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WASHINGTON, DC

WHEN: April 18, 2000

WHERE: Conference Room, Suite 700
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7283 of March 24

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2000

By the President of the United States of America

A Proclamation

Two thousand five hundred years ago, the birth of democracy in Greece ushered in one of the true golden ages of Western civilization. The flowering of political, social, and artistic innovation in Greece served as the source of many of our most treasured gifts—the philosophy of Plato and Socrates, the plays of Sophocles and Aristophanes, the heroic individualism that rings in the epic poetry of Homer.

But Ancient Greece's greatest legacy is the establishment of democratic government. America's founders were deeply influenced by the passion for truth and justice that guided Greek political theory. In ratifying our Constitution, they forever enshrined these principles in American law and created a system of government based on the Hellenic belief that the authority to govern derives directly from the people.

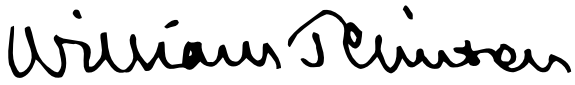
While our democracy has its roots in Greek thought, the friendship between our two nations flows from our shared values, common goals, and mutual respect. This kinship with the Greek people was reflected in the enthusiasm with which America embraced modern Greece's fight for independence 179 years ago. Many Americans fought alongside the Greeks, while stirring speeches by President James Monroe and Daniel Webster led the Congress to send funds and supplies to aid the Greeks in their struggle for freedom.

Our alliance with Greece has remained strong. Together we have stood up to the forces of oppression in conflicts from World War II to the Persian Gulf, we have joined as strategic partners in NATO, and we have worked to build peace, stability, and prosperity in the Balkans. Through decades of challenge and change, our friendship has endured and deepened, and together we have proved the fundamental truth of the Greek proverb, ''The passion for freedom never dies.''

That passion for freedom has also beckoned generations of Greek men and women to America's shores, and today we celebrate and give thanks for the myriad contributions Greek Americans have made to our national life. More than a million citizens of Greek descent live in America today, and their devotion to family, faith, community, and country has enriched our society immeasurably.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 25, 2000, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–7900
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Rules and Regulations

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing an interim regulation that would permit certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 13 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

DATES: This interim regulation is effective March 29, 2000. Comments are invited and are due by April 28, 2000.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Attention: Karen Kimball.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference: Interim Rule Exemption Under 18 U.S.C. 208(b)(2).

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they, or, *inter alia*, any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate executive branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On December 18, 1996, the Office of Government Ethics published an executive branchwide final rule, ''Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest),'' which as corrected is now codified at 5 CFR part 2640. The regulation describes financial interests that OGE has determined are either too remote or too inconsequential to affect an employee's consideration of any particular matter. Employees who have these financial interests, or who have such interests that are imputed to them, are permitted, to the extent described in the final regulation, to participate in matters affecting such interests notwithstanding the general prohibition in section 208(a).

In order to carry out its decennial census responsibilities, the Bureau of the Census must hire approximately 800,000 temporary employees throughout the country, primarily to assist in the enumeration process. Current historic low unemployment rates and demographic and societal changes have rendered traditional sources of decennial census workers insufficient. The Bureau, therefore, must engage in vigorous recruitment efforts to obtain needed personnel. Potential sources of such workers are likely to include teachers and other State, local, or tribal government workers who are available to work nights and weekends. The recruitment of these workers is time-sensitive because of the Constitutional mandate to conduct the census during calendar year 2000. The majority of workers are hired within a period of a few weeks.

The Bureau of the Census has authority under 13 U.S.C. 23 to hire temporary employees, ''including employees of Federal, State, or local agencies or instrumentalities * * * to assist the Bureau'' in conducting the census. *See* 13 U.S.C. 23(c). That statute grants no express relief from the application of 18 U.S.C. 208.

State, local, and tribal governments have a financial interest in the decennial census. Census results are used to apportion funds among the States and among jurisdictions within the States in connection with entitlements under a number of Federal and State programs. We note that the results of the census also are used to allocate representation among the States in the United States House of Representatives and in State legislatures which, presumably, affects a State's ability to pursue its interests, including financial interests.

Conflict-of-interest concerns arise regarding decennial census workers who are directly involved in the enumeration process or in the supervisory chain of command for workers involved in that process. Such employees may be participating personally and substantially in particular matters that have a direct and predictable effect on the financial interests of their non-Federal government employer within the meaning of 18 U.S.C. 208(a). These employees' participation may be ''personal and substantial'' as those terms are defined in 5 CFR 2635.402(b)(4) of OGE's executive branch standards of ethical conduct and 5 CFR 2640.103(a)(2) of the OGE executive branchwide personal financial interests regulation because they participate directly in the determination of the census count and the numbers which their work produces are the substance of the census. Their work is the basis on which the census count is determined and, thus, their work is of significance to the matters. The decennial census and its administration in various States and localities may be ''particular matters'' as defined by 5 CFR 2635.402(b)(3) and 2640.103(a)(1), because the matters involve deliberation, decision, or action that *is* focused upon the interests of specific persons or on a discrete and identifiable class of persons.

As participation in census matters may be a conflict of interest pursuant to 18 U.S.C. 208(a), decennial census workers need to know whether they can lawfully engage in the activities required by their employment. Also,

since all aspects of the work that enumerators and their supervisors will do is related to the determination of the census numbers, it would not be possible to disqualify these employees from working on these matters and have them perform services for the agency. Granting waivers or creating an exemption is an appropriate method for removing any legal uncertainty about whether the conflict-of-interest laws in title 18 apply.

In the view of the Department of Commerce, as the department responsible for the administration of the census program, the financial interests of the non-Federal government employers in the work that these temporary census employees perform are both too remote and too inconsequential to affect the integrity of the services which the United States Government may expect from these employees for the following reasons. The nature of the work to be performed is basic data gathering and lower level supervision of the data gathering. No employee in a position covered by the new exemption in this interim rule would be able to affect the count for any census statistical unit to any significant degree due to the extent of the data gathering, the fragmentation of the data-gathering process, and the several quality checking and verification processes that the Department of Commerce has imposed. Additionally, the work of these employees is too far removed from the financial interests of their non-Federal government employers due to the number of independent intervening steps in the census process before final census determinations are made. Thus, the work of these employees is inconsequential to those financial interests due to the limited scope of their duties. Any risks regarding the conduct of an inaccurate and biased census are remote.

In addition, the scope of the exemption is very narrow and will not apply to cover those serving in State, local, and tribal government positions which are filled through public election. While elected officials would not be able to distort the census count to any significant degree because of the procedures that Commerce has imposed and the limited scope of temporary census employees' duties, there is a heightened concern about appearances arising from the greater interest elected officials have regarding the impact of the census count on their employers. The exclusion of such employees from the exemption and the narrowness of the exemption also address any concerns that the census count might appear to be biased or inaccurate.

The Department of Commerce, under authority of 18 U.S.C. 208(b)(1), could issue individual waivers after determining that the employees' disqualifying financial interests are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from them. However, senior officials at the Bureau of the Census have determined that it is administratively impractical to implement a system which would assure that individual waivers are granted due to the scale of the workforce it expects to hire, the decentralized nationwide hiring process, and the streamlined hiring process that must be utilized to meet the personnel needs required by the decennial census. According to Bureau of the Census officials, it would not be feasible to issue individual waivers due to the volume of personnel actions anticipated. Hundreds of thousands of positions need to be filled within a three- to four-week period for employment lasting six to eight weeks. In addition, most of this hiring process is administered by temporary clerks who are employed scarcely longer than those whose positions they are attempting to fill. These clerks are required to follow a multitude of complex procedures in order legally to hire and pay new employees. Bureau of the Census officials have concluded that having these clerks perform an additional step to determine whether the new employees are employed by State, local, or tribal government employers in order to determine whether a conflict of interest waiver is required is an unjustified use of very limited time. They also believe that such a process would be inconsistent with permission the Bureau of the Census received from the Office of Management and Budget to reduce and consolidate the number of forms that must be completed for each employee at the time of appointment. The Office of Management and Budget's agreement has permitted the Bureau to streamline its hiring process for the 2000 Census, minimizing the administrative burden wherever possible. Under these circumstances, the Bureau believes that only a regulatory waiver will address the Bureau's administrative needs and will provide reliable protection from inadvertent violations of the conflict of interest statute.

Based on the determinations of the Commerce Department and the Census Bureau, OGE has decided to issue this interim rule exemption. Accordingly, this interim regulation provides an exemption for the financial interests of State, local, or tribal government employers whose employees are hired on a temporary basis by the Department of Commerce under authority of 13 U.S.C. 23 to participate in activities related to the conduct of the decennial census. While still employed by State, local, or tribal governments, the employees also work on a part-time or intermittent basis at the Bureau of the Census in a Local Census Office or in an Accuracy and Coverage Evaluation (ACE) function as enumerators, crew leaders, or as field operations supervisors. Commerce Department employment is expected to last from six to eight weeks. None of these temporary Commerce employees serve in a State, local, or tribal government position which is filled through public election.

This interim rule is being published after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this rule.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 CFR 553(b) and (d), I find that good cause exists for waiving the general requirements of notice of proposed rulemaking, opportunity for public comments, and 30-day delayed effective date for this interim rule. It is in the public interest that this regulation take effect as soon as possible in order to enable the Bureau of the Census to conduct the census during the year 2000 as required by Constitutional mandate. Interested persons are invited to submit written comments to OGE on this interim regulation, to be received on or before April 28, 2000. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted before adopting the final rule on this matter.

Executive Order 12866

In promulgating this interim rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this interim regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this interim regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: March 17, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

2. Section 2640.203 is amended by adding a new paragraph (l) to read as follows:

§ 2640.203 Miscellaneous exemptions.

* * * * *

(l) *Exemption for financial interests of non-Federal government employers in the decennial census.* An employee of the Bureau of the Census at the United States Department of Commerce, who is also an employee of a State, local, or tribal government, may participate in the decennial census notwithstanding the disqualifying financial interests of the employee's non-Federal government employer in the census provided that the employee:

(1) Does not serve in a State, local, or tribal government position which is filled through public election;

(2) Was hired for a temporary position under authority of 13 U.S.C. 23; and

(3) Is serving in a Local Census Office or an Accuracy and Coverage Evaluation function position as an enumerator, crew leader, or field operations supervisor.

[FR Doc. 00–7769 Filed 3–28–00; 8:45 am]

BILLING CODE 6345–01–U

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect an organizational reassignment of the FOIA function within TVA. It also provides a new address for filing FOIA requests and FOIA appeals.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499, telephone number (865) 632–6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective on March 29, 2000.

List of Subjects in 18 CFR Part 1301

Freedom of information, Government in the Sunshine, Privacy.

For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, subpart A, continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

2. In § 1301.3, revise the first sentence of paragraph (a) to read as follows:

§ 1301.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of TVA by writing to the Tennessee Valley Authority, FOIA Officer, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499. * * *

* * * * *

3. In § 1301.9, revise the first sentence of paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the General Manager, CAO Business Services, Tennessee Valley Authority, 400 Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499. * * *

* * * * *

Cleo W. Norman,

General Manager, CAO Business Services.

[FR Doc. 00–7519 Filed 3–28–00; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 18, 122, 123, 144, and 146

[T.D. 00–22]

Technical Corrections Relating to Customs Forms

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by correcting references to certain Customs Forms that have either been eliminated, substantially revised, or consolidated with another Customs Form. These corrections are made to update the Customs Regulations so that the trade community and vessel operators can be aware of current Customs information requirements.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Larry Burton, Entry Procedures & Carriers Branch, Office of Regulations and Rulings, (202) 927–1287.

For operational questions: Robert Watt, Office of Field Operations, (202) 927–3654, or Kim Nott, Office of Field Operations, (202) 927–1364.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Customs Regulations by correcting references to certain Customs Forms (CFs) that have either been eliminated, substantially revised, or consolidated with another Customs Form. These corrections are made to update the Customs Regulations so that the trade community and vessel operators can be aware of current Customs information requirements.

Elimination of Master's Oath Requirement (CF 1300)

The CF 1300 (Master's Oath of Vessel in Foreign Trade) was a multi-purpose form that had to be completed for each entrance and clearance of a vessel, including preliminary entry and the granting of a permit to proceed, and contained the sworn statement of the master as to the contents of documents and manifests filed with Customs for vessels over five net tons engaged in trade or commercial use. The statutory basis (19 U.S.C. 282) for the Master's Oath requirement was repealed by section 690(a) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, Title VI, section 690(a)(2), 107 Stat. 2222) without replacement. Nine sections in the Customs Regulations (19 CFR 4.7(a), 4.20(f), 4.61(a), 4.63(a)(1), 4.75(a) and (b), 4.81(e), (g)(1) and (2), 4.84(c)(1), 4.85(b) and (c), and 4.87(b), (d), and (g)) provide for the submission of the CF 1300 or otherwise reference the master's oath for purposes of meeting Customs entry requirements. Accordingly, the applicable texts of these regulatory provisions are amended to remove the reference.

Elimination of Customs Form 7512–C

The CF 7512–C (Transportation Entry and Manifest of Goods) was a multiple-copy, data-card form used by Customs and the trade to track in-bond movements of merchandise by means of a unique 9-digit number pre-printed on the card. This form was designed to speed cargo movement reporting by means of having one copy of the form stay with Customs for data input once the designated merchandise was picked up by the in-bond carrier; the other copy of the form accompanied the merchandise in transit, to be delivered to Customs at the port of destination. With the continued development of the Automated Manifest System (AMS) throughout the 1990s, which now tracks these types of in-bond cargo movements, the practical use of the CF 7512–C tracking system became obsolete, and, in fact, this form has been eliminated. Some fifteen sections in the Customs Regulations (19 CFR 4.81(g)(1), 18.2(b)–(d), 18.3(b), 18.7(a), 18.13(b), 122.83(e), 122.92(a)(2) and (b)(1) and (2), 122.93(a), 122.94(a), 122.119(c), 122.120(d) and (i), 123.42(c) and (d), 123.64(b), 144.37(a), and 146.68(b)) provide for the submission of the CF 7512–C for purposes of meeting Customs entry requirements. Accordingly, the applicable texts of these regulatory provisions are amended to remove the reference.

New Customs Form 1300

Two Customs Forms pertaining to vessel operators (the CF 1301—General Declaration; and the CF 1378—Clearance of Vessel to a Foreign Port) recently have been combined into a new form designated as CF 1300 (Vessel Entrance or Clearance Statement). Accordingly, all references to these two forms in the Customs Regulations (19 CFR Chapter I) need to be amended. In Part 4 of the Customs Regulations (19 CFR part 4) there are some thirteen sections of the Customs Regulations (19 CFR 4.7(a), 4.9(b), 4.34(e), 4.61(a), 4.75(a) and (b), 4.81(e), (g)(1) and (2), 4.84(a) and (d), 4.85(a) through (c), 4.87(b) through (d) and (f), 4.89(b) and (d), 4.90(b), 4.91(a) and (b), and 4.99(a)) that require submission of one or both of these Customs Forms for purposes of meeting Customs vessel entry requirements. The applicable texts of these regulatory provisions are amended to remove references to the CF 1301 and CF 1378. Further, in tandem with the elimination of the old CF 1300 (see discussion above), the applicable texts of the identified sections in part 4 of the Customs Regulations are amended to correct references to the new CF 1300.

Other Changes

Section 4.81(g) of the Customs Regulations contains simplified procedural provisions regarding the coastwise movement of LASH-type barges. The fourth sentence of paragraph (g)(2) states:

> Where a complete manifest is not available at the port of lading, the permit to proceed must include a statement that a complete manifest and shipper's export declaration for each barge will be filed at the port where the barge will be taken aboard a barge-carrying vessel, and that port must be identified in the statement.

It has come to Customs attention that this requirement is irrelevant to LASH-type barges and merely serves to cause confusion at ports. Accordingly, this sentence is removed in this document.

Paperwork Reduction Act

The collection of information contained in this final rule document has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control numbers 1515–0060 and 1515–0062. These amendments do not make any substantive or substantial change to the existing approved information collections; they merely require vessel operators to submit the same vessel information on a different form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Inapplicability of Public Notice and Comment Requirements and Delayed Effective Date Requirements; The Regulatory Flexibility Act and Executive Order 12866

Inasmuch as these amendments either substitute one Customs Form reference for another or otherwise advise the public that certain Customs Forms are no longer used and that a certain procedural requirement is no longer required, which are matters pertaining to agency procedure, pursuant to 5 U.S.C. 553(b)(A), the notice and public procedure requirements of the Administrative Procedures Act (5 U.S.C. 553) are not applicable. For the same reason, these amendments are not subject to the delayed effective date requirement of 5 U.S.C. 553(d). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Cargo vessels, Computer technology, Customs duties and inspection, Entry, Imports, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 18

Bonded transportation, Common carriers, Customs duties and inspection,

Exports, Foreign trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds, Transportation, Vehicles, Vessels.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Air transportation, Baggage, Customs duties and inspection, Entry procedure, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Common carriers, Customs duties and inspection, Entry of merchandise, Forms, Freight, Imports, International traffic, Motor carriers, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 146

Administrative practice and procedure, Customs duties and inspection, Entry, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements, Surety bonds.

Amendments to the Regulations

Parts 4, 18, 122, 123, 144, and 146 of the Customs Regulations (19 CFR parts 4, 18, 122, 123, 144, and 146) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citations for §§ 4.7, 4.9, 4.20, 4.75, 4.81, 4.84, and 4.85, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702; 46 U.S.C. App. 121, 128;

* * * * *

Section 4.75 also issued under 46 U.S.C. App. 91;

* * * * *

Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 251, 883;

* * * * *

Section 4.84 also issued under 46 U.S.C. App. 883–1;

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

* * * * *

2. Section 4.7(a) is amended:

a. In the fourth sentence by removing the words ''Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, a General Declaration, Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300'';

b. In the fifth sentence by removing the words ''item 17–22 of the General Declaration'' and adding, in their place, the words ''items 16, 18, and/or 19 of the Vessel Entrance or Clearance Statement''; and

c. In the last sentence by removing the words ''13 of the General Declaration'' and adding, in their place, the words ''16 of the Vessel Entrance or Clearance Statement''.

3. Section 4.9(b) is amended by removing the words ''Customs Form 1301 (General Declaration)'' wherever they appear and adding, in their place, the words ''Customs Form 1300 (Vessel Entrance or Clearance Statement)''.

4. Section 4.20 (f)(2) is amended by removing the words ''master's oath'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement''.

5. Section 4.34(e) is amended in the last sentence by removing the words ''General Declaration, Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300''.

6. In § 4.61, paragraph (a) is amended by revising the first four sentences to read as follows; and paragraph (b) is amended in the fourth sentence by removing the words ''Customs Form 1301 (General Declaration)'' and adding, in their place, the words ''Customs Form 1300 (Vessel Entrance or Clearance Statement)'':

§ 4.61 Requirements for clearance.

(a) *Application for clearance.* A clearance application for a vessel intending to depart for a foreign port must be made by filing Customs Form 1300 (Vessel Entrance or Clearance Statement) executed by the vessel master or other proper officer. The master, licensed deck officer, or purser may appear in person to clear the vessel, or the properly executed Customs Form 1300 may be delivered to the customhouse by the vessel agent or other personal representative of the master. Necessary information may also be transmitted electronically pursuant to a system authorized by Customs. Clearance will be granted by Customs either on the Customs Form 1300 or by approved electronic means. * * *

* * * * *

§ 4.63 [Amended]

7. Section 4.63(a)(1) is amended by removing the words ''properly executed Master's Oath on Entry of Vessel in Foreign Trade'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement''.

§ 4.75 [Amended]

8. In § 4.75:

a. Paragraph (a) is amended:

1. By removing the words ''General Declaration, Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300''; and

2. By removing the last two sentences and adding, in their place, the following sentence:

* * * * *

(a) * * * The ''Incomplete Manifest for Export'' box in item 17 of the Vessel Entrance or Clearance Statement form must be checked.

* * * * *

b. Paragraph (b) is amended:

1. In the first sentence by removing the words ''General Declaration on Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300''; and

2. By removing the second sentence.

9. Section 4.81 is amended by revising paragraphs (e) and (g)(1) and (2) to read as follows:

§ 4.81 Reports of arrivals and departures in coastwise trade.

* * * * *

(e) Before any foreign vessel departs in ballast, or solely with articles to be transported in accordance with § 4.93, from any port in the United States for any other such port, the master must apply to the port director for a permit to proceed by filing a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate. If a vessel is proceeding in ballast and therefore the Cargo Declaration (Customs Form 1302) is omitted, the words ''No merchandise on board'' shall be inserted in item 16 of the Vessel Entrance or Clearance Statement. However, articles to be transported in accordance with § 4.93 must be manifested on the Cargo Declaration, as required by § 4.93(c). Three copies of the Cargo Declaration must be filed with the port director.

When the port director grants the permit by making an appropriate endorsement on the Vessel Entrance or Clearance Statement (see § 4.85(b)), the duplicate copy, together with two copies of the Cargo Declaration covering articles to be transported in accordance with § 4.93, must be returned to the master. The traveling Crew's Effects Declaration, Customs Form 1304, and all unused crewmembers' declarations on Customs Form 5129 will be placed in a sealed envelope addressed to the appropriate Customs officer at the next intended domestic port and returned to the master for delivery. The master must execute a receipt for all unused crewmembers' declarations which are returned to him. Immediately upon arrival at the next United States port the master must report his arrival to the port director. He must make entry within 48 hours by filing with the port director the permit to proceed on the Vessel Entrance or Clearance Statement received at the previous port, a newly executed Vessel Entrance or Clearance Statement, a Crew's Effects Declaration of all unentered articles acquired abroad by crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining on board, both copies of the Cargo Declaration covering articles transported in accordance with § 4.93, and the document of the vessel. The traveling Crew's Effects Declaration and all unused crewmembers' declarations on Customs Form 5129 returned at the prior port to the master must be delivered by him to the appropriate Customs officer.

* * * * *

(g) * * *

(1) At the port where a LASH-type barge begins a coastwise movement with inward foreign cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be obtained. A single permit to proceed may be used for all the barges proceeding to the same port of unlading in the same town. An inward foreign manifest of the cargo in each barge, destined to the port of unlading shown on the permit to proceed, must be attached to each permit. At the port of unlading of the barge, report of arrival and entry must be made immediately upon arrival to the appropriate Customs officer by presentation of the permit to proceed, manifests, and a new Vessel Entrance or Clearance Statement, Customs Form 1300. If only part of the inward foreign cargo is unladen, a new permit to proceed must be obtained and the inward foreign manifests must be attached to it.

(2) At the port where a LASH-type barge begins a coastwise movement with export cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be presented to the appropriate Customs officer. A single permit to proceed may be presented for all the barges proceeding from the same port of lading in the same tow. Required shipper's export declarations for LASH-type barges must be filed at the port where the barges will be taken aboard a barge-carrying vessel. At the next port, a report of arrival must be made immediately upon arrival and entry must be made within 48 hours by presentation of the permit to proceed received upon departure from the prior port and a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300.

* * * * *

§ 4.84 [Amended]

10. Section 4.84 is amended:

a. At paragraph (a) by removing the second and third sentences and adding, in their place, a new sentence to read as follows:

(a) * * * Such a clearance shall be granted in accordance with the applicable provisions of § 4.61 of the regulations of this part, including clearance of a vessel simultaneously engaged in one or more of the transactions listed in § 4.90(a)(4), (5), or (6) of this part.* * *

b. At paragraph (c)(1) in the last sentence by removing the words ''Master's Oath on Entry of Vessel in Foreign Trade'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement'; and

c. At paragraph (d) in the second sentence by removing the words ''General Customs Declaration, Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300''.

11. In § 4.85, paragraph (a) is amended in the fourth sentence by removing the words ''General Declaration, Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300'; and paragraphs (b) and (c) are revised to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(b)(1) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in paragraph (a) of this section, the master must present to the director of such port of departure an application in triplicate on Customs Form 1300 for a permit to proceed to the next port. When a port director grants the permit on Customs Form 1300, the following legend must be endorsed on the form:

Port
Date
Permission is granted to proceed to the port named in item 12.

_____
Signature and title

(2) The duplicate must be attached to the traveling manifest and the triplicate (the permit to proceed to be delivered at the next port) must be returned to the master, together with the traveling manifest and the vessel's document, if on deposit. If no inward foreign cargo or passengers are to be discharged at the next port, that fact must be indicated on Customs Form 1300 by inserting ''To load only'' in parentheses after the name of the port to which the vessel is to proceed. The traveling Crew's Effects Declaration covering articles acquired abroad by officers and members of the crew, together with the unused crewmembers' declarations prepared for such articles, will be placed in a sealed envelope addressed to the appropriate Customs officer at the next port and given to the master for delivery.

(c)(1) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master must immediately report its arrival and make entry within 48 hours. To make such entry, he must deliver to the port director the vessel's document, the permit to proceed (Customs Form 1300 endorsed in accordance with paragraph (b) of this section), the traveling manifest, and the traveling Crew's Effects Declaration (Customs Form 1304), together with the crewmembers' declarations received on departure from the previous port. The master must also present an abstract manifest consisting of a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300, a Cargo Declaration, Customs Form 1302, and a Passenger List, Customs and Immigration Form I–418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port, a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by officers and crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the sea or ship's stores remaining on board, and if applicable, the Cargo Declaration required by § 4.86. If no inward foreign cargo or passengers are to be discharged, the Cargo Declaration or Passenger List may be omitted from the abstract manifest, and

the following legend must be placed in item 15 of the Vessel Entrance or Clearance Statement:

Vessel on an inward foreign voyage with residue cargo/passengers for _____. No cargo or passengers for discharge at this port.

(2) The traveling manifest, together with a copy of the newly executed Vessel Entrance or Clearance Statement, will serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered.

* * * * *

12. Section 4.87 is amended by revising paragraphs (b)–(d), (f), and (g) to read as follows:

§ 4.87 Vessels proceeding foreign via domestic ports.

* * * * *

(b) When applying for a clearance from the first and each succeeding port of lading, the master must present to the port director a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate and a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, in accordance with § 4.63(a), of all the cargo laden for export at that port. The Vessel Entrance or Clearance Statement must clearly indicate all previous ports of lading.

(c) Upon compliance with the applicable provisions of § 4.61, the port director will grant the permit to proceed by making the endorsement prescribed by § 4.85(b) on the Vessel Entrance or Clearance Statement, Customs Form 1300. One copy will be returned to the master, together with the vessel's document if on deposit. The traveling Crew's Effects Declaration, Customs Form 1304, together with any unused crewmembers' declarations, will be placed in a sealed envelope addressed to the appropriate Customs officer at the next domestic port and returned to the master.

(d) On arrival at the next and each succeeding domestic port, the master must immediately report arrival. He must also make entry within 48 hours by presenting the vessel's document, the permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, received by him upon departure from the last port, a Crew's Effects Declaration, Customs Form 1304, in duplicate listing all unentered articles acquired aboard by officers and crew of the vessel which are still retained on board, and a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining aboard. The master must also execute a Vessel Entrance or Clearance Statement. The traveling Crew's Effects Declaration, together with any unused crewmembers' declarations returned to the master at the prior port, will be delivered by him to the port director.

* * * * *

(f) If a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), and all required shipper's export declarations are not available for filing before departure of a vessel from any port, clearance on the Vessel Entrance or Clearance Statement, Customs Form 1300, may be granted in accordance with § 4.75, subject to the limitation specified in § 4.75(c).

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel must deliver to the director of that port within 4 business days after the vessel's clearance a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), and the export declarations to cover the cargo laden for export at that port.

