998 a set of regulations to track the diversion of chemicals used in drug production. Working closely in conjunction with DEA, Venezuelan law enforcement officials seized over 110 tons of potassium permanganate, a prime chemical used in the production of cocaine, and signed an agreement with the Government of Colombia to exchange information on chemical precursor movements.

Corruption has traditionally hampered the effectiveness of Venezuela's law enforcement and judicial institutions. The GOV took concrete steps against corruption in 1999, initiating investigations of corrupt officials and overseeing the implementation of a new criminal code which has the potential to provide a more efficient, transparent system of justice.

To consolidate these important advances, the GOV should take certain measures to improve its performance, specifically: pass needed anti-organized crime legislation; reenter negotiations with the USG on a comprehensive maritime agreement; take the necessary steps to permit the extradition of Venezuelan nationals accused of drug-related crimes or organized crime activity; and continue to enhance and refine multilateral counter-drug interdiction cooperation.

Vietnam

As a national priority in Vietnam, the fight against illicit drugs is second only to poverty reduction. In 1999 Vietnam fought on two fronts: against the production and use of drugs as well as against cross-border trafficking of drugs. Vietnam, with 2,100 hectares under poppy cultivation and a potential of 11 metric tons of opium production, intensified efforts to eradicate poppy crops. Authorities also successfully eradicated 860 of an estimated total of 1,000 hectares used for cannabis cultivation in 1999.

The Government of Vietnam (GOV) instituted an augmented prevention campaign to reduce domestic drug use and abuse. Also in 1999 Vietnam stiffened law-enforcement campaigns against drug traffickers and toughened prosecution to achieve a record number of arrests and convictions. Authorities prosecuted 3,310 drug-related cases involving 4,952 defendants. Of cases brought to trial, 35 received a death sentence and 21 were sentenced to life imprisonment. A high-profile anti-corruption campaign was implemented and included public trials of high-ranking government and party officials involved in illicit drug and other smuggling.

Due, in part, to its location so close to the ''Golden Triangle,'' Vietnam is a major transit point for opium and heroin. To address this problem, the GOV set up special task force units to combat drug trafficking along the borders, and police, customs and border forces arrested 19,010 drug criminals, an increase in arrests of 31 percent over last year. Drug interdictions increased by 32 percent, with seizures of 51.8 kilograms of heroin, 314 kilograms of opium, and 369 kilograms of cannabis. In its first year of operation (September 1998–September 1999), the marine police force began patrols to detect drug trafficking. Vietnam also tightened oversight and control of precursor chemicals, transferring responsibility for monitoring to the Ministry of Public Security, Ministry of Public Health, and Department of Customs, and set up a Precursor Chemical Control Force in the Ministry of Health.

In 1999 GOV began work on preparing draft counter-drug legislation to modernize organized-crime statutes and techniques, enhance law-enforcement efforts, and strengthen compliance with the 1988 UN Drug Convention, to which Vietnam is a party. Vietnam is negotiating counter-drug agreements with China and several EU countries, has cooperated with Interpol, and has worked closely with U.S. law-enforcement agencies. In April 1999 the Vietnamese Police joined the ASEANOPOL Criminal Information System. UNDCP is assisting Vietnam revise its Master Plan against drugs and craft its new counter-drug legislation. Vietnam supports UNDCP projects targeting demand reduction, crop substitution and suppression of drug trafficking.

The United States and Vietnam have not yet concluded a counter-drug agreement. The GOV has not fully eradicated poppy crops, and farmers reverted to poppy cultivation in some high-poverty rural areas, bringing an additional 645 hectares under cultivation in 1999 and increasing the total to 2,100 hectares devoted to poppy crops. Vietnam's National Assembly approved penal code revisions that criminalize money laundering for the first time. The provisions will take effect on July 1, 2000. Vietnam is working with the World Bank to develop a money-laundering section in draft banking legislation.

Despite some notable shortcomings, Vietnam has made a vigorous effort to combat drug production and trafficking. There is no question that the GOV at the highest levels fully realizes the threat drugs present to their own people and society and is doing everything possible to counter the availability and use of illicit drugs.