13. Section 4.89 is amended:

a. At paragraph (b) by removing the words ''General Declaration, Customs Form 1301'' and adding, in their place, the words ''on the Vessel Entrance or Clearance Statement, Customs Form 1300''; and

b. At paragraph (d) by removing the words ''General Declaration, Customs Form 1301'' and adding, in their place, the words ''Vessel Entrance or Clearance Statement, Customs Form 1300''.

14. Section 4.90(b) is amended in the first sentence, by removing the number ''1301'' and adding, in its place, the number ''1300''.

15. Section 4.91 is amended:

a. At paragraph (a) in the first sentence by removing within the parenthesis the number ''1301'' and adding, in its place, the number ''1300''; and in the second sentence, by removing the number ''1301'' and adding, in its place, the number ''1300''; and

b. At paragraph (b)(2) by removing the number ''1378'' and adding, in its place, the number ''1300''.

16. In § 4.99, paragraph (a), introductory text, and paragraph (a)(2)(ii) are amended by removing the number ''1301,''.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for part 18, and the specific authority citations for §§ 18.3, 18.7, and 18.13, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623.

* * * * *

Section 18.3 also issued under 19 U.S.C. 1565;

* * * * *

Section 18.7 also issued under 19 U.S.C. 1557, 1646a;

* * * * *

Section 18.13 also issued under 19 U.S.C. 1498(a);

* * * * *

2. Section 18.2(b) is amended in the first sentence, by removing the words ''and Customs control card (Customs Form 7512–C),''.

3. Section 18.2(c)(1) is amended:

a. In the first sentence, by removing the words ''either the related Customs Form 7512–C (destination) or the'' and adding, in their place, the words ''any related''; and by removing the parenthetical words ''(which cannot be used in conjunction with Customs Form 7512–C)''; and

b. In the second sentence, by removing the words ''the Customs Form 7512–C (destination) shall accompany the first conveyance, and''.

4. Section 18.2(d) is amended in the first sentence, by removing in the parenthesis the words ''and related Customs Form 7512–C (destination) or the'' and adding, in their place, the words ''any related''.

5. Section 18.3(b) is amended:

a. In the second sentence, by removing the words ''and Customs Form 7512–C (destination)''; and

b. In the fourth sentence, by removing the words ''and the related Customs Form 7512–C (destination)''.

6. Section 18.7(a) is amended in the first sentence, by removing in the parenthesis the words ''and related Customs Form 7512–C (destination) or the'' and adding, in their place, the words ''any related''.

7. Section 18.13(b) is amended by removing the last sentence.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.83(e) is amended:

a. In the first sentence, by removing the words ''and a numbered Customs Form 7512–C shall be filled out and filed'';

b. In the last sentence, by removing the words ''and Customs Form 7512–C (duplicate)''; and

c. By removing the second and third sentences.

3. Section 122.92 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2).

4. Section 122.92(b)(1) is amended:

a. In the first sentence, by removing the words '', and the duplicate copy of Customs Form 7512–C''; and

b. By removing the last sentence.

5. Section 122.92(b)(2) is amended by removing the words ''one copy of Customs Form 7512–C or'' and adding, in their place, the word ''any''.

6. Section 122.93(a) is amended in the first sentence, by removing the words ''with Customs Form 7512–C attached''.

7. Section 122.94(a) is amended in the second sentence, by removing the words '', Customs Form 7512 with Customs Form 7512–C attached,'' and adding, in their place, the words ''and a Customs Form 7512''.

8. Section 122.119(c) is amended:

a. By removing in the introductory text, the words '', and two copies of Customs Form 7512–C (original and duplicate)'';

b. By adding a second sentence, at the end of the introductory text, as follows:

* * * * *

(c) * * * The permit copy is used and kept by Customs at the port of arrival.

* * * * *

c. By removing paragraphs (c)(1) and (2).

9. In § 122.120:

a. Paragraph (d) is amended in the introductory text, by removing the words ''and a Customs Form 7512–C (original and duplicate)'';

b. Paragraph (d)(1) is amended in the first sentence, by removing the words ''and Customs Form 7512–C (original)'' and by removing the second sentence; and

c. Paragraph (i) is amended by removing the words ''Forms 7512 and 7512–C'' and adding, in their place, the words ''Form 7512''.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. Section 123.42(c)(1) is amended in the last sentence by removing the words ''with the related Customs Form 7512–C (destination)''.

3. Section 123.42(d) is amended in the first sentence by removing the words ''and the related Customs Form 7512–C (destination)''.

4. Section 123.64(b) is amended in the second sentence by removing the words ''and related Customs Form 7512–C (destination)''.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

2. Section 144.37(a) is amended in the first sentence by removing the words '', accompanied by Customs Form 7512–C (Transportation Entry and Manifest of Goods)''.

PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 146.68(b) is amended:

a. In the fourth sentence by removing the words ''and the destination copy (Customs Form 7512–C)''; and

b. In the last sentence by removing the words ''and the origin copy (Customs Form 7512–C)''.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 24, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–7557 Filed 3–28–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 93F–0132]

Indirect Food Additives: Paper and Paperboard Components

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 a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin as a preservative in clay-type fillers for paper and paperboard intended for use in contact with aqueous and fatty food. This action is in response to a petition filed by Lonza, Inc.

DATES: This rule is effective March 29, 2000. Submit written objections and requests for a hearing by April 28, 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:

I. Background

In a notice published in the **Federal Register** May 17, 1993 (58 FR 28882), FDA announced that a food additive petition (FAP 3B4367) had been filed by Lonza, Inc., c/o Delta Analytical Corp., 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105), § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300), and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin as a preservative in adhesives, resinous and polymeric coatings and clay-type fillers for paper and paperboard in food-contact articles. Lonza, Inc., is currently represented by Lewis and Harrison, 122 C St. NW., suite 740, Washington, DC 20001. (Formerly represented by Delta Analytical Corp. whose current address is 7910 Woodmont Ave., Bethesda, MD 20814).

When the petition was filed on May 17, 1993, the petitioner proposed to amend the food additive regulations in §§ 175.105, 175.300, and 176.170. Subsequent to the filing of the petition, the petitioner amended the petition to limit the use of the additive to the manufacture of paper and paperboard under § 176.170.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive, a mixture of

hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin as a preservative in clay-type fillers for paper and paperboard intended to contact aqueous and fatty food is safe; (2) the additive will achieve its intended technical effect; and therefore, (3) the regulation in § 176.170(a)(5) should be amended as set forth below.

FDA's review of the petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route, but the Committee concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two-year drinking-water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, ''* * * that data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde'' (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

A mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin intended as a preservative in clay-type fillers for paper and paperboard intended in contact with aqueous and fatty foods is regulated under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) as a food additive and not as a pesticide chemical under section 408 of the act (21 U.S.C. 346a). However, this intended use of a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to market food-contact articles containing a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin for this intended use should contact the Environmental Protection Agency to determine whether this use requires a pesticide registration under FIFRA.

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 carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

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.

II. Objections

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 28, 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 are to be submitted and are to 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.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, ''Formaldehyde: An Experimental Multipotential Carcinogen,'' *Toxicology and Industrial Health*, vol. 5, No. 5, pp. 699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, ''Two-Year Drinking-Water Study of Formaldehyde in Rats,'' *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conferences concerning ''Formaldehyde,'' Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding an entry under the headings ''List of Substances'' and ''Limitations'' to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * * * * * *	
Hydroxymethyl-5,5-dimethylhydantoin (CAS Reg. No. 27636–82–4), mixture with 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin (CAS Reg. No. 6440–58–0).	For use only as a preservative in clay-type fillers at a level not to exceed a combined total of 1,200 milligrams/kilograms hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin in the filler.
* * * * * * *	

* * * * *

Dated: March 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7655 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 00P–0931]

Clinical Chemistry Devices; Classification of the Biotinidase Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the biotinidase test system into class II (special controls). The special control that will apply to this device is restriction to sale, distribution, and use as a prescription device. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of the safety and effectiveness of the devices.

DATES: This rule is effective April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Carol C. Benson, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or class II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on November 19, 1999, classifying the Wallac Neonatal Biotinidase Test Kit in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On December 20, 1999, FDA filed a petition submitted by PerkinElmer requesting classification of the Wallac Neonatal Biotinidase Test Kit into class II under section 513(f)(2) of the act.

After review of the information submitted in the petition, FDA determined that the Wallac Neonatal Biotinidase Test Kit can be classified in class II with the establishment of special controls. This device is intended for use in the semiquantitative in vitro determination of biotinidase activity in blood specimens collected onto filter paper to screen newborns for biotinidase deficiency, an inborn error of metabolism. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

In addition to the general controls of the act, Wallac Neonatal Biotinidase Test Kit is subject to the following special control: The sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 (21 CFR 801.109). Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the device is not exempt from the premarket notification requirements. The test is widely used in newborn screening programs and FDA review of data sets and labeling ensure that minimum levels of performance are obtained before marketing and are subject to impartial external quality control before labeling is put into place. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the biotinidase test system before marketing the device.

On February 15, 2000, FDA issued an order to the petitioner classifying the Wallac Neonatal Biotinidase Test Kit, and substantially equivalent devices of this generic type, into class II under the generic name, biotinidase test system. FDA identifies this generic type of device as a biotinidase test system, which is intended to measure the activity of the enzyme biotinidase deficiency, an inborn error of metabolism in infants, characterized by the inability to utilize dietary protein bound vitamin, or to recycle endogenous biotin, and may result in irreversible neurological impairment. This order also identifies the following special control applicable to this device: Sale, distribution, and use of this device are restricted in accordance with the prescription device requirements in § 801.109.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency knows of only one manufacturer of this device. Without this rule, the manufacturer would be required to obtain approval of a premarket approval application from FDA before marketing this device. Therefore, this rule reduces an economic burden for this manufacturer and any future manufacturers of this type of device. The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform act is not required.

IV. Paperwork Reduction Act of 1995

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.

Therefore, under the Federal Food, Drug, and Cosmetic Act under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

List of Subjects in 21 CFR Part 862

Medical devices.

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.1118 is added to subpart B to read as follows:

§ 862.1118 Biotinidase test system.

(a) *Identification.* The biotinidase test system is an in vitro diagnostic device intended to measure the activity of the enzyme biotinidase in blood. Measurements of biotinidase are used in the treatment and diagnosis of biotinidase deficiency, an inborn error of metabolism in infants, characterized by the inability to utilize dietary protein bound vitamin or to recycle endogenous biotin. The deficiency may result in irreversible neurological impairment.

(b) *Classification.* Class II (special controls). The special control is sale, distribution, and use in accordance with the prescription device requirements in § 801.109 of this chapter.

Dated: March 13, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–7541 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–003]

Drawbridge Operating Regulation; Pass Manchac, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Illinois Central Railroad automated bridge, mile 6.7, at Manchac, Tangipahoa and St. John Parishes, Louisiana. This deviation allows the Canadian National/Illinois Central Railroad to close the bridge to navigation continuously from noon on Wednesday, April 12, 2000 until 8 p.m. on Thursday, April 13, 2000. This temporary deviation was issued to allow for the replacement of an electrical cable and to accomplish other general maintenance. Presently, the draw is maintained in the open position and closes for the passage of trains.

DATES: This deviation is effective from noon on Wednesday, April 12, 2000 through 8 p.m. on Thursday, April 13, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Illinois Central Railroad automated bridge across Pass Manchac, mile 6.7, at Manchac, has a vertical clearance of one foot above mean high water in the closed-to-navigation position and 56 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Canadian National/Illinois Central Railroad requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving replacement of an underground

electrical cable and other general maintenance work.

This deviation allows the draw of the Illinois Central Railroad automated bridge across Pass Manchac, mile 6.7, at Manchac, Tangipahoa and St. John Parishes, Louisiana to remain closed to navigation continuously from noon on Wednesday, April 12, 2000, until 8 p.m. on Thursday, April 13, 2000.

Dated: March 15, 2000.

K.J. Eldridge,

Capt, USCG, Acting District Commander, Eighth CG District.

[FR Doc. 00–7644 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 00–016]

RIN 2115–AA97

Safety Zone Regulations: Saint Pete Beach, FL

AGENCY: Coast Guard, DOT

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone closing the waters of Blind Pass, Pinellas County, Florida. The zone will be placed into effect and terminated at different times by a broadcast notice to mariners to protect recovery personnel and vessels in the vicinity of pollution response operations. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation becomes effective at 9 a.m., on March 9, 2000 through 9 a.m., on May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606, Attention: Lieutenant Warren Weedon, or phone (813) 228–2189 ext 101.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and making these regulations effective less than 30 days after the **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public as the updated information concerning the channel blockage was received only one day prior.

Background and Purpose

A permit was granted by the U. S. Army Corp of Engineers to conduct dredging operations in Blind Pass. During the dredging operations it was determined that some oil was buried in the pass. The Coast Guard is now conducting oil recovery operations and has determined that a safety zone is needed to ensure the safety of personnel engaged in recovery operations. The Coast Guard is establishing a temporary safety zone closing the waters of Blind Pass, Pinellas County, Florida. The zone will be placed into effect and terminated at different times by a broadcast notice to mariners to protect recovery personnel and vessels in the vicinity of pollution response operations. Entry into this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect in a limited area of Saint Pete Beach.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''Small entities'' comprises small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect in a limited area of Saint Pete Beach.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531—1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking disproportionately affect children.

Civil Justice Reform

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

Protection of Children

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

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Safety measures, Waterways.

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Temporary § 165.T07–016 is added to read as follows:

§ 165.T07–016 Safety Zone; Tampa Bay, Florida

(a) *Regulated area.* A temporary fixed safety zone is established closing the entrance to Blind Pass, Saint Pete Beach, Florida from a line drawn across Blind Pass between Treasure Island and Long Key as defined by COLREGS Demarcation Line, 33 CFR 80.753 (a), to a line drawn 500 yards north, again crossing Blind Pass channel, during periods when oil spill recovery operations are being conducted in Blind Pass Channel.

(b) *Periods of closure.* The COTP will notify the maritime community and local agencies of periods when the safety zone is in effect by providing notice via telephone and/or Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited to all vessels without the prior permission of the Coast Guard Captain of the Port.

(d) *Dates.* These regulations will remain in effect from between 9 a.m. on March 9, 2000, through 9 a.m. on May 1, 2000.

Dated: March 9, 2000.

D.M. Smith,

Commander, U.S. Coast Guard, Acting Captain of the Port, Tampa, Florida.

[FR Doc. 00–7750 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6567–2]

Extension of Operating Permits Program Interim Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the February 14, 2000 direct final rule: ''Extending Operating Permits Program Interim Approval Expiration Dates.'' This rule would extend the dates by which interim approval of State or local operating permits programs will expire until June 1, 2002. The withdrawal of the rule will only affect those programs with interim approval as opposed to full approval.

DATES: The direct final rule, published on February 14, 2000 (65 FR 7290), is withdrawn as of March 29, 2000.

ADDRESSES: Docket No. A–93–50 containing supporting information used in the development of this notice is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding holidays. The docket is located in EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Powell at (919) 541–5331, Information Transfer and Program Integration Division (MD–12), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, electronic mail address: powell.roger@epa.gov.

SUPPLEMENTARY INFORMATION: On February 14, 2000, EPA published a direct final rule (65 FR 7290) and a parallel proposal (65 FR 7333) to amend Appendix A of the 40 CFR part 70 operating permits regulations. This amendment would extend until June 1, 2002 the expiration dates of all interim approvals of State or local operating permits programs. The purpose of this action was to allow State and local permitting authorities to combine the operating permits program revisions necessary to correct interim approval deficiencies with program revisions necessary to implement the revisions to the part 70 regulations that are now anticipated to be promulgated in late 2001. This action would allow the permitting authorities to preserve resources by preparing and submitting to EPA only one program revision instead of two.

The EPA stated in the direct final rule (65 FR 7291, February 14, 2000) that if relevant, adverse comments were received by March 15, 2000, EPA would publish a notice to withdraw the direct final rule before its effective date of May 30, 2000. The EPA received an adverse comment on the direct final rule and, therefore, is withdrawing the direct final rulemaking action. The adverse comment stated that the action was contrary to the express terms of the Clean Air Act. The EPA will address this comment on the withdrawn amendment in the subsequent final action on the proposed amendment.

Dated: March 21, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–7735 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6565–6]

West Virginia: Final Determination of Partial Program Adequacy of the State's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Partial Program Adequacy for the State of West Virginia's Municipal Solid Waste Landfill Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs or other systems to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised federal MSWLF criteria

(40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the U.S. Environmental Protection Agency (EPA) to determine whether states have adequate programs for MSWLFs.

On October 23, 1998, EPA published the final State Implementation Rule (SIR) which contains procedures by which EPA will approve or partially approve state landfill permit programs (63 FR 57025). Prior to that date, EPA processed state applications for EPA approval of their landfill permit programs based on draft SIR procedures. The procedures contained in the draft SIR did not significantly differ from the final SIR.

Owners/operators of MSWLFs located in states with EPA-approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state permit program allows such flexibility. EPA notes that regardless of the approval status of a state and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities. However, facilities in EPA-approved states may have more flexibility in meeting those criteria.

On June 17, 1994, the State of West Virginia applied for a determination of partial program adequacy for its municipal solid waste landfill permit program under section 4005 of RCRA. West Virginia submitted relevant regulations that corresponded to all sections of 40 CFR part 258 except for specific sections of the following four subparts:

1. Subpart A—General: West Virginia (WV) was not able to adopt all of the definitions listed under 40 CFR 258.2;

2. Subpart E—Groundwater Monitoring and Corrective Action: WV was not able to adopt the requirements of 40 CFR 258.51, Groundwater Monitoring Systems; 40 CFR 258.54, Detection Monitoring Program; and 40 CFR 258.55, Assessment Monitoring Program;

3. Subpart F—Closure and Post-Closure Care: WV was not able to adopt the criteria in 40 CFR 258.60, Closure Criteria, pertaining to the time allowed to apply the final cover;

4. Subpart G—Financial Assurance Criteria: West Virginia was not able to adopt any of the sections or provisions of this Subpart.

On March 8, 1996, EPA published a tentative determination of partial program adequacy for all portions of the State of West Virginia MSWLF permitting program that satisfied the federal provisions of 40 CFR part 258, with the exceptions mentioned above (61 FR 9451–9454). EPA delayed the final determination of partial program adequacy of West Virginia's program due to litigation that affected the state's solid waste management authorities. However, these issues were resolved by the passage of West Virginia Senate Bill 178 on March 2, 1998. Based on EPA's March 8, 1996 tentative determination and the amendment of West Virginia's solid waste management authorities, as provided in Senate Bill 178, EPA is today completing its decision making process by issuing a final determination of partial program adequacy of West Virginia's MSWLF permitting program.

EFFECTIVE DATE: This final determination of partial program adequacy for the State of West Virginia shall be effective on April 28, 2000.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Attn: Mr. Michael C. Giuranna, mailcode 3WC21, telephone (215) 814–3298. The contact for the West Virginia Division of Environmental Protection is Mr. Larry Atha, 1356 Hansford Street, Charleston, West Virginia 25301–1401, telephone (304) 558–6350.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Section 4005(c)(1)(B) of Subtitle D of RCRA, as amended by HSWA, requires states to develop permitting or other similar programs that incorporate the federal criteria under 40 CFR part 258. Subtitle D also requires in Section 4005(c)(1)(C) that EPA determine the adequacy of state MSWLF permitting programs to ensure that facilities comply with the revised federal criteria. To fulfill this requirement, the Agency promulgated the State Implementation Rule on October 23, 1998 (63 FR 57025) which provides procedures by which EPA will approve or partially approve state landfill permit programs.

EPA interprets the requirements for states to develop ''adequate'' programs for permits, or other forms of prior approval, as imposing several minimum requirements. First, each state must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

EPA Regions determine whether state programs are ''adequate'' based on the criteria outlined above.

B. State of West Virginia

In a letter dated June 17, 1994, the West Virginia Division of Environmental Protection (WVDEP) submitted an application to EPA Region III for a determination of partial program adequacy. In response to EPA's comments on West Virginia's application, the WVDEP submitted additional information in letters dated April 10, 1995 and October 12, 1995. EPA reviewed WVDEP's application and this additional information and published a tentative determination of partial program adequacy for subparts B, C and D, and portions of subparts A, E and F of 40 CFR part 258, as described below, in the **Federal Register** on March 8, 1996 (61 FR 9451–9454).

A public comment period began on March 8, 1996, and ended on April 30, 1996. As announced in the notice of tentative determination, a public hearing was offered to be held on April 30, 1996, if sufficient interest was expressed by the public. Since only one commenter requested that a hearing be held, it was determined that sufficient interest did not exist, and therefore a public hearing was not held. This commenter submitted written comments which are addressed, along with all other comments, in Section C, Public Comments, of this notice. Following the close of the public comment period, WVDEP addressed all public comments which EPA received on its tentative determination. Based on WVDEP's response to comments, EPA was prepared to publish a final determination of partial program adequacy of the West Virginia MSWLF permitting program in late 1996. However, EPA delayed the final determination of partial program adequacy of West Virginia's program due to several rulings in the U.S. District Court for the Northern District of West Virginia which brought into question the implementation of portions of the West Virginia solid waste statutes. However, on March 2, 1998, the Governor of West Virginia signed into law Senate Bill 178 which corrected language in the State's solid waste laws that had previously been declared unconstitutional by the federal court rulings. The provisions of Senate Bill 178 eliminated EPA's concerns about the enforceability of West Virginia's solid waste statutes and allowed EPA to

proceed with this final determination of partial program adequacy.

Listed below are the elements of the federal program that West Virginia's MSWLF permitting program satisfy for partial program approval. These elements of the federal program that West Virginia's MSWLF permitting program satisfy were listed in EPA's previous notice of tentative determination of partial program adequacy (61 FR 9451, March 8, 1996), and it is those corresponding provisions of West Virginia's MSWLF permitting program that are being approved by EPA today in this final determination of partial program adequacy.

Subpart A—General

Existing WVDEP requirements fully comply with 40 CFR sections 258.1, Purpose, Scope, and Applicability and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

WVDEP requirements fully comply with § 258.10, Airport Safety, § 258.11, Floodplains; § 258.12, Wetlands; § 258.13, Fault Areas; § 258.14, Seismic Impact Zones; § 258.15, Unstable Areas; and § 258.16, Closure of Existing MSWLF Units.

Subpart C—Operating Criteria

WVDEP requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.23, Explosive Gas Control; § 258.24, Air Criteria; § 258.25, Access requirements; § 258.26, Run-On/Run-Off Control Systems; § 258.27, Surface Water Requirements; § 258.28, Liquids Restrictions; and § 258.29, Recordkeeping Requirements.

Subpart D—Landfill Design

WVDEP requirements fully comply with: § 258.40, Design Criteria.

Subpart E—Groundwater Monitoring and Corrective Action

WVDEP requirements fully comply with: § 258.50, Applicability; § 258.53, Groundwater Sampling and Analysis requirements; § 258.56, Assessment of Corrective Measures; § 258.57, Selection of Remedy; and § 258.58, Implementation of the Corrective Action Program.

Subpart F—Closure and Post-Closure Care

WVDEP requirements fully comply with:

§ 258.61, Post-Closure Care Requirements.

In a similar manner, EPA's previous notice of tentative determination of partial program adequacy listed those elements of West Virginia's MSWLF permitting program that did not satisfy provisions of EPA's requirements at 40 CFR part 258. Those elements are again listed below and are not being approved in this notice. However, the federal program elements listed below are expected to be addressed in a future notice.

Subpart A—General

The definitions listed in § 258.2, Definitions.

Subpart E—Groundwater Monitoring and Corrective Action

The requirements of § 258.51, Groundwater Monitoring Systems; § 258.54, Detection Monitoring Program; and § 258.55, Assessment Monitoring Program.

Subpart F—Final Closure

The criteria in § 258.60, Closure Criteria, pertaining to the time allowed to apply the final cover.

Subpart G—Financial Assurance Criteria

§ 258 Subpart G, Financial Assurance requirements. This includes § 258.70, Applicability; § 258.71, Financial Assurance for Closure; § 258.72, Financial Assurance for Post-Closure Care; § 258.73, Financial Assurance for Corrective Action, § 258.74, Allowable Mechanisms and § 258.75, Discounting.

C. Public Comments

The reader is advised that West Virginia modified its numbering system for the Solid Waste Management Rule (the Rule) on June 2, 1996. Please note that within the following discussions, both old and new section numbers are provided for the Rule.

EPA Region III received written public comments on its tentative determination of partial program adequacy of the West Virginia MSWLF permitting program in April of 1996. At that time, two commenters raised several concerns over the incompatibility of the WVDEP solid waste regulations and the existing West Virginia Groundwater Protection Act, WV Code Section 22–12. Their primary concern was that the Groundwater Monitoring and Corrective Action Program portion of West Virginia's Solid Waste Management Rule at 47 Code of State Regulations (CSR) 38 section 4.11 presently 33 CSR 1 section 4.11 (as well as 40 CFR part 258, subpart E), were less protective than the West Virginia Groundwater Protection Act. WVDEP was aware of these deficiencies and had already addressed them by adding several references to the West Virginia Solid Waste Management Rule during the previous legislative rulemaking session. These references, which were added to the Solid Waste Facility Permitting Requirements of the Rule, were sections 33 CSR 1 sections 3.1e.1.D and 3.5.b, which require compliance with the West Virginia Groundwater Protection Act.

Another commenter questioned the wording of both 47 CSR 38 section 4.13.3 (presently 33 CSR 1 section 4.13.c) and 47 CSR 38 section 4.8.1.f (presently 33 CSR 1 section 4.8.a.6) of the Rule regarding leachate disposal as not conforming with the EPA requirements at 40 CFR 258.28. WVDEP was again already aware of the nonconformance in section 4.13.3 (presently section 4.13.c) and added Section 4.13.c.1.B to the Rule which incorporated the requirements of EPA regulations at 40 CFR 258.28. Section 4.8.1.f (presently section 4.8.a.6) of the Rule did not need to be revised to conform to federal requirements since this section, which covers the general practice of land application of treated leachate, is not an element of EPA regulations at 40 CFR 258.28. The leachate management provisions of 40 CFR 258.28 are limited to the placement of leachate onto or into the landfill itself for recirculation processes. This same commenter also questioned if the State's definition of a waste management facility boundary as defined in 47 CSR 38 section 4.11.1.f (presently 33 CSR 1 section 4.11.a.6.A) was in conflict with the EPA definition of the relative point of compliance for groundwater sampling purposes. The State was again already aware of this potential conflict and had revised 33 CSR 1 section 4.11.a.6.A to match the EPA regulation at 40 CFR 258.53(i)(1).

Two commenters noted that the presence of definitions for ''Disposal'' and ''Solid Waste Disposal,'' as well as ''Landfill'' and ''Solid Waste Landfill Facility'' in the State regulations could cause confusion. EPA agrees that having duplicate definitions appears unnecessary, but EPA does not believe they are in conflict with each other or with the federal definitions. Therefore, revisions to these definitions are not required. Concerning the comment that changes in some definitions may limit the rule's application to landfills only, it is noted that this is consistent with federal rules at 40 CFR part 258 which only apply to municipal solid waste landfills. Lastly, EPA does not agree with the previous commenter that West Virginia's solid waste recycling exemption previously under 47 CSR 38 section 2.53.7 (presently 33 CSR 1

section 2.114.g) conflicts with the definition of solid waste under the federal requirements. West Virginia's recycling exemption from solid waste refers to materials which are being recycled or reused, while EPA's definition of solid waste refers to materials which are being discarded. EPA's 40 CFR part 258 regulations apply to solid wastes destined for disposal consistent with West Virginia's rules. If waste materials are recycled or reused, by definition, they are not destined for disposal.

Finally, another commenter raised the concern that the existing WVDEP regulations on bonding and financial assurance exempt several major categories of MSWLF owners. The WVDEP, in written communication to EPA Region III, dated August 2, 1996, replied that this commenter's interpretation of a ''non-commercial'' facility was incorrect, and confirmed that all landfills in West Virginia which are subject to 40 CFR part 258 fall under the State's financial assurance requirements.

Additionally, EPA received a comment which expressed concern over ''weaknesses'' in the WVDEP groundwater monitoring program. EPA was aware that the State's groundwater monitoring program was not in compliance with EPA requirements under 40 CFR 258.51, Ground Water Monitoring Systems; 40 CFR 258.54, Detection Monitoring Program; and 40 CFR 258.55, Assessment Monitoring Program. This is why EPA did not propose to approve those portions of West Virginia's Groundwater Monitoring program in its tentative determination and why EPA is not including these components in today's final determination of partial program adequacy. However, the Rule has since been amended to correct those weaknesses, and EPA plans to publish a separate **Federal Register** notice addressing the above-referenced regulatory revisions to West Virginia's groundwater monitoring program.

D. Decision

As discussed in the ''Public Comment'' section of this notice, WVDEP has responded to the public comments received in response to EPA's notice of tentative determination of partial program adequacy. EPA is satisfied that all of the comments and related concerns raised as a result of the tentative determination of partial program adequacy have been resolved to EPA's satisfaction by the WVDEP. Therefore, EPA is granting a final determination of partial program adequacy of West Virginia's MSWLF permitting program, for 40 CFR part 258, subparts B, C and D, and portions of subparts A, E and F as described in Section B of the ''Supplementary Information Section'' of this notice.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR part 258 independent of any state enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions of a state program approved by EPA should be considered to be in compliance with the federal criteria (56 FR 50978, 50995, October 9, 1991).

Compliance With Executive Order 12866—Regulatory Planning and Review

The Office of Management and Budget has exempted today's action from the requirements of Executive Order 12866.

Compliance With Executive Order 12898—Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. EPA does not believe that today's action will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

Compliance With Executive Order 13045—Children's Health Protection

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

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

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. West Virginia is not authorized to implement the MSWLF permitting program in Indian country.

Compliance With Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation

that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This approval does not have federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves portions of West Virginia's MSWLF permitting program that the State has voluntarily chosen to operate. Thus, the requirements of Section 6 of the Executive Order do not apply.

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

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

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

After considering the economic impacts of this approval on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are owners or operators of municipal sold waste landfills are already subject to the regulatory requirements under the State laws which EPA is now approving. This action merely approves for the purpose of RCRA 4005(c) those existing State requirements.

Compliance With the Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's document 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 today's action in the **Federal Register**. Today's action is not a ''major rule'' as defined by section 5 U.S.C. 804(2).

Compliance With the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

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

Paperwork Reduction Act

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

Compliance With the National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 258

Environmental protection, administrative practice and procedure, municipal solid waste landfills, non-hazardous solid waste, and state permit program approval.

Authority: This notice is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: March 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–7624 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6565–4]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

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

DATES: This immediate final rule is effective on May 30, 2000 without further notice, unless EPA receives adverse comments by April 28, 2000. Should EPA receive such comments, it will publish a timely document withdrawal informing the public that the rule will not take effect.

ADDRESSES: Written comments, referring to Docket Number OK–00–1, should be sent to Alima Patterson, Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180–7180 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

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

SUPPLEMENTARY INFORMATION:

A. Why Are Revision to State Programs Necessary?

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

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

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

C. What Is the History of Oklahoma's Final Authorization and Its Revisions

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990; (55 FR 39274), effective June 3, 1991; (56 FR 13411), effective November 19, 1991; (56 FR 47675) effective December 21, 1994; (59 FR 51116–51122) effective April 27, 1995; (60 FR 2699–2702) effective October 9, 1996; (61 FR 52884–52886) Technical Correction effective March 14, 1997; (62 FR 12100) and effective February 8, 1999 (63 FR 67800–67802). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993, and July 14, 1998. On December 7, 1998, Oklahoma applied approval of its complete program revision. In this application, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Oklahoma statutes provide authority for a single State agency, the Oklahoma Department of Environmental Quality (ODEQ), to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Environmental Quality Act, 27 O.S. Supplement (Supp) 1997 §§ 1–1–101 *et seq.* General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program, 27A O.S. Supp. 1997 §§ 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 1997 §§ 2–7–101 *et seq.* No amendments were made to the above statutory authorities during the 1998 legislative session which will substantially affect the State Hazardous Waste Management Program; however, 27A O.S. § 2–14–305 has been added to allow for issuance of general permits.

On January 8, 1998, the Council voted to recommend amendments to

Oklahoma Administrative Code (OAC) 252:200–3–1 and 252:200:3–2 to incorporate by reference, in accordance with Guidelines For State Adoption of Federal Regulations by Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1997: the provisions of 40 CFR part 124 which are required by 40 CFR 271.14 as well as 124.31, 124.32 and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR 260.20 through 260.22, 40 CFR part 268, 40 CFR part 270, 40 CFR part 273 and 40 CFR part 279. The Board adopted these amendments on January 27, 1998, as emergency rules. The emergency rules became permanent rules effective June 1, 1998. On June 9, 1998, the Board adopted amendments to 252:200 which classified mercury-containing lamps as a Universal Waste in Oklahoma. The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1997 § 2–7–105(13) to cooperate with Federal agencies for the purposes of hazardous waste regulations.

The OHWMA delegates authority to the ODEQ to administer the State Hazardous Waste Program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster VII requirements.

D. What Revisions Are We Approving With Today's Action?

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

Federal citation	State analog
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste, [61 FR 34252] July 1, 1996. (Checklist 153).	OAC 27A Oklahoma Statutes (O.S.), Supp. 1997, § 2–2–104 laws added 1994, effective July 1,1994. 27A O.S. 1997 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; OHWMA, Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, and permanent effective date June 1, 1998. Oklahoma 27A § 2–10–301 is more stringent than the Federal rule 40 CFR parts 258, §§ 257.5 and 257.30 because the State prohibits disposal of hazardous waste in landfills approved to receive only solid waste.
2. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, Identification and Listing of Hazardous Waste, [61 FR 59931] November 25, 1996. [59 FR 62896] December 6, 1994, [60 FR 26828] May 19, 1995, (Checklists 154, 154.1,154.2, 154.3, 154.4, 154.5 and 154.6).	27A O.S. Supp. 1997 § 2–2104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp.1997 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; OHWMA Rules 252:200–3–1 and 252–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998, and 252–200–3–5 adopted March 30, 1994, effective as permanent rules May 26, 1994.
3. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1992] January 14, 1997. (Checklist 155).	27A O.S. Supp. 1997 § 2–7–106 Amended by Law 1993, effective July 1, 1993; 27A O.S. Supp. 1997 § 2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998. 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; 252:200–3–5, 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.
4. Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	OAC 27A O.S. Supp 1997 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 § 2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998; 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; 252:200–3–5, and 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.
5. Land Disposal Restrictions—Phase IV; Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	OAC 27A O.S. Supp. 1997 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 § 2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998; 252:200–3–4 Amended June 18 1996, permanent effective date June 1, 1997 and 252:200–3–5 and 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.
6. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	OAC 27A O.S. Supp. 1997 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 § 2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998; 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; 252:200–3–5 and 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.

Federal citation	State analog
7. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] June 17, 1997. (Checklist 159).	27A O.S. Supp. 1997 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 § 2–2104 added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1 1998; 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; and 252:200–3–5, 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.

E. What Decision Has EPA Made?

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

F. How Do the Revised State Rules Differ From the Federal Rules?

EPA considers the following State requirements to be more stringent than the Federal: Oklahoma 27A O.S. 1997 § 2–10–301 is more stringent than the Federal rule 40 CFR parts 258; because disposal of hazardous waste, including conditionally exempt small quantity generator waste, in Oklahoma landfills is approved to receive only solid waste is prohibited. These requirements are part of Oklahoma's authorized program and are federally enforceable. In this authorization of the State of Oklahoma's program revisions for RCRA Cluster VII, there are no provisions that are broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

G. Who Handles Permits After This Authorization Takes Effect?

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

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

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

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

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number OK–00–1. We must receive your comments by April 28, 2000. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

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

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

K. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on May 30, 2000.

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

You can review and copy the State of Oklahoma's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180–7180 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

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

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

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, Subpart LL for this codification of Oklahoma's program changes until a later date.

Regulatory Requirements

Compliance With Executive Order 12866

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

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' applies to any rule that: (1) The OMB determines is ''economically significant'' as defined under Executive Order 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, the EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

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

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

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

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

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

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

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

Executive Order 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 cost incurred by the tribal governments. If EPA complies with 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''.

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

Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications''. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'.

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

List of Subjects in 40 CFR Part 271

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

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

Dated: July 12, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Editorial Note: This document was received at the Office of the **Federal Register** on March 22, 2000.

[FR Doc. 00–7448 Filed 3–28–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 032300A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock Within the Shelikof Strait Conservation Area in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock within the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for the Shelikof Strait conservation area in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 25, 2000, until 1200 hrs, A.l.t., August 20, 2000.

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

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

In accordance with § 679.22(b)(3)(iii)(C), the B season allowance of the pollock TAC within the Shelikof Strait conservation area is 6,996 metric tons (mt) as established by the Final 2000 Harvest Specifications for Groundfish (65 FR 8298, February 18, 2000) and subsequent correction (65 FR 11909, March 7, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region,

NMFS (Regional Administrator), has determined that the B season allowance of the pollock TAC within the Shelikof Strait conservation area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,696 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.22(b)(3)(iii)(A), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock within the Shelikof Strait conservation area in the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock within the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: March 23, 2000.

George H. Darcy,

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

[FR Doc. 00–7696 Filed 3–24–00; 4:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 61
Wednesday, March 29, 2000

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

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 111

[Notice 2000–6]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Treasury and General Government Appropriations Act, 2000, amended the Federal Election Campaign Act of 1971 (hereinafter ''the Act'' or ''FECA'') to permit the Federal Election Commission to impose civil money penalties for violations of the reporting requirements of the FECA that occur between January 1, 2000, and December 31, 2001. The amendments are intended to expedite and streamline the Commission's enforcement procedures. The Commission is proposing amendments to its compliance procedure regulations to implement the new program. Please note that the proposed rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before April 28, 2000.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to adminfine@fec.gov. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its website within ten (10) business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Mai T. Dinh, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Treasury and General Government Appropriations Act, 2000, Public Law No. 106–58, 106th Cong., § 640, 113 Stat. 430, 476–77 (1999), amended section 309(a)(4) of the FECA, 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of reporting requirements. The amended procedure provides that if the Commission finds a violation of 2 U.S.C. 434(a) it may:

(i) require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i) until the person has been given written notice and an opportunity to be heard before the Commission.

(iii) Any person against whom an adverse determination is made under this subparagraph may obtain a review of such determination in the district court of the United States for the district in which the person resides, or transacts business, by filing in such court (prior to the expiration of the 30-day period which begins on the date the person receives notification of the determination) a written petition requesting that the determination be set aside.

The Commission is seeking public comments on the proposed rules at 11 CFR part 111, subpart B, that would implement this amendment to the Act and would establish a new streamlined procedure for only those enforcement matters that involve alleged violations of the reporting requirements of 2 U.S.C. 434(a). The new rules would also impose civil money penalties in accordance with the schedules of penalties. The current enforcement procedures in 11 CFR 111.1 through 111.24 would be designated as 11 CFR part 111, subpart A—Enforcement, and would continue to apply to other types of alleged violations of the FECA.

Applicability

The amendment to the Act applies only to violations that occur between January 1, 2000 and December 31, 2001. The Commission would have discretion to apply these new procedures to reporting violations of 2 U.S.C. 434(a). These reporting violations include failure to file or timely file monthly, quarterly, pre-election, post-general election, mid-year and year-end reports, and 48 hour notices regarding contributions after the 20th day but more than 48 hours before the election. While the Commission anticipates that it would use these new procedures to handle most of its non-filer and late filer enforcement matters, the Commission may decide not to apply the new procedures to certain violations because of unusual circumstances. The Commission also contemplates that complaint generated matters that deal only with alleged 2 U.S.C. 434(a) violations would be processed under the new procedures. Complaints that contain allegations of 2 U.S.C. 434(a) violation(s) as well as violation(s) of other provisions of the FECA would be processed under the current enforcement procedures.

Enforcement Procedures

1. Due Process Considerations

In developing the procedures to implement this amendment to the FECA, the Commission is taking into consideration the requirements of the Administrative Procedure Act (hereinafter ''APA''), 5 U.S.C 551 *et seq.*, and the Due Process Clause of the U.S. Constitution, *U.S. Const.* amend. XIV, § 1, and the intent of Congress in enacting this amendment.

Because the only procedures specified in the amendment to section 434(a) of the FECA are ''written notice and an opportunity to be heard by the Commission,'' it is quite clear that the statute on its face does not trigger the formal adjudication provisions of the APA. Section 554(a) of the APA states that the relevant program statute must require an opportunity for a hearing ''on the record,'' before the APA's formal adjudication procedures are triggered.

Although the Supreme Court has never interpreted this language in section 554(a), it has so interpreted the almost identical language pertaining to formal rulemaking in section 553(c) of the APA in *United States* v. *Florida East Coast Railway Co.*, 410 U.S. 224 (1973). Furthermore, the leading court of appeals decisions, *City of West Chicago* v. *NRC,* 701 F.2d 632 (7th Cir. 1983), and *Chemical Waste Management, Inc.* v. *EPA*, 873 F.2d 1477 (D.C. Cir. 1989), have required the presence of the phrase ''on the record'' unless there is some extraordinary indication of congressional intent that formal APA procedures should apply. Nothing extraordinary in the amendment or the legislative history indicates that Congress intended to require the Commission to follow the formal APA adjudication procedures.

Although the FECA does not require a formal APA procedure, the U.S. Constitution requires the Commission to afford respondents adequate due process prior to assessment of a civil money penalty. Because the APA is silent on what type of procedure agencies must follow in informal adjudication, the Commission must look to case law to determine what procedure will satisfy the due process requirements. Under *Mathews* v. *Eldridge*, 424 U.S. 319, 334–335 (1976), the Supreme Court stated that courts must employ a balancing test to determine the adequacy of an agency's procedures, once a protected property or liberty interest has been shown to be affected. The balance involves the following three factors: (1) The private interest affected by the official action, (2) the risk of an erroneous result and the probable value of additional procedural safeguards, and (3) the government's interest in avoiding administrative burdens. Because the APA does not prescribe procedures for informal adjudications, the Commission is left with devising a procedure that meets the *Mathews* balancing test.

Another consideration is congressional intent. The legislative history suggests that a purpose for the amendment is to streamline the process for reporting violations in order to redirect more resources to more complex violations. Congressman William Thomas, Chairman of the Committee of House Administration, stated the following on the floor of the House of Representatives on September 15, 1999:

> Allowing the FEC to impose administrative fines for reporting violations without the lengthy procedural steps required in a normal enforcement case will free critical FEC resources for more important disclosure and enforcement efforts. The rights of those under these regulations are protected by preserving the option of appeal to a U.S. District Court for those who believe the FEC erred.

The Commission believes it has developed procedures in this proposed rule that address these considerations. The private interests involved in this rulemaking are protected. The risk of erroneous results is relatively low in most cases given that reporting violations are relatively straightforward. Absent extraordinary circumstances, there are basically only three issues—whether the respondent was required to submit a report, whether the report was timely filed, and whether the civil money penalty was calculated correctly. The opportunity for the respondent to submit a written response and to have the enforcement matter reviewed by an independent reviewing officer will protect the respondent from an erroneous result as will the opportunity for the respondents to appeal to federal district court. This streamlined process will ensure that the Commission does not devote too many resources to these relatively minor, straightforward violations. The streamlined process will also meet the requirements of the amendment. The Commission seeks comments on the adequacy of the procedures proposed to protect respondents' due process rights.

2. Notification to Respondents of Reason To Believe Finding

The amendment to the FECA did not change the 2 U.S.C. 437g(a)(2) requirements pertaining to reason to believe findings and notifying respondents of the reason to believe findings. Thus, under the proposed 11 CFR 111.32, the Commission would continue to authorize the Chairman or Vice-Chairman to notify the respondents in writing if it finds reason to believe that a violation has occurred. The notification would contain the factual and legal basis for the reason to believe finding and the proposed civil money penalty in accordance with the applicable schedule of penalties. Before the reports are due, the Commission intends to follow its current procedures of informing all committees of their duty to submit the reports and the filing deadlines. Thus, all committees will have prior notification of the requirements and an adequate opportunity to meet the requirements before the Commission finds reason to believe and commences an enforcement action.

Under the proposed 11 CFR 111.34, if the respondent does not wish to challenge the reason to believe finding, the respondent may pay the proposed civil money penalty within forty days of the Commission's reason to believe finding. The Commission would then send the respondent an acknowledgment of the payment and its final determination. The matter would then be closed and the information placed on the public record.

3. Respondent's Written Response

If, however, the respondent wants to challenge the reason to believe finding and/or the proposed civil money penalty, the respondent under the proposed 11 CFR 111.35 would be required to submit a written notice of intent to challenge the reason to believe finding and/or the proposed civil money penalty to the Commission within twenty days of the Commission's reason to believe finding. The respondent would also be required to submit a written response to the Commission within forty days of the Commission's reason to believe finding. The written response must set forth one or more of the following arguments: alleged factual and/or legal errors in the reason to believe finding; and/or reasons why the proposed civil money penalty was improperly calculated; and/or extraordinary circumstances that were out of the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner. Extraordinary circumstances would not include negligence, illness of staff, computer failures, problems with contractors and vendors, and other similar occurrences. Respondents would be required to include all supporting documentation with their written response.

4. Reviewing Officer

The respondent's written response would be forwarded to a reviewing officer under proposed 11 CFR 111.36. To ensure impartiality, the reviewing officer would not be someone who was involved in developing the reason to believe finding. The reviewing officer would review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer would also be allowed to request that other Commission staff and the respondent submit supplemental information. The reviewing officer would draft a written recommended decision and forward it to the Commission along with the reason to believe finding with supporting documentation, the respondent's written response with the supporting documentation, and

supplemental information, if any. These materials along with the Commission's final determination and any statement(s) of reasons, subject to any claims of privilege, would constitute the entire administrative record.

The amendment to the FECA requires that a respondent have ''an opportunity to be heard'' before the Commission makes a final adverse determination. The Commission believes that this requirement would be satisfied by the respondent's opportunity to submit a written response to the reason to believe finding with a review by an impartial reviewing officer. The Commission recognizes, however, the possibility that respondents may want the opportunity for an oral hearing before the reviewing officer in those infrequent situations where there may be a disputed issue of material fact. The Commission seeks comments on whether oral hearings should be incorporated into the new procedural rules. If so, under what circumstances should an oral hearing be held? Who should preside over an oral hearing? What procedures should be followed? What topics should be addressed in an oral hearing?

A broader concern is that oral hearings would necessitate increasing the resources the Commission devotes to these straightforward reporting violations, thereby defeating the congressional intent to streamline the process. Hearings may also increase the respondent's expenses and unduly prolong the enforcement process. Comments are requested on ways to reduce the amount of resources needed if the process includes an opportunity for an oral hearing, and ways to avoid procedural delays.

5. Final Determination by the Commission

Proposed 11 CFR 111.37 contemplates that once the Commission receives the respondent's written response, if any, to the reason to believe finding, the reviewing officer's written recommendation, and all supporting and supplemental documents and information, the Commission would then make a final determination, by a vote of at least four of its members, as to whether a violation of 2 U.S.C. 434(a) has occurred. If the Commission determines that a violation has occurred, then it would assess a civil money penalty in accordance with the schedules of penalties in proposed 11 CFR 111.43. For purposes of judicial review, the final determination would be the final agency action.

The Commission would modify the proposed civil money penalty if the respondent can demonstrate that the proposed civil money penalty was incorrectly calculated. An example of an incorrectly calculated civil money penalty is when the respondent can convincingly demonstrate that it filed the required report earlier than the filing date alleged in the reason to believe finding, though the report is still filed late. Then the Commission would reduce the fine to the appropriate amount based on a recalculation of the number of days late.

The Commission may also determine that there was no violation. Finally, the Commission may determine, by a vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the civil money penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours.

The proposed rules do not include provisions for mitigating factors that may reduce the civil money penalty. The Commission believes that this is the simplest, most straightforward way to effectuate statutory intent, particularly since the new administrative fine program is limited to a two-year period. The Commission is also concerned that the inclusion of mitigating factors would result in a lack of uniformity and certainty in the imposition of civil money penalties. Nevertheless, comments are sought as to whether the Commission should include mitigating factors, what those factors should be and how the factors should be applied.

6. Failure To Submit Payment or Written Response

If the respondent fails to pay the proposed civil money penalty within forty days of the Commission's reason to believe finding or to submit a notice of intent to challenge the reason to believe finding or to submit the written response within the time stated in proposed 11 CFR 111.35, the Commission would, under proposed 11 CFR 111.40, issue a final determination with a civil money penalty consistent with the appropriate schedule of penalties. The respondent would then have thirty days from receipt of the final determination either to submit payment of the civil money penalty or to seek judicial review.

Judicial Review

As provided in the statutory amendments to the FECA and section 111.38 of the Commission's proposed regulations, the respondent may seek judicial review of the Commission's final determination within thirty (30) days of receipt of the final determination. The respondent may seek judicial review in a U.S. district court where the respondent resides or conducts business. The review would be limited to issues and facts raised during the enforcement process. This is consistent with the Commission's procedures for presidential repayment determinations at 11 CFR 9007.5(b) and 9038.5(b) where the failure to timely raise issues constitutes a waiver of the right to raise the issues in future proceedings.

Schedules of Penalties for Reports Other Than 48-Hour Notices

The amendment to the Act requires the Commission to take into account the amount of the violation and the existence of previous violations by the respondent in developing the schedules of penalties. In establishing the proposed schedules of penalties set forth in 11 CFR 111.43, the Commission considered its past enforcement of 2 U.S.C. 434(a) violations and the civil penalties involved in those enforcement cases and the fine schedules of state agencies for similar reporting violations. In addition, the Commission believes that it is vital that civil money penalties not be set at a level so low that they will be treated as merely ''the cost of doing business.'' Conversely, the penalties must not be so high that they become unduly burdensome.

The Commission also considered the election sensitivity of a report. While it is important that all reports should be filed in a timely manner, it is especially important that reports due just before an election, i.e., pre-primary, pre-general, October quarterly, and October monthly, be filed in a timely manner to maintain the integrity of the campaign finance system. Therefore, the Commission proposes to subject these election sensitive reports, which are defined in proposed 11 CFR 111.43(e) as the October quarterly and October monthly, and the pre-election reports under 11 CFR 104.5 to a higher civil money penalty. Election sensitive reports and the pre-election reports under the schedules of penalties in proposed 11 CFR 111. 43 would be assessed an additional 50% of the base amounts. An alternative method of handling election sensitive reports would be to add a flat $1000 to the base amounts. The Commission seeks comments on which alternative the Commission should adopt.

The schedules of penalties in proposed 11 CFR 111.43 for late filers and non-filers would have four components. The first is a base amount depending on the level of activity on the

report. The level of activity is the amount of receipts plus the amount of disbursements in the report. The base amounts would range from $100 to $5000 for all reports except for election sensitive reports and from $150 to $7500 for election sensitive reports. This component would satisfy the statutory requirement that the schedules of penalties take into account the amount of the violation.

The second component is a set amount depending on the level of activity on the report multiplied by the number of days the report is filed late up to thirty days. This set amount ranges from $25 per day to $200 per day for all reports. This component would also satisfy the statutory requirement that the schedules of penalties take into account the amount of the violation.

The third component is a set amount for respondents who are non-filers. The Commission considers respondents to be non-filers if they do not file their election sensitive reports prior to four (4) days before the election or if they do not file any other report within thirty days of its due date. This set amount ranges from $1,600 to $17,000 for all reports except election sensitive reports and from $1,650 to $19,500 for election sensitive reports. These amounts were achieved by doubling the per day penalty and multiplying this penalty by thirty days and then adding the base amount of the first component.

The fourth component is an additional premium for each prior civil money penalty that was assessed against the respondent for failure to file timely reports. This component would satisfy the requirement that the schedules of penalties take into account the existence of previous violations. This premium would be an additional 25% of the civil money penalty for each prior civil money penalty that had been assessed under this subpart during the current two-year election cycle and prior two-year election cycle.

For non-filers, the Commission would estimate their level of activity by adding the total receipts and total disbursements reported in the current election cycle and then dividing by the number of reports received in the current election cycle. If the respondents have not filed any reports in the current election cycle, then the Commission would estimate the level of activity by adding the total receipts and total disbursement reported in the most recent election cycle and then dividing by the number of reports received in the most recent election cycle.

Examples of Civil Money Penalties

Example 1: The respondent files an October quarterly report 20 days late. The level of activity on the report is $105,000. The civil money penalty would be calculated as follows. The base amount would be $900. The per day amount would be $125 multiplied by 20 days, which equals $2500. The civil money penalty would be the sum of these two amounts, which would be $3400.

Example 2: The respondent in the above example has one prior violation in the current two-year election cycle. The premium for the one prior violation would be 25% of the civil money penalty calculated in example 1, which would equal $850. The civil money penalty would be the sum of this premium and the civil money penalty from example 1, which would be $4250.

Example 3: Instead of being subject to the proposed schedule of penalties that adds 50% of the base to the civil money penalty, the respondent in example 1 would be subject to a schedule of penalties that adds $1000 to the base amounts for election sensitive reports. The civil money penalty would be calculated as follows. The base amount would be $1600. The per day amount would be $125 multiplied by 20 days, which equals $2500. The civil money penalty would be the sum of these two amounts, which would be $4100. Example 4: The respondent in the example 3 had one prior violation in the current two-year election cycle. The premium for the one prior violation would be 25% of the civil money penalty calculated in example 3, which would equal $1025. The civil money penalty would be the sum of this premium and the civil money penalty from example 3, which would be $5125.

The Commission believes that these proposed schedules of penalties reflect a reasonable approach. The additional premium that is added for those respondents who have had previous civil money penalty assessments is intended to ensure that the schedules of penalties would not be viewed as ''the cost of doing business.'' The Commission seeks comments on the reasonableness of the schedules of penalties in the proposed rule; the comprehensiveness of the schedules of penalties; additional factors that the Commission should consider; and alternative means to develop the schedules of penalties.

Schedule of Penalties for 48-Hour Notices

Under 2 U.S.C. 434(a)(6), principal campaign committees are required to report within 48 hours contributions of $1000 or more that are received after the 20th day but more than 48 hours before an election. It has been the Commission's experience that in the cases regarding alleged violations of the 48-hour notice requirement, the respondents generally fail to file these notices rather than file them late. Also, because of the unique nature and timing of this reporting requirement, the Commission believes that failure to file these 48-hour notices in a timely manner is tantamount to failing to file them at all. Thus, the proposed schedule of penalties does not make a distinction between late filers and non-filers for violations of 2 U.S.C. 434(a)(6). The schedule of penalties set forth in proposed 11 CFR 111.44 would be calculated based on the number of previous civil money penalties assessed against the respondent in the current two-year election cycle and the prior two-year election cycle, as well as a percentage of contribution(s) not timely reported. The Commission seeks comments on this approach to handling the failure to file timely the 48 hour notices.

Debt Collection Improvement Act

The Debt Collection Improvement Act of 1996 (hereinafter ''DCIA''), Pub. L. 104–134, 110 Stat. 1321–358 (1996), codified at 31 U.S.C. 3711(g), requires Federal agencies to transfer to the Department of the Treasury for debt collection action any non-tax debt that is over 180 days delinquent, subject to certain exemptions. The DCIA also permits the voluntary transfer of debts less than 180 days delinquent to the Department of the Treasury or, with the consent of the Department of the Treasury, to a Treasury-designated debt collection center for debt collection services. Section 111.44 of the proposed rules would incorporate, by reference, the Department of Treasury's debt collection regulations and the Federal Claims Collection Standards.