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Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 2000–17 of March 2, 2000

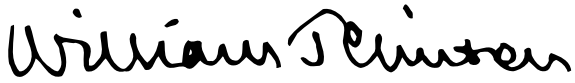
Drawdown Under Section 506(a)(2) of the Foreign Assistance Act of 1961, as Amended, To Provide Emergency Disaster Assistance in Southern Africa

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the ''Act''), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, for the purpose of providing international disaster assistance to Southern Africa, including Mozambique, South Africa, Zimbabwe, and Botswana.

Therefore, I direct the drawdown of up to $37.6 million of articles and services from the inventory and resources of the Department of Defense for Southern Africa, including Mozambique, South Africa, Zimbabwe, and Botswana for the purposes and under the authorities of chapter 9 of part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 2, 2000.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air pollutants, hazardous; national emission standards:
- Secondary aluminum production; published 3-23-00

FEDERAL COMMUNICATIONS COMMISSION

Television broadcasting:
- Satellite Home Viewer Improvement Act; implementation—
  - Retransmission consent issues; good faith negotation and exclusivity; published 3-23-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
- Payment amount if customery charges are less than reasonable costs; published 2-22-00

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Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Pennsylvania; published 3-23-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Fairchild; published 2-17-00
- General Electric; published 3-23-00
- McDonnell Douglas; published 2-17-00

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Income taxes:
- Tax treatment of cafeteria plans; published 3-23-00

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Cotton classing, testing, and standards:
- Upland cotton; official color grade determination; comments due by 3-31-00; published 3-1-00

Raisins produced from grapes grown in—
- California; comments due by 3-31-00; published 1-31-00

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Animal and Plant Health Inspection Service

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- Canine and equine semen from Canada; comments due by 3-27-00; published 1-26-00

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Alaska National Interest Lands Conservation Act:
- TItle VII implementation (subsistence priority)
  - Kenai Peninsula determination; comments due by 3-31-00; published 2-22-00

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00

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  - Deep-sea red crab; comments due by 3-31-00; published 3-1-00
  - Deep-sea red crab; correction; comments due by 3-31-00; published 3-17-00

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- Deferred research and development costs; comments due by 3-27-00; published 1-26-00
- Drafting principles; comments due by 3-27-00; published 1-26-00

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Energy Efficiency and Renewable Energy Office

Energy conservation:
- Weatherization assistance program for low-income persons; comments due by 3-27-00; published 1-26-00

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- Stratospheric ozone protection—
  - Essential-use allowances ; allocation; comments due by 3-27-00; published 2-25-00

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Georgia; comments due by 3-27-00; published 2-25-00

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-29-00; published 3-14-00
- New Mexico; comments due by 3-29-00; published 2-28-00

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- Louisiana; comments due by 3-29-00; published 2-28-00
- Missouri; comments due by 3-29-00; published 2-28-00

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- Local exchange carriers, low-volume long distance users, and Federal-State Joint Board on Universal Service—
  - Access charge reform and price cap performance review; comments due by 3-30-00; published 3-15-00
- Wireless telecommunications services—
  - Specialized mobile radio (SMR) systems in 800 MHz frequency band; future development facilitation; comments due by 3-27-00; published 3-23-00

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- Alabama and Florida; comments due by 3-27-00; published 2-16-00
- Texas; comments due by 3-27-00; published 2-16-00

Television broadcasting:
- Broadcast licensees; public interest obligations; comments due by 3-27-00; published 1-26-00

FEDERAL DEPOSIT INSURANCE CORPORATION

Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL RESERVE SYSTEM

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FEDERAL TRADE COMMISSION

Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

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- Drafting principles; comments due by 3-27-00; published 1-26-00

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- Fish and wildlife resources on public lands; preference for subsistence use—
  - Kenai Peninsula; comments due by 3-31-00; published 2-22-00

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00

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- Columbian sharp-tailed grouse; status review; comments due by 3-27-00; published 1-24-00
- Tidewater goby; comments due by 3-31-00; published 2-15-00

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Copyright Office, Library of Congress

Digital Millennium Copyright Act:
- Circumvention of copyright protection systems for

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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