After a final determination as to the amount of the civil money penalty, the Commission intends to utilize the DCIA to collect civil money penalties from respondents who fail to pay within a reasonable time. This debt collection procedure, however, would not preclude the Commission from filing suit under 2 U.S.C. 437g(a)(6) in the appropriate United States district court to collect the civil money penalty where it determines that this is preferable to transferring the debt to the Department of Treasury for collection under the DCIA.

Conforming Amendments

The proposed rules contain conforming amendments to the existing regulations. The current sections of part 111 would be designated as ''subpart A—Enforcement.'' Paragraph (d) would be added to 11 CFR 111.8 to allow the Commission to apply proposed subpart B of part 111 to internally generated matters relating to violations of 2 U.S.C.

434(a). Paragraph (c) would be added to 11 CFR 111.20 to provide for public disclosure of non-exempt 2 U.S.C. 437g investigatory materials within thirty (30) days after the final disposition of a civil action. This paragraph, if promulgated, would not be limited to civil actions arising from enforcement actions undertaken under subpart B of part 111 but would be applied to all civil actions.

The Commission welcomes comments on these and any other issues raised by the new statutory provisions on administrative fines for reporting violations.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the attached proposed rules, if promulgated, would impose penalties which are scaled to take into account the size of the political committees. Thus, committees with less financial activity would be subject to lower fines than committees with more financial activity. Also, the Commission anticipates that there will not be a large number of small committees that would be subject to the process in the proposed rules. Therefore, the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

For reasons set out in the preamble, it is proposed to amend subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. 11 CFR 104.5 would be amended by adding new paragraph (i) to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

3. The authority for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8).

4. 11 CFR 111.8 would be amended by adding new paragraph (d) to read as follows:

§ 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).

* * * * *

(d) Notwithstanding §§ 111.9 through 111.19, for violations of 2 U.S.C. 434(a), the Commission, when appropriate, may review internally generated matters under subpart B of this part.

5. 11 CFR 111.20 would be amended by adding new paragraph (c) to read as follows:

§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

* * * * *

(c) For any compliance matter in which a civil action is commenced, the Commission will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notification of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

6. 11 CFR 111.24(a) would be revised to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) Except as provided in 11 CFR 111.44 and in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.) shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

* * * * *

7. 11 CFR 111.25 through 111.29 would be added and reserved.

8. Part 111 would be amended by designating 11 CFR 111.1 through 111.24 as subpart A—Enforcement—and by adding new subpart B to read as follows:

Subpart B—Administrative Fines

Sec.

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers on or after [the effective date of the final rule], and on or before December 31, 2001.

§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?

(a) No; §§ 111.1 through 111.8 and 111.20 through 111.24 shall apply to all compliance matters. This subpart will apply, rather than §§ 111.9 through 111.19, when the Commission, on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and when appropriate, determines that the compliance matter should be subject to this subpart. If the Commission determines that the violation should not be subject to this

subpart, then the violation will be subject to all sections of subpart A of this part.

(b) Subpart B will apply to compliance matters resulting from a complaint filed pursuant to 11 CFR 111.4 through 111.7 if the complaint alleges a violation of 2 U.S.C. 434(a) and does not allege violations of any other provision of any statute or regulation over which the Commission has jurisdiction.

§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 2 U.S.C. 434(a), it shall authorize the Chairman or Vice-Chairman to notify such respondent of the Commission's finding. The written notification shall set forth the following:

(a) The alleged factual and legal basis supporting the finding including the type of report that was due, the filing deadline, the actual date filed (if filed), and the number of days the report was late (if filed);

(b) The applicable schedule of penalties;

(c) The number of times the respondent has been assessed a civil money penalty under this subpart during the current two-year election cycle and the prior two-year election cycle;

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in 11 CFR 111.43; and

(e) An explanation of the respondent's right to challenge both the reason to believe finding and the proposed civil money penalty.

§ 111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?

The respondent must either send payment in the amount of the proposed civil money penalty pursuant to 11 CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

§ 111.35. If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

(a) Within twenty (20) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written notice of intent to challenge the reason to believe finding and/or the proposed civil money penalty.

(b) Within forty (40) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written response.

(c) The written response shall contain the following:

(1) Reason(s) why the respondent is challenging the reason to believe finding and/or civil money penalty which may consist of:

(i) The existence of factual errors; and/or

(ii) The improper calculation of the civil money penalty; and/or

(iii) The existence of extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner;

(2) The factual basis supporting the reason(s); and

(3) Supporting documentation.

(4) Examples of circumstances that will not be considered extraordinary include, but are not limited to, the following:

(i) Negligence;

(ii) Problems with vendors or contractors;

(iii) Illness of staff;

(iv) Computer failures; and

(v) Other similar circumstances.

§ 111.36 Who will review the respondent's written response?

(a) The reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within a time specified by the reviewing officer.

(c) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 2 U.S.C. 434(a) and the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred, or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(c) The Commission will modify the proposed civil money penalty only if the respondent is able to demonstrate that the amount of the proposed civil money penalty was calculated on an incorrect basis.

(d) The Commission may determine, by an affirmative vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours. The Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

§ 111.38. Can the respondent appeal the Commission's final determination?

Yes; within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37, the respondent may submit a written petition to the district court of the United States for the district in which the respondent resides, or transacts business, requesting that the final determination be modified or set aside. The respondent's failure to raise an argument in a timely fashion during

the administrative process shall be deemed a waiver of the respondent's right to present such argument in a petition to the district court under 2 U.S.C. 437g.

§ 111.39. When must the respondent transmit payment of the civil money penalty?

(a) If the respondent does not submit a written petition to the district court of the United States, the respondent must remit payment of the civil money penalty within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37.

(b) If the respondent submits a written petition to the district court of the United States and, upon the final disposition of the civil action, is required to pay a civil money penalty, the respondent shall remit payment of the civil money penalty to the Commission within thirty (30) days of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

(c) Failure to pay the civil money penalty may result in the commencement of a collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(6)(A), or any other legal action deemed necessary by the Commission.

§ 111.40. What happens if the respondent does not pay civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 2 U.S.C. 434(a) and determines the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) The respondent shall transmit payment of the civil money penalty to the Commission within thirty (30) days of receipt of the Commission's final determination.

(c) Failure to pay the civil money penalty may result in the commencement of a collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(6)(A), or any other legal action deemed necessary by the Commission.

§ 111.41. To whom should the civil money penalty payment be made payable?

Payment of civil money penalties shall be made in the form of a check or money order made payable to the Federal Election Commission.

§ 111.42. Will the enforcement file be made available to the public?

(a) Yes; the Commission shall make the enforcement file available to the public.

(b) If neither the Commission nor the respondent commences a civil action, the Commission shall make the enforcement file available to the public pursuant to 11 CFR 4.4(a)(3).

(c) If a civil action is commenced, the Commission shall make the enforcement file available pursuant to 11 CFR 111.20(c).

§ 111.43. What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was	And the report was filed late, the fine is	Or the report was not filed, the fine is
$1–24,999.99	[$100+($25×Number of days late)]×[1+(.25×Number of previous violations)].	$1600×[1+(.25×Number of previous violations)]
$25,000–49,999.99	[$200+($50×Number of days late)]×[1+(.25×Number of previous violations)].	$3200×[1+(.25×Number of previous violations)]
$50,000–74,999.99	[$300+($75×Number of days late)]×[1+(.25×Number of previous violations)].	$4800×[1+(.25×Number of previous violations)]
$75,000–99,999.99	[$400+($100×Number of days late)]×[1+(.25×Number of previous violations)].	$6400×[1+(.25×Number of previous violations)]
$100,000–149,999.99	[$600+($125×Number of days late)]×[1+(.25×Number of previous violations)].	$8100×[1+(.25×Number of previous violations)]
$150,000–199,999.99	[$800+($150×Number of days late)]×[1+(.25×Number of previous violations)].	$9800×[1+(.25×Number of previous violations)]
$200,000–249,999.99	[$1,000+($175×Number of days late)]×[1+(.25×Number of previous violations)].	$11,500×[1+(.25×Number of previous violations)]
$250,000–349,999.99	[$1500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$13,500×[1+(.25×Number of previous violations)]
$350,000–449,999.99	[$2000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$14,000×[1+(.25×Number of previous violations)]
$450,000–549,999.99	[$2500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$14,500×[1+(.25×Number of previous violations)]
$550,000–649,999.99	[$3000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$15,000×[1+(.25×Number of previous violations)]
$650,000–749,999.99	[$3500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$15,500×[1+(.25×Number of previous violations)]
$750,000–849,999.99	[$4000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$16,000×[1+(.25×Number of previous violations)]
$850,000–949,999.99	[$4500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$16,500×[1+(.25×Number of previous violations)]
$950,000 or over	[$5000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$17,000×[1+(.25×Number of previous violations)]

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was	And the report was filed late, the fine is	Or the report was not filed, the fine is
$1–24,999.99	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,650 × [1 + (.25 × Number of previous violations)]
$25,000–49,999.99	[$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3,300 × [1 + (.25 × Number of previous violations)]
$50,000–74,999.99	[$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,950 × [1 + (.25 × Number of previous violations)]
$75,000–99,999.99	[$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6,600 × [1 + (.25 × Number of previous violations)]
$100,000–149,999.99	[$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8,400 × [1 + (.25 × Number of previous violations)]
$150,000–199,999.99	[$1,200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,200 × [1 + (.25 × Number of previous violations)]
$200,000–249,999.99	[$1,500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)]
$250,000–349,999.99	[$2,250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,250 × [1 + (.25 × Number of previous violations)]
$350,000–449,999.99	[$3,000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,000 × [1 + (.25 × Number of previous violations)]
$450,000–549,999.99	[$3,750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,750 × [1 + (.25 × Number of previous violations)]
$550,000–649,999.99	[$4,500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,500 × [1 + (.25 × Number of previous violations)]
$650,000–749,999.99	[$5,250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,250 × [1 + (.25 × Number of previous violations)]
$750,000–849,999.99	[$6,000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,000 × [1 + (.25 × Number of previous violations)]
$850,000–949,999.99	[$6,250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,750 × [1 + (.25 × Number of previous violations)]
$950,000 or over	[$7,500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,500 × [1 + (.25 × Number of previous violations)]

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (e) of this section, then the civil money penalty shall be $5,500.

(d) *Definitions.* For this section only, the following definitions will apply:

Election Sensitive Reports means third quarter reports due on October 15th before the general election (unless the candidate does not participate in that general election), monthly reports due October 20th before the general election (unless the candidate does not participate in that general election), and pre-election reports under 11 CFR 104.5.

Estimated level of activity means total receipts and disbursements reported in the current election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

Level of activity means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity.

Number of previous violations mean all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

(e) For purposes of the schedules of penalties in paragraphs (a) and (b) of this section,

(1) Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.

(2) Election sensitive reports are considered to be filed late if they are filed after their due dates but prior to four (4) days before the primary election for pre-primary reports, or prior to four (4) days before the general election for all other election sensitive reports. These reports are considered to be not filed if they are not filed prior to four (4) days before the primary election for pre-primary reports, or prior to four (4) days before the general election for all other election sensitive reports.

§ 111.44. What is the schedule of penalties for 48-hour notice?

(a) If the respondent fails to file timely a notice regarding contribution(s) received after the 20th day but more than 48 hour hours before the election as required under 2 U.S.C. 434(a)(6), the civil money penalty will be calculated as follows:

(1) Civil money penalty = $100 + (.15 × amount of the contribution(s) not timely reported)

(2) The civil money penalty calculated in paragraph (a)(1) of this section shall be increased by twenty-five percent 25%) for each prior violation.

(b) For purposes of this section, prior violation means a civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

§ 111.45. Will the Debt Collection Improvement Act of 1996 be used to collect unpaid civil money penalties?

Yes; The debt collection regulations issued by the Department of Treasury at 31 CFR part 285 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the Government Accounting Office at 4 CFR parts 101 through 104 also apply.

Dated: March 23, 2000.

Darryl R. Wold,

Chairman, Federal Election Committee.

[FR Doc. 00–7618 Filed 3–28–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE120; Notice No. 35–99–01–SC]

Special Conditions: Hamilton Sundstrand, Model NP2000 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Hamilton Sundstrand model NP2000 constant speed propeller. This eight-bladed propeller uses a dual acting digital electro-hydraulic propeller control system and has blades constructed of composite materials. These design features are novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. This notice proposes the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. NE120, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. NE120. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7116; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statetment is made: ''Comments to Docket No. NE120.'' The postcard will be date stamped and returned to the commenter.

Background

On February 9, 1999, Hamilton Sundstrand applied for type certification for a new model NP2000 propeller. The NP2000 propeller uses a digital electro-hydraulic control system and blades that are constructed of composite material.

Conventional propellers on turboprop aircraft use a mechanical governor in the propeller control system that senses propeller speed and adjusts the pitch by directing hydraulic oil to the propeller actuator to increase or decrease pitch to maintain the propeller at the correct RPM. When the mechanical governor fails, the propeller pitch is controlled by a backup mechanical overspeed governor.

The Hamilton Sundstrand model NP2000 propeller uses a digital electronic governor in the propeller control system. The digital electronic governor is designed to operate a hydro-mechanical interface to direct hydraulic oil to the propeller actuator to increase or decrease pitch. The digital electronic governor logic commands speed governing, synchrophasing, failure monitoring and provides beta scheduling. The digital electronic governor introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. In addition to these features, the system has a backup mechanical overspeed governor.

The proposed special conditions would address the following airworthiness issues for the Hamilton Sundstrand model NP2000 propeller:

1. Safety assessment;
2. Propeller control system;
3. Centrifugal load tests;
4. Fatigue limits and evaluation;
5. Bird impact; and
6. Lightning strike.

The Hamilton Sundstrand model NP2000 propeller incorporates propeller blades constructed of composite material. This material has fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the resin matrix material that binds the fibers together. Composite materials introduce fatigue characteristics and failure modes that differ from metallic materials.

The requirements of part 35 were established to address the airworthiness considerations associated with metal propeller blades. Propeller blades constructed using composite material may be subject to damage due to the high impact forces associated with a bird strike. Thus, composite propellers must demonstrate propeller integrity following a bird strike.

Part 35 does not require a demonstration of propeller integrity following a lightning strike. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite blades must demonstrate propeller integrity following a lightning strike.

The existing certification requirements only address structural and fatigue evaluation of metal propeller blades or hubs, and those metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature, moisture, erosion and chemical attack. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

Type Certification Basis

Under § 21.17, Hamiltion Sundstrand must show that the model NP2000 propeller meets the applicable provisions of § 21.21 and part 35.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 35), do not contain adequate or appropriate safety standards for the model NP2000 propeller because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

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

Novel or Unusual Design Features

The novel and unusual design features are the dual acting digital electro-hydraulic propeller control system and blades constructed of composite materials. Special conditions for a safety assessment, the propeller control system, centrifugal load tests, fatigue limits and evaluation, bird impact, and lightning strike are proposed to address the novel and unusual design features. The special conditions are discussed below.

Safety Assessment

The proposed special conditions would require the applicant to conduct a safety assessment of the propeller in conjunction with the requirement for evaluating the digital electro-hydraulic control system. A safety assessment is necessary due to the increased complexity of these propeller designs and related controls systems. The ultimate objective of the safety assessment requirement is to ensure that the collective risk from all propeller failure conditions is acceptably low. The basis is the concept that an acceptable total propeller design a risk is achievable by managing the individual risks to acceptable levels. This concept emphasizes reducing the risk of an event proportionally with the severity of the hazard it represents.

The proposed special conditions are written at the propeller level for a typical aircraft. The typical aircraft may be the aircraft intended for installation of the propeller. It is advised that the propeller applicant have an understanding of the intended aircraft, not to show compliance with this requirement, but to design a propeller that will be acceptable for the intended aircraft. For example, a part 25 aircraft may require different failure effects and probability of failure than a part 23 aircraft. Showing compliance with the requirement without consideration of the intended aircraft may result in a propeller that cannot be installed on the intended aircraft.

Propeller Control System

Currently, part 35 does not adequately address propellers with combined mechanical, hydraulic, digital, and electronic control systems. Propeller mechanical control systems certified under the existing requirements incorporate a mechanical governor that senses propeller speed and adjusts the pitch to absorb the engine power to maintain the propeller at the selected rotational speed. Propellers with digital electronic control components perform the same basic function but use software, electronic circuitry, and electro-hydraulic actuators. The electronic control system may also incorporate additional functions such as failure monitoring, synchrophasing and beta scheduling. This addition of electronics to the control system may introduce new failure modes that can result in hazardous propeller effects.

Certrifugal Load Tests

Section 35.35 currently requires that the hub and blade retention arrangement of propellers with detachable blades be tested to a centrifugal load of twice the maximum centrifugal force to which the propeller would be subjected during operation. This requirement is limited to the blade and hub retention capacity and does not address composite materials and composite construction of the propeller assembly or changes in materials due to service degradation and environmental factors.

Fatigue Limits and Evaluation

The current requirement does not adequately address composite materials and is limited to metallic hubs and blades and primary load-carrying metal components of non-metallic blades. The proposed special conditions will expand the requirements to include all materials and components whose failure would cause a hazardous propeller effect and to take into account material degradation expected in service, material property variations, manufacturing variations, and environmental effects. The proposed special conditions will clarify that the fatigue limits may be determined by tests or analysis based on tests. The components whose failure may cause a hazardous propeller effect include control system components, when applicable.

The proposed special conditions will require the applicant to conduct fatigue evaluation on a typical aircraft or on an aircraft used during aircraft certification to conduct the vibration tests and evaluation required by either §§ 23.907 or 25.907. The typical aircraft may be one used to develop design criteria for the propeller or another appropriate aircraft.

Bird Impact

Currently there are no bird impact requirements in part 35. The existing requirements only address the airworthiness considerations associated with propellers that use wood and metal blades. Propeller blades of this type have demonstrated good service experience following a bird strike. Propeller blade and spinner construction now use composite materials that have a higher potential for damage from bird impact.

The need for bird impact requirements was recognized when composite blades were introduced in the 1970's; the safety issue has been addressed by special tests and special conditions for composite blade certifications. These special conditions were unique for each propeller and effectively stated that the propeller will withstand a four-pound bird impact without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to bird impact on composite propellers. The selection of a four-pound bird has been substantiated by the extensive service history of blades that have been designed using the four-pound bird criteria.

Lightning Strike

Currently there are no lightning strike requirements in part 35. The need for lightning strike requirements was recognized when composite blades were first introduced in the 1970's; the safety issue has been addressed by special tests and special condition for each design using composite blades. The special tests and special condition, which were unique for each propeller, effectively stated that the propeller must be able to withstand a lightning strike without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to a lightning strike on composite propellers.

Applicability

As discussed above, these special conditions are applicable to the Hamilton Sundstrand model NP2000 propeller. Should Hamilton Sundstrand apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to the model as well under the provisions of § 21.101(a)(1).

Conclusion

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

List of Subjects in 14 CFR Part 35

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Hamilton Sundstrand model NP2000 propeller.

In addition to the requirements of part 35, the following requirements apply to the propeller.

(a) *Definitions.* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the propeller:

(1) Propeller. The propeller is defined by the components listed in the type design.

(2) Propeller system. The propeller system consists of the propeller plus all the components necessary for its functioning, but not necessarily included in the propeller type design.

(3) Hazardous propeller effects. The following are regarded as hazardous propeller effects:

(i) A significant overspeed of the propeller.

(ii) The development of excessive drag.

(iii) Thrust in the opposite direction to that commanded by the pilot.

(iv) A release of the propeller or any major portion of the propeller.

(v) A failure that results in excessive unbalance.

(vi) The unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(4) Major propeller effects. The following are regarded as major propeller effects;

(i) An inability to feather.

(ii) An inability to command a change in propeller pitch.

(iii) A significant uncommanded change in pitch.

(iv) A significant uncontrollable torque or speed fluctuation.

(b) *Safety analysis.*

(1)(i) An analysis of the propeller system must be carried out to assess the likely consequence of all failures that can reasonably be expected to occur. This analysis must consider the following:

(A) The propeller system is a typical installation. When the analysis depends on representative components, assumed interfaces, or assumed installed conditions, the assumptions must be stated in the analysis.

(B) Consequential secondary failures and latent failures.

(C) Multiple failures referred to in paragraph (b)(4) or that result in hazardous propeller effects.

(ii) A summary must be made of those failures that could result in major propeller effects or hazardous propeller effects, together with an estimate of the probability of occurrence of those effects.

(iii) It must be shown that hazardous propeller effects are not predicted to occur at a rate in excess of that defined as extremely remote (probability of 10^{-7} or less per propeller flight hour). The estimated probability for individual failures may be insufficiently precise to enable the total rate for hazardous propeller effects to be assessed. For propeller certification, it is acceptable to consider that the intent of this paragraph has been achieved if the probability of a hazardous propeller effect arising from an individual failure can be predicted to be not greater than 10^{-8} per propeller flight hour. It will also be accepted that, in dealing with probabilities of this low order of magnitude, absolute proof is not possible and reliance must be placed on engineering judgment and previous experience combined with sound design and test philosophies.

(iv) It must be shown that major propeller effects are not predicted to occur at a rate in excess of that defined as remote (probability of 10^{-5} or less per propeller flight hour).

(2) If significant doubt exists as to the effects of failures or likely combination of failures, any assumption of the effect may be required to be verified by test.

(3) It is recognized that the probability of primary failures of certain single elements (for example, blades) cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous propeller effects, reliance must be placed on meeting the prescribed integrity requirements of part 35 and these special conditions. These instances must be stated in the safety analysis.

(4) If reliance is placed on a system or device, such as safety devices, feathering and overspeed systems, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures, to prevent a failure from progressing to hazardous propeller effects, the possibility of a safety system failure in combination with a basic propeller failure must be covered. If items of a safety system are outside the control of the propeller manufacturer, the assumptions of the safety analysis with respect to the reliability of these parts must be clearly stated in the analysis and identified in the installation and operation instructions required under § 35.3.

(5) If the acceptability of the safety analysis is dependent on one or more of the following, it must be identified in the analysis and appropriately substantiated.

(i) Performance of mandatory maintenance actions at stated intervals required for certification and other maintenance actions. This includes the verification of the serviceability of items that could fail in a latent manner. These maintenance intervals must be published in the appropriate manuals. Additionally, if errors in maintenance of the propeller system could lead to hazardous propeller effects, the appropriate procedures must be published in the appropriate propeller manuals.

(ii) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate manuals.

(iii) The provisions of specific instrumentation not otherwise required.

(iv) A fatigue assessment.

(6) If applicable, the safety analysis must include the assessment of indicating equipment, manual and automatic controls, governors and propeller control systems, synchrophasers, synchronizers, and propeller thrust reversal systems.

(c) *Propeller control system.* The requirements of this section are applicable to any system or component that controls, limits or monitors propeller functions.

(1) The propeller control system must be designed, constructed and validated to show that:

(i) The propeller control system, operating in normal and alternative operating modes and transition between operating modes, performs the intended functions throughout the declared operating conditions and flight envelope.

(ii) The propeller control system functionality is not adversely affected by the declared environmental

conditions, including temperature, electromagnetic interference (EMI), high intensity radiated fields (HIRF) and lightning. The environmental limits to which the system has been satisfactorily validated must be documented in the appropriate propeller manuals.

(iii) A method is provided to indicate that an operating mode change has occurred if flight crew action is required. In such an event, operating instructions must be provided in the appropriate manuals.

(2) The propeller control system must be designed and constructed so that, in addition to compliance with paragraph (b), Safety analysis:

(i) A level of integrity consistent with the intended aircraft is achieved.

(ii) A single failure or malfunction of electrical or electronic components in the control system does not cause a hazardous propeller effect.

(iii) Failures or malfunctions directly affecting the propeller control system in typical aircraft, such as structural failures of attachments to the control, fire, or overheat, do not lead to a hazardous propeller effect.

(iv) The loss of normal propeller pitch control does not cause a hazardous propeller effect under the intended operating conditions.

(v) The failure or corruption of data or signals shared across propellers does not cause a major or hazardous propeller effect.

(3) Electronic propeller control system imbedded software must be designed and implemented by a method approved by the Administrator that is consistent with the criticality of the performed functions and minimizes the existence of software errors.

(4) The propeller control system must be designed and constructed so that the failure or corruption of aircraft-supplied data does not result in hazardous propeller effects.

(5) The propeller control system must be designed and constructed so that the loss, interruption or abnormal characteristic of aircraft-supplied electrical power does not result in hazardous propeller effects. The power quality requirements must be described in the appropriate manuals.

(6) The propeller control system description, characteristics and authority, in both normal operation and failure conditions, and the range of control of other controlled functions must be specified in the appropriate propeller manuals.

(d) *Centrifugal load test.* It must be demonstrated that a propeller, accounting for environmental degradation expected in service, complies with paragraphs (d)(1), (d)(2) and (d)(3) of these special conditions without evidence of failure, malfunction, or permanent deformation that would result in a major or hazardous propeller effect. Environmental degradation may be accounted for by adjustment of the loads during the tests.

(1) The hub, blade retention system, and counterweights must be tested for a period of one hour to a load equivalent to twice the maximum centrifugal load to which the propeller would be subjected during operation at the maximum rated rotational speed.

(2) If appropriate, blade features associated with transitions to the retention system (e.g., a composite blade bonded to a metallic retention) may be tested either during the test required by paragraph (d)(1) or in a separate component test.

(3) Components used with or attached to the propeller (e.g., spinners, de-icing equipment, and blade erosion shields) must be subjected to a load equivalent to 159 percent of the maximum centrifugal load to which the component would be subjected during operation at the maximum rated rotational speed. This must be performed by either:

(i) Testing at the required load for a period of 30 minutes; or

(ii) Analysis based on test.

(e) *Fatigue limits and evaluation.*

(1) Fatigue limits must be established by tests or analysis based on tests, for propeller:

(i) Hubs;

(ii) Blades;

(iii) Blade retention components; and

(iv) Other components that are affected by fatigue loads and that are shown under paragraph (b), Safety analysis, as having a fatigue failure mode leading to hazardous propeller effects.

(2) The fatigue limits must take the following into account:

(i) All known and reasonable foreseeable vibration and cyclic load patterns that are expected in service; and

(ii) Expected service deterioration, variations in material properties, manufacturing variations, and environmental effects.

(3) A fatigue evaluation of the propeller must be conducted to show that hazardous propeller effects due to fatigue will be avoided throughout the intended operational life of the propeller on either:

(i) The intended aircraft, by complying with §§ 23.907 or 25.907 as applicable; or

(ii) A typical aircraft.

(f) *Bird impact.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding the impact of a four pound bird at the critical location(s) and critical flight condition(s) of the intended aircraft without causing a major or hazardous propeller effect.

(g) *Lightning strike.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding a lightning strike without causing a major or hazardous propeller effect.

Issued in Burlington, Massachusetts on March 20, 2000.

David A. Downey,

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

[FR Doc. 00–7634 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113572–99]

RIN 1545–AX33

Qualified Transportation Fringe Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking which was published in the **Federal Register** on Thursday, January 27, 2000 (65 FR 4388), relating to qualified transportation fringe benefits.

FOR FURTHER INFORMATION CONTACT: John Richards at (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections reflect the changes to the law made by the Energy Policy Act of 1992, the Taxpayer Relief Act of 1997, and the Transportation Equity Act for the 21st Century.

Need for Correction

As published, this notice of proposed rulemaking contains errors in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–113572l–99), which was the subject of

FR Doc. 00–1859, is corrected as follows:

§ 1.132–9 [Corrected]

1. On page 4392, column 2, § 1.132–9(b), A–7, paragraph (d), line 3, the language ''Q/A7'' is corrected to read ''Q/A–7''.

2. On page 4293, column 1, § 1.132–9(b), Q–11, line 2, the language ''fringes be provided pursuant to a'' is corrected to read '' fringes be provided to employees pursuant to a''.

3. On page 4393, column 3, § 1.132–9(b), A–14, paragraph (d), line 4, the language ''paragraph (a)(3) of the Q/A–14, an'' is corrected to read ''paragraph (c) of this Q/A–14, an''.

4. On page 4395, column 1, § 1.132–9(b), A–16, paragraph (d)(2), line 8, the language '' that it will be used it during the month.'' is corrected to read ''that it will be used during the month.''.

5. On page 4395, column 2, § 1.1320–9(b), A–21, paragraph (a), line 2, the language ''Employer-and'' is corrected to read ''Employer and''.

6. On page 4395, column 2, § 1.132–9(b), A–21, paragraph (b), line 8, the language ''132(f)(5)(B) and Q/A–2 of this section.'' is corrected to read '' 132(f)(5)(B) and Q/A–2 of this section.''.

7. On page 4396, column 1, § 1.132–9(b), A–22, paragraph (b), line 7, the language ''monthly limit under section 132(f) are'' is corrected to read ''monthly limit under section 132(f) is''.

8. On page 4396, column 3, the title of the official signing the document, ''Commissioner of Internal Revenue'' is corrected to read ''Deputy Commissioner of Internal Revenue Service''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5238 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109101–98]

Special Rules Regarding Optional Forms of Benefit Under Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would permit qualified defined contribution plans to be amended to eliminate some alternative forms in which an account balance can be paid under certain circumstances, and would permit certain transfers between defined contribution plans that are not permitted under regulations now in effect. These proposed regulations affect qualified retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by June 27, 2000. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for June 27, 2000, at 10 a.m., must be received by June 6, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–109101–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–109101–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax—regs/reglist.html. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S.F. Marshall, 202–622–6030; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code of 1986 (Code).

Section 411(d)(6) generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Section 411(d)(6)(B), which was added by the Retirement Equity Act of 1984 (REA), Public Law 98–397 (98 Stat. 1426), provides that a plan amendment that eliminates an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. However, section 411(d)(6)(B) authorizes the Secretary of the Treasury to provide exceptions to this requirement. This authority does not extend to a plan amendment that would have the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy.

Final regulations regarding section 411(d)(6)(B) were published in the **Federal Register** on July 8, 1988. Those final regulations, and subsequent amendments to the regulations, define the optional forms of benefit that are protected under section 411(d)(6)(B) and provide for certain exceptions to the general rule of section 411(d)(6)(B). In general, existing regulatory exceptions to the application of section 411(d)(6)(B) to optional forms of benefit have been developed to address certain specific practical problems. For example, § 1.411(d)–4, Q&A–3(b) permits a transfer between plans of a participant's entire nonforfeitable benefit to be made at the election of the participant, without a requirement that the transferee plan preserve all section 411(d)(6) protected benefits, but only if the participant is eligible to receive an immediate distribution and certain other conditions are satisfied. In addition, some regulatory exceptions to the application of section 411(d)(6)(B) to optional forms of benefit address plan amendments that are related to statutory changes. See Q&A–2(b) and Q&A–10 of § 1.411(d)–4.

The IRS and Treasury recognize that the accumulation of a variety of payment choices in a plan may increase the cost and complexity of plan operations. For example, an employer that initially adopted a plan for which the plan document was prepared by a prototype sponsor may now be using a different prototype plan that offers a different array of distribution forms. The requirement to preserve virtually all preexisting optional forms for benefits accrued up to the date of change in the prototype plan may present significant practical problems in certain cases.

Similar issues arise where employers merge with or acquire other businesses. These employers often face issues of whether to maintain separate plans, terminate one or more of the plans, or merge the plans. If the employer chooses to merge the plans, the resulting plan may accumulate a wide variety of optional forms, some of which may differ in insignificant ways or may entail special administrative costs. Because the existing elective transfer rule of § 1.411(d)–4, Q&A–3(b) applies only to situations in which a

participant's benefits have become distributable, its applicability is limited.

In recent years, it has become easier for individuals to replicate the various payment choices available from qualified plans through other means. The Unemployment Compensation Amendments of 1992, Public Law 102–318 (106 Stat. 290), substantially expanded participants' ability to transfer distributions from qualified plans to individual retirement arrangements (IRAs) on a tax-deferred basis. Individuals who receive single-sum distributions from qualified plans frequently roll those distributions over directly to IRAs, under which distributions can be made in a wide variety of payment forms. There are also indications that the vast majority of participants in defined contribution plans who are given a choice of distribution forms that includes a single-sum distribution elect the single-sum distribution.

The IRS and Treasury have been weighing these considerations as they apply to various circumstances and various benefit forms. As a result, the IRS and Treasury have been considering the appropriateness of exercising the regulatory authority under section 411(d)(6)(B) to provide additional exceptions under that provision, in order to allow greater flexibility for sponsors to modify alternative forms of payment and simplify plan provisions and plan administration.

Notice 98–29 (1998–1 C.B. 1163) requested public comment on several ways of providing regulatory relief from the requirements of section 411(d)(6)(B) for defined contribution plans. Most of the public comments received in response to Notice 98–29 indicate that, particularly for defined contribution plans, the section 411(d)(6)(B) requirement that a plan continue to offer all existing payment options often imposes significant administrative burdens that are disproportionate to any corresponding benefit to participants. Accordingly, after considering the comments received in response to Notice 98–29, the IRS and Treasury are issuing these proposed regulations, which would provide relief from the requirements of section 411(d)(6)(B) in a wide range of circumstances.

As anticipated in Notice 98–29, the primary focus of these regulations is on defined contribution plans, and the provisions of these regulations relating to elimination of alternative forms of payment are limited to defined contribution plans. Defined benefit plans have special characteristics, including benefit payment calculation specifications, early retirement benefits, and other retirement-type subsidies (for which section 411(d)(6)(B) does not authorize the issuance of regulatory relief). Features such as these are not characteristic of defined contribution plans and provide important protections to participants. While limited comments relating to defined benefit plans were received in response to Notice 98–29, the IRS and Treasury remain open to further comment in this area. As discussed below, the provisions of these proposed regulations relating to elimination of in-kind distributions extend to both defined contribution plans and defined benefit plans, and the provisions of these proposed regulations relating to transfers between plans apply to defined contribution plans and, to some extent, to defined benefit plans.

These proposed regulations would not affect other requirements of the Code For example, a money purchase pension plan (or a plan otherwise described in section 401(a)(11)(B)) generally must satisfy certain requirements relating to qualified joint and survivor annuities and qualified preretirement survivor annuities. Similarly, these proposed regulations would not affect the requirements of section 401(a)(31) relating to direct rollovers.

Explanation of Provisions

A. Permitted Amendments to Alternative Forms of Payment Under a Defined Contribution Plan

The proposed regulations would simplify plan administration and allow greater flexibility by significantly expanding the permitted changes that may be made to alternative forms of payment under a defined contribution plan. Instead of requiring defined contribution plans to continue to maintain nearly all existing alternative forms of payment with only limited exceptions, these proposed regulations would permit defined contribution plans to be amended to eliminate nearly all existing forms of payment if certain specified forms of payment are available. Under the proposed regulations, a defined contribution plan would not violate the requirements of section 411(d)(6) merely because the plan was amended to eliminate or restrict the ability of a participant to receive payment of the participant's accrued benefit under a particular optional form of benefit if, after the plan amendment became effective with respect to the participant, the distribution choices available to the participant included both payment of the accrued benefit in a single-sum distribution form and payment of the accrued benefit in an extended distribution form, each of which is otherwise identical to the eliminated or restricted optional form of benefit.

Under the proposed regulations, a distribution form is an otherwise identical distribution form with respect to an optional form of benefit that is eliminated or restricted only if the distribution form is identical in all respects to the eliminated or restricted optional form of benefit except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not an otherwise identical distribution form with respect to a specified installment form of benefit if the single-sum distribution form is not available for distribution on any date on which the installment form would have been available for commencement, is not available in the same medium of distribution as the installment form, does not apply to the benefit to which the installment form applied, imposes any condition of eligibility that did not apply to the installment form, or lacks any related election rights that were available with respect to the installment form. However, a distribution form does not fail to be identical just because it provides greater rights to the participant. Further, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features are not otherwise protected under section 411(d)(6). Moreover, in the case of an optional form of benefit that is in the form of an annuity and that provides for distribution of an annuity contract, a distribution form that is not in the form of an annuity would not fail to be an otherwise identical distribution form with respect to that optional form of benefit merely because the non-annuity distribution form does not provide for distribution of an annuity contract.

The requirement under the proposed regulations that an extended distribution form be retained would be satisfied if the plan provided either (1) a life annuity or (2) periodic payments over the participant's life expectancy (or, at the election of the participant, over the joint life expectancy of the participant and the participant's spouse). Thus, a defined contribution plan would not violate section 411(d)(6) merely because of a plan amendment that replaced an optional form of benefit payable under the plan with either of these two extended distribution forms, together with a single-sum distribution form, provided that the single-sum distribution form and the extended distribution form are each otherwise

identical to the replaced optional form of benefit. A plan providing for periodic payments over life expectancy could provide for the life expectancy to be fixed when payments begin or, alternatively, could provide for the life expectancy to be redetermined annually as described in section 401(a)(9)(D).

As noted above, the proposed regulations would not affect the survivor annuity requirements of sections 401(a)(11) and 417. Thus, for example, as required under sections 401(a)(11) and 417, any profit-sharing plan that provides for payment in the form of a life annuity (whether or not the life annuity was added to the plan in lieu of some other optional form) would also be required to offer payment in the form of a qualified joint and survivor annuity.

A third extended distribution form would generally be permitted under the proposed regulations for a plan amendment that did not eliminate any optional form of benefit that is an extended distribution form described above. For such an amendment, the requirement to provide an extended distribution form would be satisfied if the plan offered a distribution in the form of substantially equal periodic payments made (not less frequently than annually) over a period at least as long as the longest period over which the participant is entitled to receive a distribution under the plan before the plan amendment under any of the optional forms of benefit that are eliminated by the plan amendment. Thus, for example, a defined contribution plan that offers distributions in the form of a single-sum distribution, 5-year installment payments, 10-year installment payments, 15-year installment payments, and 20-year installment payments could be amended to offer only a single-sum distribution and 20-year installment payments, each of which is otherwise identical to the formerly available 5-year, 10-year, and 15-year distribution forms.

The provisions of the proposed regulations permitting payment forms to be eliminated if the defined contribution plan retains a single-sum distribution form and an extended distribution form are similar to one of the proposals outlined in Notice 98–29. In response to Notice 98–29, commentators generally stated that implementing this relief would be very helpful for plan sponsors, but there was also substantial comment urging further relief, so that a defined contribution plan with a single-sum distribution option would not also be required to continue to offer an extended distribution form. These commentators took the position that, in light of a participant's ability to roll over distributions to IRAs, which may offer multiple payment forms, there is only a marginal advantage to the participant in requiring the retention of an option to receive extended payments from a qualified defined contribution plan.

Some of these comments described plans that have been preserving a variety of payment options because the regulations require it, even though certain of the options have not been selected by a single participant for years. Commentators asserted that ultimately, employee demand would tend to shape the array of payment options offered by plan sponsors, and that plan sponsors generally would feel more free to offer or ''test market'' various payment form alternatives to participants if the sponsors were not legally prohibited from ever removing any option, once offered, even when participants in the plan have evidenced little or no interest in the option. Commentators observed that participants would in all events continue to have the option to leave their account balance in the plan (if above the $5,000 cashout threshold) until they were ready to begin receiving distributions. It was argued that the vast majority of participants are not ready to begin drawing lifetime retirement benefits at the time their employment with a particular plan sponsor terminates, and that, accordingly, a participant's rollover to a single IRA of the participant's benefits from a series of employer-sponsored plans over the course of the participant's working life is an effective and common means of achieving portability, consolidation, and preservation of retirement savings.

Commentators also asserted that the protections of section 411(d)(6)(B) may have adversely affected participants involved in corporate sale transactions. Specifically, some sellers and buyers that might otherwise have merged their plans, or transferred benefits under the seller's plan to the buyer's plan, instead have terminated the seller's plan or made distributions in order to avoid being required to preserve all of the distribution forms in the seller's plan.

Although the comments received in response to Notice 98–29 made a strong case that only a single sum distribution should be required to be retained, these proposed regulations reflect the view that the advantages to participants from retaining an extended distribution form may be worth the plan administration costs of retaining this additional option. These advantages include the benefits that participants, especially less sophisticated participants, can derive from employer involvement, which is subject to the fiduciary standards, in selecting and monitoring investment options under the plan after retirement distributions have begun. The IRS and Treasury are open to further comments on whether or not an extended distribution form should be required to be preserved, including comments that identify circumstances in which it may be acceptable for a plan not to preserve an extended distribution form. In particular, comments are requested on whether the final regulations should provide any of the following further relief:

- Should an extended distribution form be required to be retained only for participants who have reached a specified age, such as age 55, age 62, or normal retirement age, at the time of the distribution?
- Should there be an exception from this requirement for small businesses (e.g., employers with fewer than 100 employees or fewer than 25 employees)?
- Should a plan be treated as satisfying the requirement that it retain an extended distribution form if the plan allows a participant to elect to receive distribution by transfer of his or her vested account to a defined benefit plan for distribution in an extended distribution form?
- Should a plan be treated as satisfying the requirement that it retain an extended distribution form if the plan offers installment payments over a fixed period, such as 20 years?
- Should there be an exception from the requirement that an extended distribution form be retained if a plan with an extended distribution form is merged into another plan that does not offer an extended distribution form (for example, if the plan without the extended distribution form has a larger number of participants) in connection with an asset or stock acquisition, merger, or similar transaction involving a change in employer of the employees of a trade or business?
- If extended distribution forms are permitted to be eliminated, should there be additional protections, such as requiring that the amendment not go into effect for a specified period (such as two, four, or five years) or that the amendment not apply to participants who have reached a specified age (such as age 55, age 62, or normal retirement age) at the time of the amendment, or both?

Approaches such as these may be considered either independently of each other, as a series of coordinated alternatives, or in combination (such as permitting small businesses to limit the

availability of extended distribution forms to participants who receive distributions after attaining a specified age, or such as permitting plan amendments that make extended distribution forms available only to participants who reach a specified age before a specified date, such as five years after the amendment). Commentators are requested to identify the burdens in plan administration that may be reduced by any of these approaches and the extent to which the approaches involve elimination of distribution alternatives that may be important to a participant.

B. Voluntary Direct Transfers Between Plans

The proposed regulations would make a number of changes in the existing regulations relating to elective transfers between qualified plans. Under certain circumstances, the existing regulations permit elimination of optional forms of benefit in connection with plan transfers with a participant's consent. The proposed regulations would significantly liberalize the application of these elective transfer provisions.

The existing regulations do not permit an elective transfer from one qualified plan to another unless the participant's benefit under the transferring plan is immediately distributable. This condition has precluded use of the elective transfer provision in the existing regulations in connection with merger and acquisition transactions involving plans with a cash or deferred arrangement under section 401(k) in cases in which benefits under the cash or deferred arrangement are not distributable because section 401(k)(10) is not applicable. Many commentators have stated that permitting elective transfers from the former employer's section 401(k) plan to the new employer's section 401(k) plan under these circumstances would allow employers to permit employees to keep their old retirement benefits in a qualified plan together with their newly earned retirement benefits, particularly in cases where the new employer chooses not to maintain the former employer's plan.

The proposed regulations would grant broad section 411(d)(6) relief for many types of elective transfers of a participant's entire benefit, without regard to whether the participant's benefit is immediately distributable. The elective transfer provision would be available for transfers made in connection with certain corporate transactions (such as a merger or acquisition), or in connection with the transfer of a participant to a different job (for example, to a different subsidiary or division of the employer) that is not covered by the transferor plan, even if the event is not one that allows a distribution. Insofar as the immediately distributable requirement of the existing regulations would be eliminated, the proposed regulations would permit an elective transfer even if the participant's benefit is not fully vested, provided that the requirements of section 411(a)(10) are satisfied. The proposed regulations would not restrict the permissible types of elective transfers to transfers between plans of the same employer. Accordingly, elective transfers could be made to plans that are within the employer's controlled group or to plans that are outside the employer's controlled group.

The proposed regulations would provide section 411(d)(6) relief for elective transfers involving corporate transactions or employee job transfers generally where the defined contribution plans are of the same type (e.g., from a qualified cash or deferred arrangement under section 401(k) to another qualified cash or deferred arrangement). The restrictions on the types of plans between which transfers would be permitted would ensure that amounts transferred to the receiving plan will be subject to similar legal restrictions with respect to in-service distributions. See Rev. Rul. 94–76 (1994–2 C.B. 46). In the case of transfers from plans that are subject to the survivor annuity requirements under sections 401(a)(11) and 417, those survivor annuity requirements would apply to the receiving plan with respect to the transferred amount in accordance with the transferee plan rules of section 401(a)(11)(B)(iii)(III).

The existing regulations relating to elective transfers were issued in 1988. Since then, section 401(a)(31) has been enacted. Under section 401(a)(31), any eligible rollover distribution may be directly rolled over to an IRA or to another eligible retirement plan. The section 411(d)(6) requirements do not apply to amounts that have been distributed, such as distributions that are directly rolled over to another plan under section 401(a)(31). Accordingly, the elective transfer rules of the existing regulations have largely been duplicated by the enactment of section 401(a)(31) because the same result generally is available through a direct rollover. The proposed regulations would eliminate this duplication by replacing the elective transfer rules of the existing regulations that apply to immediately distributable amounts, except for certain transfers of amounts that are not eligible rollover distributions (such as amounts attributable to after-tax employee contributions). Specifically, an elective transfer of an immediately distributable amount would be permitted to the extent the amount is not an eligible rollover distribution, if the participant's entire nonforfeitable accrued benefit is transferred by means of a combination of a section 401(a)(31) transfer and the elective transfer. This rule would apply to transfers between defined benefit plans, as well as transfers between defined contribution plans. Comments are requested regarding whether there are other situations (where direct rollovers are unavailable) to which the elective transfer approach should apply.

C. Rules Regarding In-Kind Distributions

The proposed regulations clarify and modify the rules regarding the application of the protections of section 411(d)(6)(B) to a right to receive benefit distributions in kind with respect to defined contribution plans and defined benefit plans. Provisions for distribution in kind are sometimes found in plans invested in annuity contracts or in marketable mutual funds. The right to a particular form of investment is not a protected optional form of benefit. However, the investments made by a plan generally are subject to fiduciary requirements, including the prudence requirement of section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829). The existing regulations state that the right to a medium of distribution, such as cash or in-kind payments, is an optional form of benefit to which section 411(d)(6)(B) applies.

Under the proposed regulations, if a defined benefit plan includes an optional form of benefit under which benefits are distributed in the medium of an annuity contract, that optional form of benefit could be modified by substituting cash for the annuity contract. Thus, a defined benefit plan that provides for distribution of an annuity contract could be amended to substitute cash payments from the plan that are identical in all respects protected by section 411(d)(6) to the payments available from the annuity contract except with respect to the source of the payments. Comments are requested regarding whether any additional section 411(d)(6)(B) relief for non-cash distributions is appropriate for defined benefit plans.

The proposed regulations would permit a defined contribution plan to be amended to replace the ability to receive a distribution in the form of marketable securities (other than employer securities) with the ability to receive a

distribution in the form of cash. The right to distributions from a defined contribution plan in the form of cash, employer securities or other property that is not marketable securities would generally be protected. However, the proposed regulations would also permit a defined contribution plan that gives a participant the right to an in-kind distribution (including employer securities and property that is not marketable securities) to be amended to limit the types of property in which distributions could be made to the participant to specific types of property in which the participant's account is invested at the time of the amendment (and with respect to which the participant had the right to receive an in-kind distribution before the plan amendment). In addition, the proposed regulations would permit a defined contribution plan giving a participant the right to a distribution in a type of property to be amended to specify that the participant is permitted to receive a distribution in that type of property only to the extent that the plan assets held in the participant's account at the time of the distribution include that type of property. These provisions of the proposed regulations would not permit a plan to be amended in a way that would affect protected features of optional forms of benefit other than the medium of distribution. Thus, for example, a plan could not be amended to eliminate a participant's right to payments over a period of years, regardless of the plan's current investments, except as permitted under other provisions of the current or proposed regulations (such as the provisions described above relating to permitted plan amendments affecting alternative forms of payment under defined contribution plans).

Comments are requested on whether section 411(d)(6) protection for in-kind distributions of employer securities and property that is not marketable securities from defined contribution plans should be preserved or eliminated. Commentators are requested to address the extent to which these may be important rights for participants. For example, in a defined contribution plan that does not give participants the right to payment in kind, it is possible that a distribution made in cash for a particular asset may be in an amount that is less than the value that the participant assigns to the asset. Commentators are further requested to address the potential administrative burden if, as proposed, plans are prohibited from eliminating these media of distribution. Comments are also requested on whether section 411(d)(6)(B) protection should be retained for any form of in-kind distribution from a defined contribution plan other than employer securities and property that is not marketable securities.

Proposed Effective Date

The proposed regulations are proposed to be effective upon publication of final regulations in the **Federal Register** and cannot be relied upon before finalization.

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) 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 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 comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 27, 2000, at 10 a.m., in room 6718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by June 6, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 6, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

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

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

Par. 2. Section 1.411(d)1–4 is amended as follows:

1. In Q&A–1, paragraph (b)(1), the last sentence is amended by removing the language ''§ 1.401(a)(4)–4(d)'' and adding ''§ 1.401(a)(4)–4(e)(1)'' in its place.

2. Q&A–2 is amended by:

a. Revising paragraph (b)(2)(iii).

b. Adding paragraph (e).

3. Q&A–3 is amended by:

a. Revising paragraph (a)(3).

b. Adding paragraph (a)(4).

c. Revising paragraphs (b), (c), and (d).

d. Adding paragraph (e).

The additions and revisions read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–2: * * *

(b) * * *

(2) * * *

(iii) *In-kind distributions*—(A) *Distributions of annuity contracts payable under defined benefit plans.* If a defined benefit plan includes an

optional form of benefit under which benefits are distributed in the medium of an annuity contract, that optional form of benefit may be modified by substituting cash for the annuity contract.

(B) *In-kind distributions payable under defined contribution plans in the form of marketable securities other than employer securities.* If a defined contribution plan includes an optional form of benefit under which benefits are distributed in the form of marketable securities, other than securities of the employer, that optional form of benefit may be modified by substituting cash for the marketable securities. For purposes of this paragraph (b)(2)(iii), the term *marketable securities* means marketable securities as defined in section 731(c)(2), and the term *securities of the employer* means securities of the employer as defined in section 402(e)(4)(E)(ii).

(C) *Amendments to defined contribution plans to specify medium of distribution.* If a defined contribution plan includes an optional form of benefit under which benefits are distributable to a participant in a medium other than cash, the plan may be amended to limit the types of property in which distributions may be made to the participant to the types of property specified in the amendment. For this purpose, the types of property specified in the amendment must include all types of property (other than types of property for which the plan may be amended to substitute cash under paragraph (b)(2)(iii)(B) of this Q&A–2) that are held in the participant's account on the effective date of the amendment and in which the participant would be able to receive a distribution immediately before the effective date of the amendment. In addition, a plan amendment may provide that the participant's right to receive a distribution in the form of specified types of property is limited to the property held in the participant's account at the time of distribution that consists of property of those specified types.

(D) *In-kind distributions after plan termination.* If a plan includes an optional form of benefit under which benefits are distributed in specified property, that optional form of benefit may be modified for distributions after plan termination by substituting cash for the specified property to the extent that, on plan termination, an employee has the opportunity to receive the optional form of benefit in the form of the specified property. This exception is not available, however, if the employer that maintains the terminating plan also maintains another plan that provides an optional form of benefit under which benefits are distributed in the specified property.

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

Example 1. (i) An employer maintains a profit-sharing plan under which participants may direct the investment of their accounts. One investment option available to participants is a fund invested in common stock of the employer. The plan provides that the participant has the right to a distribution in the form of cash upon termination of employment. In addition, the plan provides that, to the extent a participant's account is invested in the employer stock fund, the participant may receive an in-kind distribution of employer stock upon termination of employment. On September 1, 2000, the plan is amended, effective on January 1, 2001, to remove the fund invested in employer common stock as an investment option under the plan and to provide for the stock held in the fund to be sold. The amendment permits participants to elect how the sale proceeds are to be reallocated among the remaining investment options, and provides for amounts not so reallocated as of January 1, 2001, to be allocated to a specified investment option.

(ii) The plan does not fail to satisfy section 411(d)(6) solely on account of the plan amendment relating to the elimination of the employer stock investment option, which is not a section 411(d)(6) protected benefit. See paragraph (d)(7) of Q&A–1 of this section. Moreover, because the plan did not provide for distributions of employer securities except to the extent participants' accounts were invested in the employer stock fund, the plan is not required operationally to offer distributions of employer securities following the amendment. In addition, the plan would not fail to satisfy section 411(d)(6) on account of a further plan amendment, effective after the plan has ceased to provide for an employer stock fund investment option, to eliminate the right to a distribution in the form of employer stock. See paragraph (b)(2)(iii)(C) of this Q&A–2.

Example 2. (i) An employer maintains a profit-sharing plan under which a participant, upon termination of employment, may elect to receive benefits in a single-sum distribution either in cash or in kind. The plan's investments are limited to a fund invested in employer stock, a fund invested in XYZ mutual funds (which are marketable securities), and a fund invested in shares of PQR limited partnership (which are not marketable securities).

(ii) The following alternative plan amendments would not cause the plan to fail to satisfy section 411(d)(6):

(A) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership. See paragraph (b)(2)(iii)(B) of this Q&A–2.

(B) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership, and that also lists the participants that hold employer stock in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of employer stock, and lists the participants that hold shares of PQR limited partnership in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of shares of PQR limited partnership. See paragraphs (b)(2)(iii)(B) and (C) of this Q&A–2.

(C) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership to the extent that the participant's account is invested in those assets at the time of the distribution. See paragraphs (b)(2)(iii)(B) and (C) of this Q&A–2.

(D) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership, and that lists the participants that hold employer stock in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of employer stock, and lists the participants that hold shares of PQR limited partnership in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of shares of PQR limited partnership, and further provides that the distribution of that stock or those shares is available only to the extent that the participants' accounts are invested in those assets at the time of the distribution. See paragraphs (b)(2)(iii)(B) and (C) of this Q&A–2.

Example 3. (i) An employer maintains a stock bonus plan under which a participant, upon termination of employment, may elect to receive benefits in a single-sum distribution in employer stock. This is the only plan maintained by the employer under which distributions in employer stock are available. The employer decides to terminate the stock bonus plan.

(ii) If the plan makes available a single-sum distribution in employer stock on plan termination, the plan will not fail to satisfy section 411(d)(6) solely because the optional form of benefit providing a single-sum distribution in employer stock on termination of employment is modified to provide that such distribution is available only in cash. See paragraph (b)(2)(iii)(D) of this Q&A–2.

* * * * *

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans*—(1) *General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available

to the participant include payment in both a single-sum distribution form and an extended distribution form described in paragraph (e)(3) of this Q&A–2, each of which is an otherwise identical distribution form with respect to the optional form of benefit that is being eliminated or restricted.

(2) *Otherwise identical distribution form.* For purposes of this paragraph (e), a distribution form is an otherwise identical distribution form with respect to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A–2 only if the distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not an otherwise identical distribution form with respect to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form would have been available for commencement, is not available in the same medium of distribution as the installment form, does not apply to the benefit (or any portion of the benefit) to which the installment form applied, imposes any condition of eligibility that did not apply to the installment form, or lacks any related election rights that were available with respect to the installment form. However, the single-sum distribution form would not fail to be an otherwise identical distribution form with respect to the installment form merely because the single-sum distribution form is available for distribution on a date on which the installment form would not have been available for commencement, is available in media of distribution that the installment form was not, applies (if the participant so chooses) to a larger portion of the benefit than the installment form, has fewer or less stringent conditions of eligibility than the installment form, or has election rights that the installment form lacked. In addition, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features are not otherwise protected under section 411(d)(6). Moreover, in the case of an optional form of benefit that is in the form of an annuity and that provides for distribution of an annuity contract, a distribution form that is not in the form of an annuity does not fail to be an otherwise identical distribution form with respect to that optional form of benefit merely because the non-annuity distribution form does not provide for distribution of an annuity contract.

(3) *Extended distribution form*—(i) *In general.* For purposes of this paragraph (e), a distribution form is an extended distribution form if it is—

(A) An annuity payable for the life of the participant;

(B) Substantially equal periodic payments made (not less frequently than annually), at the election of the participant, over either the life expectancy of the participant or the joint life expectancy of the participant and the participant's spouse (with or without redetermination of those life expectancies, as described in section 401(a)(9)(D)); or

(C) For a plan amendment that does not eliminate any optional form of benefit that is an extended distribution form described in paragraph (e)(3)(i)(A) or (B) of this Q&A–2, substantially equal periodic payments made (not less frequently than annually) over a period at least as long as the longest period over which the participant is entitled to receive a distribution under the plan before the plan amendment under any of the optional forms of benefit that are eliminated by the plan amendment.

(ii) *Substantially equal periodic payments.* For purposes of this paragraph (e)(3), the rules of section 402(c)(4)(A)(ii) and § 1.402(c)–2, Q&A–5, apply in determining whether payments are substantially equal periodic payments (but without regard to the 10-year minimum period for payments and without regard to § 1.402(c)–2, Q&A–5(b), regarding certain periodic payments that decrease upon a participant's attainment of eligibility for social security benefits).

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

Example 1. (i) P is a participant in Plan M, a qualified profit-sharing plan that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Plan M provides that distributions on the death of a participant are made in accordance with section 401(a)(11)(B)(iii)(I). Plan M is amended so that, after the amendment is effective, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, except as required by section 401(a)(9)). In addition, P is entitled to receive P's vested account balance under Plan M payable in substantially equal monthly payments made, at P's election, over either P's life expectancy or the joint life expectancies of P and P's spouse, beginning as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, except as required by section 401(a)(9)).

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

Example 2. (i) P is a participant in Plan M, a qualified profit-sharing plan to which section 401(a)(11)(A) does not apply. Upon termination of employment, P is entitled to receive cash distributions from Plan M, payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)), in the form of a single-sum distribution, or in substantially equal monthly installment payments over either 5, 10, 15, or 20 years. Plan M is amended so that, after the amendment is effective, P is no longer entitled to receive a distribution in the form of substantially equal monthly installment payments over 5, 10, or 15 years. However, after the amendment is effective, P continues to be entitled to receive cash distributions from Plan M, payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, except as required by section 401(a)(9)), in the form of a single-sum distribution or in substantially equal monthly installment payments over 20 years.

(ii) Plan M does not violate the requirements of section 411(d)(6) merely because the plan amendment has eliminated P's option to receive a distribution in the form of substantially equal monthly installment payments over 5, 10, or 15 years.

(5) *Effective date.* This paragraph (e) applies to plan amendments that are adopted and made effective after the date of publication of final regulations in the **Federal Register**.

* * * * *

A–3. (a) * * *

(3) *Waiver prohibition.* In general, except as provided in paragraph (b) of this Q&A–3, a participant may not elect to waive section 411(d)(6) protected benefits. Thus, for example, the

elimination of the defined benefit feature of a participant's benefit under a defined benefit plan by reason of a transfer of such benefits to a defined contribution plan pursuant to a participant election, at a time when the benefit is not distributable to the participant, violates section 411(d)(6).

(4) *Direct rollovers.* A direct rollover described in Q&A–3 of § 1.401(a)(31)–1 that is paid to a qualified plan is not a transfer of assets and liabilities that must satisfy the requirements of section 414(l), and is not a transfer of benefits for purposes of applying the requirements under section 411(d)(6) and paragraph (a)(1) of this Q&A–3. Therefore, for example, if such a direct rollover is made to another qualified plan, the receiving plan is not required to provide, with respect to amounts paid to it in a direct rollover, the same optional forms of benefit that were provided under the plan that made the direct rollover. See § 1.401(a)(31)–1, Q&A–14.

(b) *Elective transfers of benefits between defined contribution plans*—(1) *General rule.* A transfer of a participant's entire benefit between qualified defined contribution plans (other than a direct transfer described in section 401(a)(31)) that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if the following requirements are met:

(i) *Voluntary election.* The plan from which the benefits are transferred must provide that the transfer is conditioned upon a voluntary, fully-informed election by the participant to transfer the participant's entire benefit to the other qualified defined contribution plan. As an alternative to the transfer, the participant must be offered the opportunity to retain the participant's section 411(d)(6) protected benefits under the plan (or, if the plan is terminating, to receive any optional form of benefit for which the participant is eligible under the plan as required by section 411(d)(6)).

(ii) *Types of plans to which transfers may be made.* To the extent the benefits are transferred from a money purchase pension plan, the transferee plan must be a money purchase pension plan. To the extent the benefits being transferred are part of a qualified cash or deferred arrangement under section 401(k), the benefits must be transferred to a qualified cash or deferred arrangement under section 401(k). To the extent the benefits being transferred are part of an employee stock ownership plan as defined in section 4975(e)(7), the benefits must be transferred to another employee stock ownership plan. Benefits transferred from a profit-sharing plan other than from a qualified cash or deferred arrangement, or from a stock bonus plan other than an employee stock ownership plan, may be transferred to any type of defined contribution plan.

(iii) *Circumstances under which transfers may be made.* The transfer must be made in connection with an asset or stock acquisition, merger, or other similar transaction involving a change in employer of the employees of a trade or business (i.e., an acquisition or disposition within the meaning of § 1.410(b)–2(f)) or in connection with the participant's transfer of employment to a different job for which service does not result in additional allocations under the transferor plan.

(2) *Applicable qualification requirements.* A transfer described in this paragraph (b) is a transfer of assets or liabilities within the meaning of section 414(l)(1) that must meet the requirements of section 414(l) and all other applicable qualification requirements. Thus, for example, if the survivor annuity requirements of sections 401(a)(11) and 417 apply to the plan from which the benefits are transferred, as described in this paragraph (b), but do not otherwise apply to the receiving plan, the requirements of sections 401(a)(11) and 417 must be met with respect to the transferred benefits under the receiving plan. In addition, the vesting provisions under the receiving plan must satisfy the requirements of section 401(a)(10) with respect to the amounts transferred.

(c) *Elective transfers of certain distributable benefits between defined benefit plans or between defined contribution plans*—(1) *In general.* A transfer of a participant's benefits that are distributable between qualified defined benefit plans, or between defined contribution plans (other than the portion of such a transfer that is a direct transfer described in section 401(a)(31)), that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if—

(i) The voluntary election requirement of paragraph (b)(1)(i) of this Q&A–3 is met; and

(ii) The amount of the benefit transferred, together with the amount of a contemporaneous section 401(a)(31) transfer to the transferee plan, equals the entire nonforfeitable accrued benefit under the plan of the participant whose benefit is being transferred, calculated to be at least the greater of the single-sum distribution provided for under the plan for which the participant is eligible (if any) or the present value of the participant's accrued benefit payable at normal retirement age (calculated by using interest and mortality assumptions that satisfy the requirements of section 417(e) and subject to the limitations imposed by section 415).

(2) *Treatment of transfer.* The transfer of benefits pursuant to this paragraph (c) generally is treated as a distribution for purposes of section 401(a). For example, the transfer is subject to the cash-out rules of section 411(a)(7), the early termination requirements of section 411(d)(2), and the survivor annuity requirements of sections 401(a)(11) and 417. However, the transfer is not treated as a distribution for purposes of the minimum distribution requirements of section 401(a)(9).

(3) *Distributable benefits.* For purposes of this paragraph (c), a participant's benefits are distributable on a particular date if, on that date, the participant is eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution of these benefits from that plan under provisions of the plan not inconsistent with section 401(a).

(d) *Status of elective transfer as optional form of benefit.* A right to a transfer of benefits pursuant to the elective transfer rules of paragraph (b) or (c) of this Q&A–3 is an optional form of benefit under section 411(d)(6). The availability of such optional form is subject to the nondiscrimination requirements of section 401(a)(4). However, a plan will not be treated as failing to satisfy § 1.401(a)(4)–4 merely because it restricts the transfer option to benefits that exceed the dollar limits on mandatory distributions that can be made without the consent of the participant under section 411(a)(11).

(e) *Effective date.* This Q&A–3 is applicable for transfers made after the date of publication of final regulations in the **Federal Register**.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–6694 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208280–86]

RIN 1545–AJ57

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; changes of date and location of the public hearing; and extension of time for public comments.

SUMMARY: This document changes the date and location of the public hearing and provides notice of an extension of time for submitting comments with respect to a notice of proposed rulemaking and notice of public hearing relating to exclusions from gross income of foreign corporations under section 883 of the Internal Revenue Code.

DATES: Written and electronically generated comments must be received by May 19, 2000. The public hearing is being held on Thursday, June 8, 2000, at 10 a.m. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208280–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208280–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternately, 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.ustreas.gov/tax__regs/regslist.html. The public hearing originally scheduled in the Internal Revenue Building, room 2615, 1111 Constitution Avenue, NW., Washington, DC, is changed to room 4718, in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, beginning at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Patricia A. Bray, (202) 622–3880; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Guy R. Traynor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, February 8, 2000, (65 FR 6065) announced that a public hearing on proposed regulations relating to exclusions from gross income of foreign corporations under section 883, would be held on Thursday, April 27, 2000, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Wednesday, April 5, 2000.

The date and location of the public hearing has changed, and the deadline for submitting written comments, requests to speak with outlines of topics to be discussed at the hearing, has been extended. The hearing is scheduled for Thursday, June 8, 2000, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The date by which written comments on proposed rules, requests to speak with outlines of topics to be discussed at the hearing must be delivered or mailed, is hereby extended to May 19, 2000.

The IRS will prepare an agenda showing the scheduling of speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing, or in the Freedom of Information Reading Room (Room 1621), approximately one week prior to the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–7667 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110

[CGD07–00–014]

RIN 2115–AE46, AA98

OPSAIL 2000, Port of San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Port of San Juan, Puerto Rico for OPSAIL 2000 activities from May 19 through May 29, 2000. The Coast Guard proposes to establish temporary limited access areas and Special Local Regulations to control vessel traffic within the Port of San Juan during this event. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000. This action will restrict vessel traffic in portions of the Port of San Juan during specific time periods.

DATES: Comments and related material must reach the Coast Guard on or before April 28, 2000.

ADDRESSES: Comments and related material may be mailed to the U.S. Coast Guard Marine Safety Office San Juan, PO Box 71526, San Juan, Puerto Rico 00936–8626, or may be delivered to Marine Safety Office San Juan Puerto Rico, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. Marine Safety Office San Juan Puerto Rico is located in the Rodriguez & Del Valle Building, 4th Floor, Calle San Martin, Carr #2 km 4.9, Guaynabo, Puerto Rico 00968. Marine Safety Office, San Juan, Puerto Rico maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office San Juan, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Le Fevers, U.S. Coast Guard Marine Safety Office, San Juan at (787) 706–2440, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 13, 2000, we published an advanced notice of proposed rulemaking (ANRPM) in the **Federal Register** (65 FR 2095) entitled OPSAIL 2000, Port of San Juan, PR. We received no comments on our anticipated rulemaking. No public hearing was requested and none was held.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Please explain your reasons for each comment so that we can carefully weigh the consequences and impacts of any future requirements we may propose. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD07–00–014) and the specific section of this document to which each comment applies. Please submit two copies of all comments and attachments in English and in an unbound format, no larger than 8½ by

11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The Coast Guard may change this proposed rule in view of comments received. The comment period for this regulation is 30 days. This time period is adequate to allow local input because we previously published a ANPRM, no comments were received, the event is highly publicized, and the shortened comment period will allow the full 30 day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Meeting

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

Background and Purpose

These proposed temporary regulations are for OPSAIL 2000 events in the Port of San Juan, in San Juan, Puerto Rico. These events will be held from May 19 through May 29, 2000, and the Coast Guard estimates many spectator craft and commercial vessels will be in the area during that period. This rule is proposed to provide for the safety of life on navigable waters and to promote maritime safety and protect participants and the Port of San Juan during this event. The restrictions stated for the proposed regulated areas will be enforced at various times throughout the OPSAIL 2000 event from May 19–29, 2000.

Discussion of Proposed Rule

The proposed regulations create temporary anchorage regulations and vessel movement controls. Special local regulations will be in effect for San Juan Bay including the waterways and adjacent piers along the Bar Channel, Anegado Channel, San Antonio Channel, Graving Dock Channel, Army Terminal Channel and Puerto Nuevo Channel for the period beginning at 6 a.m. on Friday, May 19 and ending at 6 p.m. on Monday, May 29. The safety of parade participants and spectators will require that spectator craft including, but not limited to, jet skis and sail boards be kept at a safe distance from participating tall ships while the vessels are in the harbor, whether moving, anchored, or tied up at their respective piers. The Bar Channel will be closed to inbound and outbound traffic to San Juan Harbor from 7 a.m. to 6 p.m. on Thursday, May 29 during the Parade of Sail. No vessel will be permitted to transit the entrance channel during that time without permission from the Captain of the Port. This is required to ensure the safety of Tall Ships during the Parade of Sail event. Vessel movements inside the Port of San Juan will be prohibited from 7 a.m. to 12 p.m. on May 29, 2000, except Tall Ships departing for the Parade of Sail, Law Enforcement Patrol vessels, and the Puerto Rico Ports Authority ferries. This is required to ensure the safety of participating Tall Ships as they queue up to depart San Juan Bay during the Parade of Sail. The San Juan Harbor entrance must be kept clear to ensure safety of participant vessels. Normal commercial vessel operations will resume within the harbor from noon to 6 p.m., and through the harbor entrance after all participant vessels have cleared the harbor.

The Coast Guard proposes to establish multiple limited access areas and to temporarily modify existing anchorage areas within the port area to provide for maximum spectator viewing areas and traffic patterns for deep draft and barge traffic.

The Parade of Sail route will extend from the EL MORRO Fortress, coastwise to Boca de Cangrejos Inlet where participants will turn to the west, set sail, and return to EL MORRO. The safety of parade participants and spectators will require that spectator craft including jet skis and sail boards be kept at a minimum of 300 yards from parade vessels while the vessels are in the parade route.

The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish four regulated areas in the vicinity of the Port of San Juan. These proposed regulated areas are needed to protect the maritime public and participating vessels from possible hazards to navigation associated with the large number of participant and spectator craft transiting the waters of the Port of San Juan, Puerto Rico.

Regulated Area A is in the proximity of the fireworks launch area at the point of Isla Grande. This regulated area will be in effect from 9 P.M. to 9:30 P.M. daily from May 19 to May 29, 2000. An area within a 300-yard radius around the point of Isla Grande will be kept clear for the duration of the fireworks display. Any vessel traffic movements through the regulated area will be coordinated by the Patrol Commander to avoid conflict with the daily fireworks.

Regulated Area B covers all San Juan Harbor from 7 a.m. until 12 noon on Monday, May 29, 2000. No vessels other than OPSAIL 2000 vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the Port of San Juan unless specifically authorized by the Coast Guard Captain of the Port, San Juan, or his on-scene representative. The operation of seaplanes, including taxiing, landing, and taking off, is prohibited without prior written authorization from the Captain of the Port. The Catano Ferry will be authorized to continue to operate on its established route during this time. This regulated area is necessary to ensure maritime safety and protect the boating public and the participating Tall Ships as the Tall Ships form up in order during the Outbound Parade of Sail.

Regulated Area C comprises the Parade of Sail route. The Parade of Sail route will encompass an area starting at the Northeast point of Isla Las Cabras extending north to the Three Nautical Mile line then east to a point north of Boca de Congrejos then south to the twenty fathom line just north of Boca de Congrejos, then west to the Northeast point of Isla Las Cabras. A line of anchored official yachts will mark the southern portion of this parade of sail route. The safety of parade participants and spectators will require that spectator craft including jet skis and sail boards be kept at a minimum of 300 yards from parade vessels while the vessels are in the parade route.

Regulated Area D comprises Bar Channel, the entrance to San Juan Harbor. No vessel will be permitted to transit the Bar Channel to enter or depart San Juan Harbor from 7 a.m. to 6 p.m. on Monday, May 29, 2000 without the consent of the Captain of the Port or his on-scene representative.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL 2000 vessels and spectator craft. The Anchorage Grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL vessels and to protect boaters and

spectator vessels. Rule 9 of the International Navigation Rules will be enforced. No vessel may anchor in any channel or otherwise impede the passage of a vessel, which can safely navigate only within a narrow channel or fairway. The Catano Ferry will be authorized to continue to operate on its established route at all times. Spectator vessels will not anchor within 100 yards of the Catano Ferry route. The Catano Ferry route is defined by a line from the Catano Ferry pier at Punta Catano to pier two.

In addition to the existing anchorage regulations at 33 CFR 110.240 the following temporary anchorage regulations will be enforced between May 19 and May 29, 2000:

Anchorage ''M''—Official Vessel Anchorage—Anchorage Permit Required. Temporary Anchorage M is a triangular area near EL MORRO bounded by a line starting at 18°28′0″N, 066°07.5′W then southeast to 18°27.92′N, 066°07.21′W, then south to 18°27.65′N, 066°07.15′W, then to the starting point.

Anchorage ''C''—Spectator Anchorage—No Permit Required. Temporary anchorage area C is rectangular area near Catano bounded by a line starting at 18°27′N, 066°07′W, then south to 18°26′7″N, 066°07′W, then west to 18°26′7″N, 066°07′55″W, then north to 18°27′N, 066°07′55″W, then east to the starting point.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although the Coast Guard anticipates restricting traffic in San Juan Harbor on Monday, May 29, 2000 during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the **Federal Register**, the Local Notice to Mariners, facsimile, the internet, marine information broadcasts, maritime association meetings, and San Juan area newspapers, so mariners can adjust their plans accordingly. Based upon the Coast Guard's experiences learned from previous events of a similar magnitude, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we must consider whether this proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of San Juan Harbor during May 29, 2000. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If you are a small entity and believe the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard point of contact designated in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this action and have initially determined under figure 2–1, paragraph 34 (f and h), of Commandant Instruction M16475.1C; that this proposed rule will be categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. By

controlling vessel traffic during the event, this proposed rule is intended to minimize environmental impacts from increased vessel traffic during the parade of sail.

List of Subjects

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR parts 100, and 110 as follows:

PART 100—[AMENDED]

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

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

2. Temporary § 100.35T–07–014 is added to read as follows:

§ 100.35T–07–014 OPSAIL 2000, Port of San Juan, Puerto Rico.

(a) *Regulated Areas:*

(1) *Area A, fireworks exclusion area.*

(i) *Location.* All waters within a 300 yard radius around the point of Isla Grande in position 18°27.58′N, 066°06.33′W.

(ii) *Enforcement Period.* Paragraph (a)(1)(i) of this section is enforced from 9 p.m. to 9:30 p.m. daily from May 19, 2000 until May 29, 2000.

(2) *Regulated Area B, San Juan Harbor.*

(i) *Location.* All waters within San Juan Harbor.

(ii) *Enforcement Period.* Paragraph (a)(2)(i) of this section is enforced from 7 a.m. May 29, 2000 until 12 noon on May 29, 2000.

(3) *Regulated Area C, parade area.*

(i) *Location.* The Parade of Sail route will encompass an area starting at the Northeast point of Isla Las Cabras at 18°28.5′N, 066°08.4′W; then north to the Three Nautical Mile line at 18°31.5′N, 066°08.4′W; then east to a point north of Boca de Congrejos at 18°31.5′N, 066°00.0′W, then south to the twenty fathom line just north of Boca de Congrejos at 18°28.5′N, 066°00.0′W, then west to the starting point. All coordinates reference Datum NAD:83.

(ii) *Enforcement Period.* Paragraph (a)(3)(i) of this section is enforced from 7 a.m. May 29, 2000 until 6 p.m. May 29, 2000.

(4) *Regulated Area D, Bar Channel.*

(i) *Location.* Bar Channel, San Juan Harbor.

(ii) *Enforcement Period.* Paragraph (a)(4)(i) of this section is enforced from 7 a.m. May 29, 2000 until 6 p.m. May 29, 2000.

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

(c) *Special Local Regulations.*

(1) Entry into the regulated areas described in paragraph (a)(1), (a)(3) and (a)(4) of this section during enforcement periods is prohibited, unless otherwise authorized by the Patrol Commander.

(2) Entry into and movement by vessels already within the regulated area described in paragraph (a)(2) of this section will be prohibited from 7 a.m. to 12 p.m. on May 29, 2000, except for Tall Ships departing for the Parade of Sail, Law Enforcement Patrol vessels, and the Puerto Rico Ports Authority ferries.

(d) *Effective period.* This section becomes effective at 6 a.m. on May 19, 2000 and terminates at 6 p.m. on May 29, 2000.

PART 110—[AMENDED]

3. The authority for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46, and 33 CFR 1.05–1(g).

4. In § 110.240, from 6 a.m. on May 19, 2000 through 6 p.m. on May 29, 2000, temporary new paragraphs (a)(3) and (a)(4) and (b)(3) and (b)(4) are added to read as follows:

§ 110.240 San Juan Harbor, P.R.

(a) * * *

(3) *Temporary Anchorage M.* A triangular area near El Morro bounded by a line starting at 18°28.0′N, 066°07.5′W then southeast to 18°27.92′N, 066°07.21′W, then south to 18°27.65′N, 066°07.15′W, then to the starting point.

(4) *Temporary Anchorage C.* A rectangular area near Catano bounded by a line starting at 18°27′N, 066°07′W, then south to 18°26′7″N, 066°07′W, then west to 18°26′7″N, 066°07′55″W, then north to 18°27′N, 066°07′55″W, then east to the starting point.

(b) * * *

(3)(i) Anchorage M is for Official Vessels and an Anchorage Permit from the Opsail 2000 organizers is required.

(ii) No vessel other than OPSAIL 2000 vessels and enforcement vessels may anchor, loiter, or approach any OPSAIL vessel navigating or at anchor in this area.

(iii) Mariners are cautioned that anchorage area M has not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Vessels must display anchor lights as required by the navigation rules.

(4)(i) Anchorage C is a Spectator Anchorage and no permit is required.

(ii) Mariners are cautioned that anchorage area C has not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Vessels must display anchor lights as required by the navigation rules.

Dated: March 21, 2000.

T.W. Allen,

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

[FR Doc. 00–7646 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6565–5]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' in this preamble) proposes to grant final authorization to the hazardous waste program revisions submitted by the State of Oklahoma Department of Environmental Quality (ODEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA) Cluster VII rules which contains Federal rules promulgated between July 1, 1996 through June 30, 1997. The RCRA Cluster VII rules are listed in the rules section of this **Federal Register** (FR). In the ''Rules and Regulations'' section of this FR, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments,

a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before April 28, 2000.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: July 12, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Editor's Note: This document was received at the Office of the **Federal Register** on March 22, 2000.

[FR Doc. 00–7449 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–539; MM Docket No. 99–207; RM–9626]

Radio Broadcasting Services; Kuna, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 247C to Kuna, Idaho, as that locality's first local aural transmission service. Petitioner failed to establish that its proposal would provide a 70 dBu signal over the entire boundaries of Kuna, as required by Section 73.315 of the Commission's Rules. See 64 FR 31171, June 10, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–207, adopted March 1, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–7650 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–542, MM Docket No. 00–40, RM–9824]

Radio Broadcasting Services; Cobleskill and Saint Johnsville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc., seeking the reallotment of Channel 278B from Cobleskill to Saint Johnsville, NY, as the community's first local aural service, and the modification of Station WQBJ(FM)'s license to specify Saint Johnsville as its community of license. Channel 278B can be allotted to Saint Johnsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.9 kilometers (9.9 miles) east, at coordinates 42–58–21 NL; 74–29–30 WL, to accommodate petitioner's desired transmitter site which is the present site of Station WQBJ. Saint Johnsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. However, prior concurrence by the Canadian Government is not required since no change in Station WQBJ's transmitter site is proposed.

DATES: Comments must be filed on or before May 1, 2000, and reply comments on or before May 16, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson L.L.P., 555 13th Street, NW, Washington, D.C. 20004 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–40, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–7649 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–498; MM Docket No. 99–13; RM–9428]

Radio Broadcasting Services; Palacios, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document dismisses a petition for rule making filed by Prawn Broadcasting Company requesting the allotment of Channel 252A at Palacios, Texas. *See* 64 FR 5737, February 5, 1999. Prawn Broadcasting Company withdrew its interest in the allotment of Channel 252A at Palacios, Texas. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–13, adopted February 23, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–7648 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket Nos. FRA–1999–6439, Notice No. 4 FRA–1999–6440]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearings.

SUMMARY: On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Docket No. FRA–1999–6439). On the same date FRA released a Draft Environmental Assessment (DEIS)(Docket No. FRA–1999–6440) pertaining to the proposals contained in the NPRM. In both documents, FRA stated that public hearings would be held in a number of locations throughout the country. On February 15, 2000 (65 FR 7483), and March 22, 2000 (65 FR 15298) FRA published in the **Federal Register** documents regarding the locations of combined hearings on the NPRM and DEIS to be held in various cities. FRA stated that a further document will be published and posted on FRA's web site (*http://fra.dot.gov*) regarding specific times and locations of hearings to be held in the remaining locations listed in the NPRM: Berea, Ohio; South Bend, Indiana; and Chicago, Illinois. This document provides information pertaining to those hearing sites as well as repeating the information contained in the earlier hearing documents. .

DATES: *Public Hearings:* Public hearings will be held in:

1. Washington, D.C. on March 6, 2000, beginning at 9 am;
2. Los Angeles, California area on March 15, 2000, beginning at 9 am;
3. Pendleton, Oregon on March 17, 2000, beginning at 9 am;
4. Ft. Lauderdale, Florida on March 28, 2000, beginning at 9 am;
5. Salem, Massachusetts on April 3, 2000, beginning at 9 am;
6. South Bend, Indiana on April 10, 2000, beginning at 9 am;
7. Chicago, Illinois area on April 25, 2000, beginning at 12 noon;

   April 26, 2000, beginning at 9 am;

   April 27, 2000; beginning at 9 am; and
8. Berea, Ohio on May 1, 2000, beginning at 6 pm.

Please see **SUPPLEMENTARY INFORMATION** below for further information concerning participation in the public hearings.

ADDRESSES: *Public Hearings:* Public hearings will be held at the following locations:

1. *Washington, DC:* Federal Aviation Administration Auditorium, Third Floor, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, DC 20591;
2. *Los Angeles area:* Doubletree Hotel, Catalina II Room, 3050 Bristol Street, Costa Mesa, CA 92626;
3. *Pendleton, Oregon:* City Council Chambers, Pendleton City Hall, 500 Southwest Dorian Avenue, Pendleton, OR 97801;
4. *Ft. Lauderdale, Florida:* Doubletree Oceanfront Hotel, 440 Seabreeze Blvd, Fort Lauderdale, FL 33316;
5. *Salem, Massachusetts:* National Park Service Visitor Center—Auditorium, 2 New Liberty Street, Salem, MA 01970;
6. *South Bend, Indiana:* Century Center, Convention Hall C—North, 120 South St. Joseph Street, South Bend, Indiana 46601;
7. *Chicago, Illinois:* On April 25, 2000 at Lyons Township High School, South Campus, The Little Theater, 4900 Willow Springs Road, Western Springs, Illinois;

   On April 26, 2000 at The Field Museum of Natural History (James Simpson Theater) 1400 South Lake Shore Drive, Chicago, Illinois 60605;

   On April 27, 2000 at the Federal Aviation Administration (The Minnesota Room), 2300 East Devon Avenue, Des Plaines, Illinois 60018; and
8. *Berea, Ohio:* Baldwin-Wallace College, Kleist Center for Art and Drama, 95 E. Bagley Road, Berea, Ohio 44017.

FRA Docket Clerk: Docket Clerk, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590. E-mail address for the FRA Docket Clerk is renee.bridgers@fra.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6299); or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: Any person wishing to provide testimony at one of the public hearings should notify FRA's Docket Clerk at the address above at least three working days prior to the date of the hearing. The notification should also provide either a telephone number or e-mail address at which the person may be contacted. If a participant will be representing an organization, please indicate the name of the organization.

FRA will attempt to accommodate all persons wishing to provide testimony, however depending on the number of people wishing to participate, FRA may find it necessary to limit the length of oral comments to accommodate as many people as possible. Participants may wish to submit a complete written statement for inclusion in the record, while orally summarizing the points made in that statement.

Issued in Washington, DC on March 24, 2000.

Michael T. Haley,

Deputy Chief Counsel, Federal Railroad Administration.

[FR Doc. 00–7749 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 65, No. 61
Wednesday, March 29, 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

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AR–175 4-State Horse & Equipment Auction, Springdale, Arkansas
KY–176 Ohio Valley Stockyard, South Shore, Kentucky
MS–172 Mid South, Edwards, Mississippi
MS–173 C & H Auction Co., Inc., Columbus, Mississippi
NY–173 Gavel Masters Equine Sales, Inc., Horsehead, New York
SC–158 Strickland Auction Co., Gaston, South Carolina
TX–346 Texas Cattle Exchange, Inc., Eastland, Texas

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Grain Inspection, Packers and Stockyards Administration, Room 3418-South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by April 13, 2000.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, D.C. this 21st day of March 2000.

Warren P. Preston,

Acting Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 00–7669 Filed 3–28–00; 8:45 am]

BILLING CODE 3410–EN–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 4, 2000; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW, Washington, D.C. 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: March 27, 2000.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 00–7929 Filed 3–27–00; 3:45 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/18/2000–03/15/2000

Firm name	Address	Date petition accepted	Product
Yates Foil USA, Inc	88 Route 130, Bordenton, NJ 08505	Feb 22, 2000	Copper foil for the circuit board industry.
Don-Lin Jewelry Company, Inc	39 Haskins Street, Providence, RI 02903.	Feb 22, 2000	Earrings, necklaces, pins, bracelets, pill boxes and cosmetic accessories.
Palmer Manufacturing Co., Inc	243 Medford Street, Malden, MA 02148	Feb 24, 2000	Jet engine components.
Esposito Jewelry, Inc	225 Dupont Drive, Providence, RI 02907.	Feb 24, 2000	Precious metal, sterling silver and plated base metal jewelry.
Barnhart Industries, Inc. and Orthoband Co., Inc.	3690 Highway M, Imperial, MO 63052	Feb 24, 2000	Sewing notions, garters and orthodontic headgear.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/18/2000–03/15/2000—Continued

Firm name	Address	Date petition accepted	Product
Hemingway Apparel Manufacturing, Inc	North Highway 41, Hemingway, SC 29554.	Feb 24, 2000	Women's briefs and panties, knitted or crocheted of man-made fibers and tee-shirts of cotton for men and women.
Shultz Steel Company	5321 Firestone Blvd., South Gate, CA 90280.	Feb 24, 2000	Titanium, stainless steel and aluminum aircraft parts.
Edgewater Steel, Ltd	300 College Avenue, Oakmont, PA 15139.	Feb 29, 2000	Forged wheels for locomotives and industrial use.
Starbus, Ltd	91 Mellor Avenue, Baltimore, MD 21228	Feb 29, 2000	Jackets and wind shirts for the sporting industry.
Thomas Strahan, Inc	260 Maple Street, Chelsea, MA 02150	Feb 29, 2000	Surface printed wallpaper.
Jan Bar, Inc	1205 3rd Street, NW, Great Falls, MT 59404.	Mar 2, 2000	Caps of cotton, nylon, wool and polyester.
ByTec, Inc	44801 Cemter Court East, Clinton Township, MI 48038.	Mar 3, 2000	Electrical motors for lumbar systems, plastic switches and lighting, and metal clutch assembly and anti-theft devices.
Zenith Dyeing & Finishing Corporation ...	68 E. 24th Street, Patterson, NJ 78514	Mar 3, 2000	Commercial dyeing and finishing.
Mohawk Resources, Ltd	65 Vrooman Avenue, Amsterdam, NY 12010.	Mar 3, 2000	Vehicle service lifts.
Providence Metallizing Company, Inc	51 Fairlawn Avenue, Pawtucket, RI 02860.	Mar 3, 2000	Light fixture parts, key blanks, jewelry and candles.
BPC Industries, Inc	624 N. Rockford Avenue, Tulsa, OK 74106.	Mar 3, 2000	Bolts, nuts and gaskets.
Elk Valley Woodworking, Incorporated ...	Rt. 1, Box 87, Carter, OK 73627	Mar 3, 2000	Ornamental wooden plaques.
Looper Leather Goods Company, Inc	2124 S. Prospect Avenue, Oklahoma City, OK 73129.	Mar 8, 2000	Leather belts.
Lancaster Steel Service Company, Inc ...	3915 Walden Avenue, Lancaster, NY 14086.	Mar 15, 2000	Flat rolled carbon steel.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 21, 2000.

Anthony J. Meyer,

Coordinator,

[FR Doc. 00–7702 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2000]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX—Application for Subzone; Zale Corporation (Distribution/Processing of Jewelry and Accessories), Irving, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the jewelry and accessories warehousing/distribution/processing facilities of Zale Corporation (Zale), located in Irving, TX, some 20 miles northwest of Dallas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 21, 2000.

The Zale facility is located at 901 W. Walnut Hill Lane (430,000 sq. ft. on 15.22 acres). There are 80 employees within the distribution center. The facility is used for storage, inspection, packaging, repair and distribution of a wide variety of jewelry and accessories, watches and giftware. About 30 percent of the products are sourced from abroad. Subzone status is sought for quality inspection/distribution to Zale Canada. One hundred percent of foreign items admitted into the zone will be exported to Canada. Seventy percent of Zale Canada's inventory is NAFTA-qualified. No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt Zale from Customs duty payments on foreign products that are reexported. On any domestic sales, the company would be limited to deferral of duty payments until merchandise is shipped from the plant. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff

has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 30, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 12, 2000.)

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 2050 N. Stemmons Fwy., Suite 170, P.O. Box 420069, Dallas, Texas 75207

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Constitution Avenues, NW, Washington, DC 20230

Dated: March 21, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–7765 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–98 and 28–98]

Withdrawal of Applications for Subzone Status for Hanover Direct, Inc. (Distribution of Consumer Goods); Foreign-Trade Zone 147—Reading, PA (Hanover, PA); Foreign-Trade Zone 204—Blountville, TN (Roanoke, VA)

Notice is hereby given of the withdrawal of the applications submitted by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, Reading, PA, and Tri-Cities Airport Commission, grantee of FTZ 204, Blountville, TN, requesting special-purpose subzone status for the consumer goods distribution facilities of Hanover Direct, Inc., located in Hanover, PA (Docket 27–98) and Roanoke, VA (Docket 28–98). The applications were filed on June 1, 1998 (63 FR 29699, 6/1/98).

The withdrawals were requested because of changed circumstances, and the cases have been closed without prejudice.

Dated: March 17, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–7764 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Michigan; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–002. *Applicant:* The Regents of the University of Michigan, Ann Arbor, MI 48109–2143. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 11986, March 7, 2000. *Order Date:* April 22, 1999.

Comments: None received. *Decision*: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons*: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–7763 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031400D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Amendment to the Fishery Management Plans for the Gulf of Mexico to Establish the Tortugas Marine Reserve

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

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments.

SUMMARY: NMFS announces the intent of the Gulf of Mexico Fishery Management Council (Council) to prepare a DSEIS for a Generic Amendment to the Fishery Management Plans for the Gulf of Mexico to Establish the Tortugas Marine Reserve (Generic Amendment). The Generic Amendment would amend all of the Council's fishery management plans (FMPs) in a manner necessary to establish a marine reserve in the exclusive economic zone (EEZ) in the vicinity of the Dry Tortugas, Florida, along with appropriate fishing restrictions. The purpose of this document is to solicit public comments on the scope of the issues to be addressed in the DSEIS.

DATES: Written comments on the scope of the DSEIS must be received on or before April 28, 2000.

ADDRESSES: Written comments on the scope of the DSEIS and requests for additional information on the Generic Amendment should be sent to Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, 813–228–2815, or Michael Barnette, 727–570–5305.

SUPPLEMENTARY INFORMATION: At the Council's November 1999 meeting, representatives of the Florida Keys National Marine Sanctuary (FKNMS) requested the Council to draft fishing regulations, under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), for the EEZ for a proposed ecological reserve (marine reserve) in the Tortugas region. The proposed marine reserve is approximately 70 miles west of Key West, Florida.

Currently, the Council is considering proposed measures for the Generic Amendment that would prohibit all fishing (i.e., fishing for all species managed under its FMPs as well as fishing for Atlantic highly migratory species (HMS)) and anchoring of fishing vessels in the marine reserve. The expected benefits include: (1) Protection and conservation of essential fish habitat, including critical coral reef resources, as mandated by the Magnuson-Stevens Act; (2) establishment of a refuge and biological resource replenishment area to conserve

and to enhance the abundance and diversity of reef resources; (3) protection of critical spawning stock and fishing size-class recruits from overfishing, thus helping to ensure the continued abundance of fishery resources; and (4) improvement of opportunities for research on and monitoring of a coral reef ecosystem reference site. Disadvantages include displacement of fishing effort to other areas with associated crowding and possible short-term loss of revenues for commercial fishermen. The Generic Amendment would amend, as necessary, the Council's FMPs for stone crab, shrimp, corals, spiny lobster, coastal migratory pelagics, reef fish, and red drum.

The Council intends to prepare a DSEIS covering the expected environmental impacts of the Generic Amendment. The DSEIS would supplement the environmental reviews conducted previously by the Council and NMFS for each of the Council's FMPs. It is noted that the Council intends to assess, within its DSEIS, the expected environmental impacts of a management alternative prohibiting all fishing, including fishing for HMS.

Scoping Process

The FKNMS established a working group (Tortugas 2000) in 1998 consisting of representatives of various user groups that may be impacted by the establishment of a marine reserve in the Tortugas region. This working group conducted several public meetings in 1998 and 1999. Furthermore, the FKNMS held public hearings on the proposed marine reserve in 1998 and 1999 throughout Florida and in Washington, DC. Because of these previous opportunities for public input, the Council has scheduled no scoping meetings for the DSEIS for the Generic Amendment. However, the Council is requesting written comments on the scope of the issues to be addressed in the DSEIS.

Timetable for DSEIS Preparation and Decisionmaking Schedule

The Council intends to accept public comments on the completed DSEIS, prepare a final supplemental environmental impact statement (FSEIS), and submit the FSEIS to NMFS when it submits the final Generic Amendment for agency review, approval, and implementation, as provided by procedures of the Magnuson-Stevens Act. The Council intends to hold public hearings on the Draft Generic Amendment/DSEIS in June 2000; the specific times and locations for these hearings will be announced through publication of a separate **Federal Register** notice.

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

Dated: March 23, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–7707 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032200C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) to hold a work session that is open to the public.

DATES: The work session will be held on Thursday, April 20, 2000 and Friday, April 21, 2000, from 8 a.m to 5 p.m. each day.

ADDRESSES: The work session will be held at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council, (503) 326–6352; or Dr. Doyle Hanan, California Department of Fish and Game, (619) 546–7170.

SUPPLEMENTARY INFORMATION: The primary purpose of this work session is to initiate several analyses requested by the Council. These include: (1) establish a capacity goal for the coastal pelagic species (CPS) finfish fishery and analyze transferability of CPS limited entry permits; (2) address disapproved portions of the CPS fishery management plan–develop alternatives for specifying maximum sustainable yield (MSY) and acceptable biological catch (ABC) for market squid, and management alternatives for assessing bycatch in CPS fisheries and measures to minimize bycatch and bycatch mortality in CPS fisheries; (3) initiate the 2000 stock assessment and fishery evaluation (SAFE) process for the CPS fishery, including preparation of the CPS SAFE document and consideration of developing a process to review Pacific sardine and Pacific mackerel stock assessments.

Although non-emergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meetings. CPSMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 22, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–7706 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 000317075–0075–01]

RIN 0651–XX22

Public Advisory Committees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act, Public Law 106–113, Title VI, Subtitle G, which, among other things, established Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee; and with respect to trademarks in the case of the Trademark Public Advisory Committee. To implement these statutory changes, the USPTO is requesting nominations for members to these Committees.

DATES: Nominations must be submitted on or before April 28, 2000.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resume to Nicholas Flagler by electronic mail to nicholas.flagler@uspto.gov; by facsimile transmission marked to his attention at (703) 305–8664, or by mail marked to his attention and addressed to the Office of the Commissioner, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Nicholas Flagler by telephone at (703) 305–8600, by electronic mail to nicholas.flagler@uspto.gov, by facsimile transmission marked to his attention at (703) 305–8664, or by mail marked to his attention and addressed to the Office of the Commissioner, U.S. Patent and Trademark Office; Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under the Patent and Trademark Office Efficiency Act, the Secretary of Commerce must appoint members of the Patent and Trademark Public Advisory Committees by June 29, 2000. The Advisory Committees will:

- Review and advise the Director of the United States Patent and Trademark Office (USPTO) on matters relating to policies, goals, performance, budget, and user fees of patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year, (1) prepare an annual report of the matters listed above, (2) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives, and (3) publish the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Advisory Committees will be appointed by and serve at the pleasure of the Secretary of Commerce. The Secretary will designate a chair of each Advisory Committee, whose term as chair will be for 3 years. In making appointments to each Committee, the Secretary shall consider the risk of loss of competitive advantage in international commerce or other harm to U.S. companies as a result of such appointments.

Advisory Committees

The Patent Public Advisory Committee will be composed of nine voting members who represent small and large entity applicants located in the United States. The composition of the Advisory Committee will be proportional to the number of applications filed by small and large entity applicants. However, in no case will members who represent small entity patent applicants (*e.g.,* small businesses, independent inventors, and non-profit organizations) constitute less than 25 percent of the Patent Public Advisory Committee. The Advisory Committee will include at least one independent inventor and will include individuals with substantial experience and achievement in finance, management, labor relations, science, technology, and office automation.

The Trademark Public Advisory Committee will be composed of nine voting members and will include individuals with substantial experience and achievement in finance, management, labor relations, science, technology, and office automation.

In addition to the voting members, each Advisory Committee will include a representative of each labor organization recognized by the United States Patent and Trademark Office. Such representatives will be non-voting members of the Advisory Committee.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each appointed member of the Patent and Trademark Advisory Committees will serve for a term of 3 years, with one-third of the members rotating out each year. Therefore, of the members first appointed, three will be appointed to a term of 1 year, and three will be appointed for a term of 2 years.

As required by the Act, members of the Patent and Trademark Advisory Committees will receive compensation for each day, including travel time, while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

The United States Patent and Trademark Office will provide the necessary administrative support, including technical assistance, for the Committees. Members of each Advisory Committee will be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information, and information concerning patent applications required to be kept in confidence by section 122.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of section 202 of title 18, United States Code. The following additional information assumes that members are not engaged in Public Advisory Committee business more than sixty days each calendar year:

- Each member will have to file a confidential financial disclosure form upon appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 USC 203(c), or acting where the United States has an interest, 18 USC 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. See also 18 USC 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 USC 208.
- Representation of foreign interests may also raise issues. 35 USC 5(a)(1) and 18 USC 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the chair to consider an agenda set by the chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel or other confidential matters. Nominees must also be available and have the ability to participate in Committee business through the Internet.

Procedure for Submitting Nominations

Submit resumes for nominations for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to Nicholas Flagler (see **ADDRESSES**). Each nominee must (1) be a citizen of the United States, and (2) represent the interests of at least some of the diverse USPTO users, *e.g.,* either a large or small entity located in the United States, including—if the nominee represents small entity interests—small businesses, independent inventors, or nonprofit organizations.

Dated: March 23, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–7709 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–16–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: USAF Academy Candidate Writing Sample; USAFA Form 0–878; OMB Number 0701–[to be determined].

Type of Request: New Collection.

Number of Respondents: 4,100.

Responses Per Respondent: 1.

Annual Responses: 4,100.

Average Burden Per Response: 60 minutes.

Annual Burden Hours: 4,100.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's background and aptitude in determining eligibility and selection to the Air Force Academy. Collection of information is authorized under 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7659 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services, DOD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Washington Headquarters Services announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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.

DATES: Consideration will be given to all comments received by May 30, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Washington Headquarters Services, Real Estate & Facilities Directorate, Defense Protective Service, Parking Management Office, ATTN: Ms. Tonya Tobe, Room 2E165, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Parking Management Office, at (703) 697–6251.

Title; Associated Form; and OMB Number: Pentagon Reservation Parking Permit Application; DD Form 1199; OMB Number 0704–0395.

Needs and Uses: The information collection requirement is necessary for the administration and management of the Pentagon's parking control program, which is designed to meet the government mandated car pool program.

Affected Public: Individuals or households.

Annual Burden Hours: 833.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion and annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Department of Defense and non-DoD personnel who utilize designated parking areas on the Pentagon Reservation. The Pentagon Reservation Parking Permit Application (PRPPA), DD Form 1199, is a machine read form that includes information, such as name, rank or grade, Social Security Number (SSN), and vehicle license plate number, required for the issuance and control of the parking permit. The DD Form 1199 is scanned into a computerized database designed for the administration of the Pentagon's parking control program. Each member of a Pentagon Reservation authorized car pool or individual parking permit holder is required to complete and submit the DD Form 1199 upon initial application and annually thereafter.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7660 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–30 with attached transmittal and policy justification.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Defense Security Cooperation Agency

6 Mar 2000

In reply refer to: I–00/002325

Honorable J. Dennis Hastert,

Speaker of the House of Representatives, Washington, D.C. 20515–6501.

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00–30 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Germany for defense articles and services estimated to cost up to $200 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Michael S. Davison, Jr.,

Lieutenant General, USA, Director.

Attachments
Separate Cover: Classified Annex
Same ltr to:
House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Germany.
(ii) *Total Estimated Value:*

	AGM–88B (in millions)		AGM–88C (in millions)
Major Defense Equipment [1]	35		150
Other	15		50
Total	50	or	200

[1] As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Two hundred fifty AGM–88B or AGM–88C HARM missiles, missile containers, spare and repair parts, publications and technical documentation, engineering technical assistance, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (AKP and AKQ).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See annex attached.

(vii) *Date Report Delivered to Congress:* 6 March 2000.

Policy Justification

Germany–AGM–88B or AGM–88C HARM Missiles

The Government of Germany (GOG) has requested a possible sale of two hundred fifty AGM–88B or AGM–88C HARM missiles, missile containers, spare and repair parts, publications and technical documentation, engineering technical assistance, and other related elements of logistics and program support. The estimated total cost is $50 million (AGM–88B) or $200 million (AGM–88C).

This case will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Germany to fulfill its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

The proposed sale will help replenish the GOG inventory, which was depleted during the Kosovo allied operations. Germany will have no difficulty absorbing these missiles into their armed forces. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company, Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Germany.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–7661 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

Date: 26 April 2000, (800 am to 1600 pm).

Address: The Defense Intelligence Agency, 7400 Defense Pentagon, Washington, DC 20301–7400.

Date: 27 April 2000 (900 am to 1500 pm).

Address: National Reconnaissance Office (NRO) Headquarters, 14675 Lee Road, Chantilly, VA.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7662 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on April 20, 2000 at the Institute for Defense Analyses, Alexandria, Virginia.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons security and surety options.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7663 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 28, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, Ft. Belvoir, VA 22060-5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 23, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040-400 DASG

SYSTEM NAME:

Entrance Medical Examination Files *(August 7, 1997, 62 FR 42532).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who enroll in the Reserve Officers Training Corps (nonscholarship) program, enlist or are appointed in the active or reserve units of the Armed Forces. '

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By individua's surname and Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Original SF 88 and SF 93 become permanent documents in individual's Health Record: 1 copy of these forms and supporting documentation is retained by the military entrance processing station examining facility for 2 years; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained until no longer needed then destroyed. Medical records on qualified applicants are retained for 2 years then destroyed. Records of individuals rejected for military service will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.'

* * * * *

A0040-400 DASG

SYSTEM NAME:

Entrance Medical Examination Files.

SYSTEM LOCATION:

Army medical examining facilities; military entrance processing stations (for enlistees); Department of Defense Medical Review Board, U.S. Academy, CO 80840-2200 (except for reservists). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who enroll in the Reserve Officers Training Corps (nonscholarship) program, enlist or are appointed in the active or reserve units of the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance medical examination and resulting documentation such as SF 88, Report of Medical Examination, and SF 93, Report of Medical History, together with relevant and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55; Army Regulation 601-270, Military Entrance Processing Station; and E.O. 9397 (SSN).

PURPOSE(S):

To determine medical acceptance of applicant for military service and thereafter to properly assign and use individual. Management data are derived from and used by Health Services Command to evaluate effectiveness of procurement medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; selected management data are stored on word processing or magnetic discs and tapes.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Original SF 88 and SF 93 become permanent documents in individual's Health Record: 1 copy of these forms and supporting documentation is retained by the military entrance processing station examining facility for 2 years; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained until no

longer needed then destroyed. Medical records on qualified applicants are retained for 2 years then destroyed. Records of individuals rejected for military service will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234-6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; the physician and other medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351 DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS) *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

PURPOSE:

Delete entry and replace with 'The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and train soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System-Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.'

STORAGE:

Delete entry and replace with 'Electronic storage medium'.

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by individual's name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed when no longer needed for current operations.'

* * * * *

A0351 DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS).

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310-0300; U.S. Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of all Army schools and some DoD schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for

training or is currently in the training base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army and 4301; and E.O. 9397 (SSN).

PURPOSE(S):

The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and train soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System-Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage medium.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310-0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601-270 USMEPCOM

SYSTEM NAME:

U.S. Military Entrance Processing Reporting System *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who report to a military entrance processing station to be aptitudinally tested and/or medically examined to determine their fitness for entry into one of the Armed Forces.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'physical' and replace with 'medical' in the second sentence.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete 'and to National Guard for performance of its duties' from the entry.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'All data are retained in locked rooms/compartments with access limited to personnel designated as having official need therefor. Access to computerized data is by use of a valid user ID and password code assigned to the individual video display terminal operator.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Each military entrance processing station retains a copy of reporting system source documents for each enlistee for 90 days after shipment. For all other applicants, each station retains, if applicable, a copy of the Report of Medical Examination with supporting documentation, the Report of Medical History, and any other reporting source documents, for a period not to exceed 2 years, after which they are destroyed. Originals or copies of documents are filed permanently in Official Personnel Files for acceptable applicants and transferred to the gaining Armed Force.

Information relating to the individualrquote s who become seriously ill or are injured while at MEPS, or were found disqualified for a condition considered dangerous to the individualrquote s health if left untreated, records will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration. '

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A0601-270 USMEPCOM

SYSTEM NAME:

U.S. Military Entrance Processing Reporting System.

SYSTEM LOCATION:

Primary location: United States Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094. Segments exist at 65 military entrance processing stations in the continental United States, Alaska, Puerto Rico, and Hawaii. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who report to a military entrance processing station (MEPS) to be aptitudinally tested and/or medically examined to determine their fitness for entry into one of the Armed Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various personnel data, such as individual's name, Social Security Number, date and place of birth, home address and telephone number, results of aptitude tests, physical examination, and relevant documentation concerning individual's acceptance/rejection for military service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601-270, Military Entrance Processing Station (MEPS); and E.O. 9397 (SSN).

PURPOSE(S):

To determine qualifications of applicants for the Armed Forces through aptitude testing, medical examination, and administrative processing.

To determine patterns and trends in the military population, and for statistical analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is disclosed to the Selective Service System (SSS) to update the SSS registrant data base.

Information may also be disclosed to local and state Government agencies for compliance with laws and regulations governing control of communicable diseases.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic tapes/discs.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

All data are retained in locked rooms/compartments with access limited to personnel designated as having official need therefor. Access to computerized data is by use of a valid user ID and password code assigned to the individual video display terminal operator.

RETENTION AND DISPOSAL:

Each military entrance processing station retains a copy of reporting system source documents for each enlistee for 90 days after shipment. For all other applicants, each station retains, if applicable, a copy of the Report of Medical Examination with supporting documentation, the Report of Medical History, and any other reporting source documents, for a period not to exceed 2 years, after which they are destroyed. Originals or copies of documents are filed permanently in Official Personnel Files for acceptable applicants and transferred to the gaining Armed Force. Information relating to the individual's who become seriously ill or are injured while at MEPS, or were found disqualified for a condition considered dangerous to the individual's health if left untreated, records will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

On personal visits, individual should provide acceptable identification such as valid driver's license, employer identification card, building pass, etc.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, physicians, results of tests, federal/state/local law enforcement activities/agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–7664 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on April 28, 2000, unless comments are received that

would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on [date] to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 23, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(November 4, 1999, 64 FR 60180).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '10 U.S.C. 1562, Database on Domestic Violence Incidents'.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amend paragraph 5.b. to read 'To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SBV). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.'

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S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility,

provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT-1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL-1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95-452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301-1510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606 - Selected Reserve and Title 38 U.S.C., Chapter 30 - Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38

U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83-598, 84-356, 86-724, 94-455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SBV). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To

the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95-452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97-365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104-134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an

audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 3: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 4: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DLA's 'Blanket Routine Uses' *do not* apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–7665 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part B, Individuals with Disabilities Education Act

Implementation of FAPE Requirements 2000–01 School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58;

Burden Hours: 272,890.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA-B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

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, DC 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 Sheila Carey at (202) 708–6287 or via her internet address Sheila Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7690 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act (IDEA–B).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 30,682.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

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, DC 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 Sheila Carey at (202) 708–6287 or via her internet address Sheila Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7691 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: The Impact of ICT on Learning: Quasi-Experimental Study.

Frequency: Three times a year.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,572

Burden Hours: 7,572.

Abstract: Under auspices of the Organization for Economic Cooperation and Development, the Department of Education will participate in an international study to examine the impact of information and communication technology (ICT) on student learning. The study will use the following instruments: (a) ICT Skill Test, (b) Learning to Learn Test, (c) ICT Attitudes Survey—Students, (d) ICT Use Survey—Students, (e) ICT Attitude Survey—Teachers, (f) ICT Use Survey—Teachers, (g) Student Background Survey, and (h) Teacher Background Survey. Two thousand four hundred eleventh grade students will participate in this study from 24 schools. In addition, about 100 teachers and 24 school administrators will respond to the ICT Attitude and Use surveys.

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, DC 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) or via her internet address Kathy Axt@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. 00–7692 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Reinstatement

Title: Study for Class-Size Reduction Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 800

Burden Hours: 800

Abstract: This collection will be conducted to study the implementation of the Class-Size Reduction (CSR) Program from a sample of 800 school districts. The information obtained will be used to evaluate and describe the implementation of the second year of the CSR program.

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, DC 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 Jacqueline Montague at (202) 708–5359 or via her internet address Jackie Montague@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. 00–7693 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Web-Based Education Commission; Hearing and Meeting

AGENCY: Office of Postsecondary Education, Education.

ACTION: Notice of hearing and meeting.

SUMMARY: This notice announces the next hearing and meeting of the Web-based Education Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. Difficulties in scheduling the meeting caused delay in publishing this notice. This document is intended to notify the general public of their opportunity to attend this hearing and meeting.

DATES: The hearing and meeting will be held on April 7, 2000, from 8:00 a.m.–2:00 p.m.

LOCATION: The hearing and meeting will be held at Sun Microsystems, Inc., 10 Network Circle, Menlo Park, CA 94025.

FOR FURTHER INFORMATION CONTACT: David S. Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 502–7561. Fax: (202) 502–7873. Email: *david byer@ed.gov.*

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Act Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a final report to the President and the Congress, not later than 12 months after the first meeting of the commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The purpose of the April 7 hearing will be to capture the perspectives of the nation's top business, government and education leaders who are located in the Silicon Valley. These experts will explore the potential of digital technologies for empowering learners of all ages and in all environments. Testimony will be received on the following issues: (1) Using the Internet to transform learning: past educational challenges and new opportunities; (2) applying lessons from e business: what have we learned? what is transportable to education?; (3) identifying barriers to achieving the vision of the Internet for learning and offering solutions; and (4) moving from the ''digital divide'' to ''digital opportunity.'' The testimony received will be used by the members of the Commission to help in the development of its policy recommendations.

The hearing and meeting are open to the general public. Records are kept of all Commission proceeding and are available for public inspection at the office of the Web-Based Education Commission, Room 8091, 1990 K Street, NW, Washington, DC 20006–8533 from the hours of 9:00 a.m. to 5:30 p.m.

Assistance to Individuals With Disabilities at the Hearing

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting services, assisted listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

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

Dated: March 23, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–7694 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–178–A]

Application To Export Electric Energy; Citizens Power Sales LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Power Sales LLP (CP Sales) 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 28, 2000.

ADDRESS: 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: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: On May 29, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized CP Sales to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization will expire on May 29, 2000. On March 21, 2000, CP Sales filed an application with FE for renewal of this export authority and requested that the Order be issued for a 5-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–178. 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–178 proceeding.

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 CP Sales' request to export to Mexico should be clearly marked with Docket EA–178–A. Additional copies are to be filed directly with Jolanta Sterbenz, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20006–1109 and Donald S. McCauley, Senior Vice President and General Counsel, Citizens Power LLC, 160 Federal Street, Boston, Massachusetts 02110–1776.

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'' then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on March 22, 2000.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–7760 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, April 20, 2000: 5:30 p.m.–8:30 p.m.

ADDRESS: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order
6:10 p.m. Approve Minutes
6:20 p.m. Presentations/Board Response/Public Comments
7:20 p.m. Sub Committee Reports/ Board Response/Public Comment
8:15 p.m. Administrative Issues
8:30 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal 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.

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 at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on March 23, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7759 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–30–005

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 23, 2000.

Take notice that on March 17, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Twenty-Seventh Revised Sheet No. 17, with an effective date of March 1, 2000.

ANR states that the filing is being made to correct a reference to an incorrect GRI surcharge and a clerical error is pagination in the tariff sheet previously submitted on March 6, 2000 in Docket No. RP00–30–000.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7674 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–217–000]

Cove Point LNG Limited Partnership; Notice of Request for Extension of Time

March 23, 2000.

Take notice that on March 13, 2000, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, Cove Point

LNG Limited Partnership (Cove Point) tendered for filing a request for an extension of time in which to comply with the requirement to make a *pro forma* tariff filing, by May 1, 2000, to implement certain tariff changes regarding scheduling, capacity segmentation and penalties, as mandated by Order No. 637.

Cove Point argues that reopening of Cove Point's LNG tanker discharging service will result in a significant increase in the volume of revaporized LNG and natural gas being delivered out of Cove Point's facilities into the natural gas pipelines interconnected with Cove Point. Cove Point states that the increased throughput will necessitate changes to operations at Cove Point which will involve those subject matters covered by Order No. 637.

Cove Point requests that it be granted an extension of time to comply with the requirements of Order No. 637 that have a May 1, 2000 compliance deadline, so that the required tariff changes would be effective on the date that the tariff sheets approved for the reactivation of the LNG discharging terminal are effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 March 30, 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7676 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. RP00–115–001]

Federal Energy Regulatory Commission Panhandle Eastern Pipe Line Company; Notice of Filing of Reconciliation Report

March 23, 2000.

Take notice that on March 10, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its reconciliation report in accordance with Article I, Section 3(e)(ii) of the April 18, 1996 Stipulation and Agreement in Docket No. RP95–411–000 (Settlement) and the Commission's letter order issued December 17, 1999 in Docket No. RP00–115–000.

Panhandle states that pursuant to the Commission's December 30, 1998 order in Docket No. RP99–175–000 it established the Second Carryover GSR Settlement Interruptible Rate Component to be effective during the twelve month period commencing January 1, 1999. On December 1, 1999 Panhandle filed in Docket No. RP00–115–000 to suspend the Second Carryover GSR Settlement Interruptible Rate Component applicable to Rate Schedules IT and EIT effective January 1, 2000. The Commission's letter order issued December 17, 1999 approving the filing in Docket No. RP00–115–000 required Panhandle to file a reconciliation report by March 31, 2000.

Panhandle states that copies of its filing are being served on all to the proceedings in Docket No. RP95–411–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 30, 2000. Protests will 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 wet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7675 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–22–000]

Sun River Electric Cooperative, Inc; Notice of Filing

March 23, 2000.

Take notice that on March 20, 2000, Sun River Electric Cooperative, Inc. (SREC) submitted for filing an application pursuant to Section 204 of the Federal Power Act. SREC seeks authorization to borrow money pursuant to a loan agreement with the National Rural Utilities Cooperative Finance Corporation (CFC) in an amount not to exceed $28,500,000. SREC also seeks authorization to borrow under a revolving line of credit in place with CFC in an amount not to exceed $2,000,000.

SREC also requests a waiver of the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

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 April 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7677 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–127–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

March 23, 2000.

Take notice that on March 16, 2000, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application for a certificate of public convenience and necessity authorizing Transco to construct and operate certain facilities at its Compressor Station No. 120 in Henry County, Georgia in order to comply with the Clean Air Act Amendments of 1990, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed

on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco proposes to modify several of its existing reciprocating engines at Compressor Station No. 120 (Station 120) in order to comply with the State of Georgia plan to implement the Clean Air Act Amendments of 1990. Station 120 has 18 units including 15 reciprocating/compressor units, one Solar Centaur gas turbine, and two 12,000 HP Ansaldo electric motor driven centrifugal compressor units. The facilities at Station 120 are located within a fenced area of approximately 20 acres.

Transco states that it plans to install turbochargers and associated equipment on 8 of the 15 reciprocating engines in order to reduce NO_X emissions. Transco plans to modify the existing turbochargers at the other 7 reciprocating units to increase their capacity and install associated equipment in order to reduce NO_X emissions. Transco states that the 8 engines which will have turbochargers installed will have the potential to perform above their current operating horsepower. However, since Station 120 is automated, Transco says that it has the ability to shut down other engines or reduce its load to ensure that the station will not operate above the station's total certificated horsepower. Since Transco will install these turbochargers at Station 120 solely to achieve an environmental improvement, *i.e.,* lower NO_X emissions, Transco states that it has no intent or need to operate the station above its certificated horsepower. Therefore, when Transco installs these turbochargers at Station 120 Transco states that it will adjust the automation program at the station so that it will not operate above its certificated horsepower.

At the other 7 engines, Transco states that modification of the existing turbochargers to increase their capacity will not create the potential of these engines performing above their current operating horsepower because the engines are already operating at maximum horsepower and cannot operate at a higher horsepower output. Accordingly, Transco emphasizes that there will be no increase in the capacity of Transco's system in the vicinity of the station as a result of installing the 8 new turbochargers and modifying the 7 existing turbochargers.

Transco estimates that the proposed modifications will cost $25.4 million.

Transco states that it needs to commence the work at Station 120 on May 15, 2000 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the state implementation plan, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met. Accordingly, Transco requests that the Commission issue a certificate of public convenience and necessity by May 15, 2000.

Any questions regarding this application should be directed to Alfred E. White, Jr., Senior Attorney, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251 14203 at (713) 215–2000.

Any person desiring to be heard or to make a protest with reference to said application should on or before April 13, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervener status will be placed on the service list maintained by the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must submit copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and be able to participate in meetings associated with the Commission's environmental review process. Commenters will not required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all comments filed by other parties or issued by the Commission and not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the 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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7671 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–64–000, et al.]

Cobisa-Person Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

March 22, 2000.

Take notice that the following filings have been made with the Commission:

1. Cobisa-Person Limited Partnership

[Docket No. EC00–64–000]

Take notice that on March 16, 2000, Cobisa-Person Limited Partnership (Cobisa-Person), 820 Gessner, Suite 930, Houston, Texas 77024, submitted for filing an application for approval under Section 203 of the Federal Power Act of the acquisition of Cobisa-Person by affiliates of Delta Power Company, LLC and John Hancock Life Insurance Company. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, Cobisa-Person is developing an approximately 140 MW natural gas and oil-fired

generation facility in Bernalillo County, New Mexico. Cobisa-Person will sell all energy and capacity produced by the facility to Public Service Company of New Mexico at market-based rates pursuant to a long-term power purchase agreement that has been accepted for filing by the Commission.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Orion Power MidWest, LLC

[Docket No. EG00–115–000]

Take notice that on March 17, 2000, Orion Power MidWest, LLC, with an office located at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: April 12, 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.

3. Western New York Wind Corp.

[Docket No. EG00–116–000]

Take notice that on March 21, 2000, Western New York Wind Corp. (Western Wind), a New York corporation with its headquarters in Wyoming County, New York, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Western Wind is a New York corporation with no affiliates or subsidiaries. Western Wind will construct, own and operate wind power generators in upper New York state. No state EWG findings are required.

Comment date: April 12, 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.

4. Consolidated Edison Energy Massachusetts, Inc.

[Docket No. ER99–3248–003]

Take notice that on March 17, 2000, Consolidated Edison Energy Massachusetts, Inc. (CEEMI) tendered for filing its compliance filing with respect to Consolidated Edison Energy Massachusetts FERC Electric Tariff No. 1, Market Based Rates Tariff.

CEEMI states that a copy of this filing has been served by mail upon The New York State Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Unicom Investments, Inc.

[Docket No. EL00–54–000]

Take notice that on March 17, 2000, Unicom Investments, Inc. (UII), on behalf of itself and certain grantor trusts, business trusts or limited liability companies or partnerships of limited liability companies of which UII would be the sole beneficiary or member filed with the Federal Energy Regulatory Commission a petition for declaratory order disclaiming jurisdiction and request for expedited consideration.

The Applicants are seeking a disclaimer of jurisdiction on connection with a lease/leaseback financing involving three Facilities.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER00–1748–001]

Take notice that on March 17, 2000, Southwestern Electric Power Company (SWEPCO) tendered for filing a revised final return on common equity (Final ROE) to be used in redetermining or ''truing-up'' cost-of-service formula rates for wholesale service in Contract Year 1999 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., the City of Hope, Arkansas, and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity. The revised lower Final ROE reflects a minor adjustment to the original filing on March 1, 2000 in this proceeding.

SWEPCO continues to request an effective date of January 1, 1999.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corporation

[Docket No. ER00–1903–000]

Take notice that on March 17, 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 Tractebel Energy Marketing, Inc., previously filed with the FERC under Docket No. ER99–61–000, Service Agreement No. 259, effective 10/1/98 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 the following: Mr. Trey Nixon, Tractebel Energy Marketing, Inc., 1177 West Loop South, Suite 800, Houston, TX 77027.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PPL Electric Utilities Corporation

[Docket No. ER00–1904–000]

Take notice that on March 17, 2000, PPL Electric Utilities Corporation (PPL) filed a Service Agreement in substitution for the prior Service Agreement filed on July 14, 1999. The Service Agreement adds Edison Mission Marketing & Trading, Inc. (EMMT) as an eligible customer under the Tariff.

PPL states that copies of this filing have been supplied to EMMT and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Electric Utilities Corporation

[Docket No. ER00–1905–000]

Take notice that on March 17, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL) filed a Service Agreement dated February 29, 2000, with The Detroit Edison Company (DEC) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds DEC as an eligible customer under the Tariff.

PPL requests an effective date of March 17, 2000 for the Service Agreement.

PPL states that copies of this filing have been supplied to DEC and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PPL Electric Utilities Corporation

[Docket No. ER00–1906–000]

Take Notice that on March 17, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL) filed a Service Agreement dated February 16, 2000 with ONEOK Power Marketing Company (ONEOK) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds ONEOK as an eligible customer under the Tariff.

PPL requests an effective date of March 17, 2000 for the Service Agreement.

PPL states that copies of this filing have been supplied to ONEOK and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PPL Electric Utilities Corporation

[Docket No. ER00–1907–000]

Take notice that on March 17, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL) filed a Service Agreement dated March 6, 2000 with Citizens Power Sales LLC (Citizens) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Citizens as an eligible customer under the Tariff.

PPL requests an effective date of March 17, 2000 for the Service Agreement.

PPL states that copies of this filing have been supplied to Citizens and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1908–000]

Take notice that on March 17, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 27 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 17, 2000 or on a date as determined by the Commission to El Paso Merchant Energy, L.P.

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 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1909–000]

Take notice that on March 17, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 28 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and filed Amendment No. 1 to Supplement No. 28 to incorporate a Netting Agreement with Tenaska Power Services Company into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 31, 2000 to Tenaska Power Services Company and make the Netting Agreement effective as of March 13, 2000.

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 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1910–000]

Take notice that on March 17, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 74 to add Statoil Energy Services, Inc. to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is April 1, 2000.

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, and the West Virginia Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER00–1911–000]

Take notice that on March 17, 2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Allegheny Energy Supply Company, LLC as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Copies of this filing were served upon Allegheny Energy Supply Company, LLC and the South Carolina Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. San Joaquin Cogen Limited

[Docket No. ER00–1912–000]

Take notice that on March 17, 2000, San Joaquin Cogen Limited (San Joaquin), an Exempt Wholesale Generator that owns and operates a 49 MW gas-filed electric generation plant in Lathrop, California, tendered for filing a Power Purchase and Sale Agreement between San Joaquin and El Paso Merchant Energy, L.P.

San Joaquin requests that the Agreement be permitted to become effective February 17, 2000.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1913–000]

Take notice that on March 17, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella non-firm point-to-point service agreement with American Electric Power Service Corporation, as agent for the utility subsidiaries of American Electric Power Company, Inc.(AEP) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 24, 2000.

AEP has been provided a copy of this filing.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1914–000]

Take notice that on March 17, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella short-term firm point-to-point service agreement with American Electric Power Service Corporation, as agent for the utility subsidiaries of American Electric Power Company, Inc.(AEP) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 24, 2000.

AEP has been provided a copy of this filing.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER00–1915–000]

Take notice that on March 17, 2000, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.,* an Agreement dated March 16, 2000 with NRG Power Marketing, Inc. (NRGPM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 20, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to NRG Power Marketing, Inc. and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER00–1916–000]

Take notice that on March 17, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the Companies) tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Public Service Company of Colorado—Wholesale Merchant Function.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER00–1926–000]

Take notice that on March 9, 2000, Puget Sound Energy, Inc. filed a quarterly report for the quarter ended December 31, 1999.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7715 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1694–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 21, 2000.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER00–1694–001]

Take notice that on March 16, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing replacement revisions to Part V of Appendix A to the Interconnection Agreement between Pacific Gas And Electric And The City Of Santa Clara (IA). The IA was initially filed under FERC Docket No. ER84–6–000 and designated PG&E Rate Schedule FERC No. 85.

Copies of this filing were served upon City of Santa Clara and the Public Utilities Commission of the State of California.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER00–1896–000]

Take notice that on March 16, 2000, Southern California Edison Company (SCE), tendered for filing an unexecuted Service Agreement for Wholesale Distribution Service and an unexecuted Interconnection Facilities Agreement between Atlantic Richfield Company (ARCO) and SCE.

These unexecuted Agreements specify the terms and conditions pursuant to which SCE will interconnect ARCO's generation to its electrical system and provide up to 34 MW of Distribution Service to ARCO.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. MidAmerican Energy Company

[Docket No. ER00–1897–000]

Take notice that on March 16, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered with the Commission a First Amendment dated March 8, 2000, to a Network Operating Agreement with Montezuma Municipal Light and Power (Montezuma) entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 8, 2000 for the First Amendment and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Montezuma, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. CP&L Holdings, Inc. on Behalf of Its Public Utility Subsidiaries and Florida Progress Corporation on Behalf of Its Public Utility Subsidiaries

[Docket Nos. EC00–55–000 and ER00–1520–001]

Take notice that on March 14, 2000, CP&L Energy, Inc. and Florida Progress Corporation and their public utility subsidiaries (collectively the Applicants) tendered for filing an Amended and Restated Agreement and Plan of Exchange between CP&L and Florida Progress (the Amended Agreement). The Amended Agreement replaces the Agreement and Plan of Exchange dated August 22, 1999 (the Exchange Agreement) that was included in Exhibit H to the joint application for merger authorization in this docket.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. J. Aron & Company

[Docket No. ER95–34–022]

Take notice that on February 11, 2000, J. Aron & Company filed a quarterly report for information only.

6. Tennessee Power Company

[Docket No. ER95–581–020]

Take notice that on March 10, 2000, Tennessee Power Company filed a quarterly report for information only.

7. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER95–1739–018]

Take notice that on March 17, 2000, Cogentrix Energy Power Marketing, Inc. filed a quarterly report for information only.

8. Northeast Energy Services, Inc. Puget Sound Energy, Inc.

[Docket No. ER97–4347–009 and ER99–845–002]

Take notice that on March 9, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

9. Geysers Power Company

[Docket No. ER98–495–014]

Take notice that on March 16, 2000, Geysers Power Company, LLC (Geysers Power) filed its interim report regarding refunds for the reliability must-run (RMR) agreement under which Geysers Power provides RMR services to the ISO. Geysers Power submits the interim refund report in accordance with the Commission letter order dated January 31, 2000, Geysers Power Company, LLC, 90 FERC ¶ 61,096 (2000) approving the settlement among Geysers Power, Pacific Gas and Electric Company, the California Independent System Operator Corporation (ISO) and the California Electricity Oversight Board.

As required by the settlement, commencing with the Revised Estimated Invoice for January 2000, Geysers Power will adjust its invoices to the ISO by crediting refunds against future charges for RMR services. Geysers Power will continue to credit the ISO until the refund obligation is extinguished. Within fifteen days after the fulfillment of its refund obligation, Geysers Power will file a final refund report with the Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. OA97–523–002]

Take notice that on March 16, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing on behalf of Upper Peninsula Power Co (UPPCO), a compliance report for refunds required due to settlement of transmission tariffs.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Company

[Docket No. ER00–1898–000]

Take notice that on March 16, 2000, Tampa Electric Company (Tampa Electric), tendered for filing a Notice of Termination of a letter of commitment under interchange service Schedule D between Tampa Electric and the Reedy Creek Improvement District (RCID).

Tampa Electric proposes that the termination be made effective on January 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER00–1899–000]

Take notice that on March 16, 2000, Tampa Electric Company (Tampa Electric), tendered for filing Notice of Termination of a letter of commitment under interchange service Schedule D between Tampa Electric and the Utilities Commission, City of New Smyrna Beach (New Smyrna Beach) and the related form of service agreement under Tampa Electric's open access transmission tariff.

Tampa Electric proposes that the terminations be made effective on March 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Connexus Energy

[Docket No. ER00–1900–000]

Take notice that on March 16, 2000, Connexus Energy (Connexus), tendered for filing an amendment to its rate schedule for service to Elk River Municipal Utilities (Elk River). Connexus states that the purpose of the amendment is to amend the rates and services applicable to Elk River under the December 20, 1990 all requirements Contract between Connexus and Elk River.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER00–1901–000]

Take notice that on March 16, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a Notice of Termination of the ''Special Facilities Agreement for Interconnection of NCPA's Combustion Turbine at Roseville,'' PG&E Rate Schedule FERC No. 132.

Copies of this filing have been served upon Northern California Power Agency and the California Public Utilities Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–1902–000]

Take notice that on March 16, 2000, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission, a division of Duke, tendered for filing an Interconnection and Operating Agreement with Rockingham Power, L.L.C., (Rockingham Power).

Duke requests an effective date of March 17, 2000.

Duke states that a copy of this filing is being sent to Rockingham Power.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7716 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3131–032]

SR Hydropower, Inc., SR Hydropower of Brockway Mills, Inc.; Notice of Dismissing Application To Surrender Project License

March 23, 2000.

On August 16, 1996, John M. Rais filed an application to surrender the project license for the Brockways Mills Project No. 3131 on the Williams River in Windham County, in the Town of Rockingham, Vermont, purportedly on behalf of SR Hydropower of Brockway Mills, Inc., along with a copy of a certificate of dissolution of that corporation, issued by the State of Vermont on July 10, 1996.

On March 15, 1999, the Commission issued an interim order in the surrender proceeding, noting Rais's assertion that SR Hydropower of Brockway Mills, Inc., a Vermont corporation, was incorporated by a statutory merger with SR Hydropower, Inc., a New Hampshire corporation, the licensee of record for this project. However, the Commission noted that it had never approved a transfer of the license to SR Hydropower of Brockway Mills, Inc., or a name change of the licensee. Furthermore, the Commission concluded that, as a consequence of the dissolution of SR Hydropower of Brockway Mills, Inc., into which SR Hydropower, Inc. was merged, neither SR Hydropower, Inc., which remains the licensee of record, nor SR Hydropower of Brockway Mills, Inc., any longer existed. Under these circumstances, the Commission concluded that the surrender of the project license was by implication rather than upon application of the licensee. The Commission stated that, at the request of the Town of Rockingham, it would defer acceptance of the surrender for at least six months, and entertain applications from any proposed transferee to transfer the license to such applicant.[1]

On September 20, 1999, Christopher J. Kruger and Eileen J. Kruger filed an application seeking the transfer of the project license to themselves, and on December 14, 1999, the transfer application was approved by the Chief, Engineering and Compliance Branch of the Office of Hydropower Licensing.[2] Under these circumstances, the application to surrender filed by John M. Rais has become moot and is accordingly dismissed.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7673 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–007 South Carolina]

South Carolina Electric & Gas Company; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

MARCH 23, 2000. The Federal Energy Regulatory Commission (Commission or FERC) received an application from the South Carolina Electric & Gas Company (SCE&G or Applicant) to relicense the Columbia Hydroelectric Project No. 1895–007. The 10,600-kilowatt (kW) project is located on the Broad River and Congaree River in the City of Columbia and Richland County, South Carolina. The Commission will hold public and agency scoping meetings on April 12 and 13, 2000, for preparation of an Environmental Assessment (EA) under the national Environmental Policy Act (NEPA) for the issuance of a major license for the project.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Thursday, April 13, 2000
Time: 9 a.m.
Place: South Carolina Department of Natural Resources, (Rm 335 of the Rembert Dennis Building)
Address: 1000 Assembly Street, Columbia, SC

Public Scoping Meeting

Date: Wednesday, April 12, 2000
Time: 7 p.m.
Place: South Carolina State Museum (Red Room)
Address: 301 Gervais Street, Columbia, SC

To help focus discussions, we will distribute a Scoping Document outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of this document will also be available at the scoping meetings.

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 1:00 p.m. on April 12, 2000. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the parking lot of the Columbia Hydroelectric Plant off of Gervais Street. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Christina Massey of SCE&G at 803–217–9198.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EA; and (5) identify resources this project does not effect and, therefore, do not require detailed analysis.

Procedures

Statements made at the meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. In addition, written scoping comments may be filed with the Secretary, Federal

[1] 86 FERC ¶ 61,279 (1999)

[2] 89 FERC ¶ 92,194. On October 28, 1999, Rais, as an agent for SR Hydropower of Brockway Mills, Inc., filed a motion to withdraw the surrender of license, which was rejected by the Secretary of the Commission (notice issued November 12, 1999) on the basis of the Commission's findings in its March 15, 1999 order.

Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, until May 15, 2000. All filings should contain an original and eight copies, and must clearly show at the top of the first page ''Columbia Hydroelectric Project, FERC No. 1895–007''.

Individuals, organizations, and agencies with environmental concerns related to the Columbia Hydroelectric Project are encouraged to attend the meetings and to assist the staff in defining the issues to be addressed in the EA. For further information, please contact Charles Hall at 202–219–2853, or e-mail *charles.hall@ferc.fed/us.*

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–7672 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects-Rate Order No. WAPA–89

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of firm electric service rate.

SUMMARY: This action is a proposal to extend the existing Loveland Area Projects (LAP) firm electric service rate, Rate Order No. WAPA–51, through September 30, 2003. The existing firm electric service rate will expire January 31, 2001. This notice of proposed extension of the rate is issued pursuant to 10 CFR part 903.23(a)(1). In accordance with 10 CFR part 903.23(a)(2), Western will not have a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7442, or e-mail dpayton@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in firm electric service rate adjustments at 10 CFR part 903, Western's LAP firm electric service rate was submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5181–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm electric service rate for LAP. LAP consists of the Fryingpan-Arkansas Project and the Pick-Sloan Missouri Basin Program, Western Division. The rate set forth in Rate Order No. WAPA–51 was approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–82, the Deputy Secretary extended the existing rate for a 2-year period beginning February 1, 1999, and ending January 31, 2001.

On January 31, 2001, the LAP firm electric service rate expires. This makes it necessary to extend the current rate pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–51, previously extended under Rate Order No. WAPA–82, will be extended under Rate Order No. WAPA–89.

Western proposes to extend the existing rate of $2.85/kilowattmonth for capacity and 10.85 mills/kilowatthour for energy which is sufficient to recover project expenses (including interest) and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. For the Pick Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in Fiscal Year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total annual revenue requirement of $44.3 million from firm power sales is sufficient to cover the expenses and capital requirements through September 30, 2003.

All documents made or kept by Western for developing this notice for proposed extension of the firm electric service rate will be made available for inspection and copying at the Rocky Mountain Customer Service Region, located at 5555 East Crossroads Boulevard, Loveland, Colorado.

Thirty days after publication of this notice, Rate Order No. WAPA–89 will be submitted to the Deputy Secretary for approval through September 30, 2003.

Dated: March 17, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7743 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Order No. WAPA–90

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of firm power service and firm peaking power service rates.

SUMMARY: This action is a proposal to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates, Rate Order No. WAPA–60, through September 30, 2003. The existing firm power service and firm peaking power service rates will expire January 31, 2001. This notice of proposed extension of rates is issued pursuant to 10 CFR part 903.23(a)(1). In accordance with 10 CFR part 903.23(a)(2), Western will not have a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7388, or e-mail riehl@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public

participation in firm power service rate adjustments at 10 CFR part 903, Western's P–SMBP–ED firm power service and firm peaking power service rates were submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and the firm peaking power service rates for the P–SMBP–ED. The rates set forth in Rate Order No. WAPA–60 were approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83, the Deputy Secretary extended the existing rates for a 2-year period beginning February 1, 1999, and ending January 31, 2001.

On January 31, 2001, the P–SMBP–ED firm power service and firm peaking power service rates will expire. This makes it necessary to extend the current rates pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83, will be extended under Rate Order No. WAPA–90.

Western proposes to extend the existing rate of $3.20/kilowattmonth for capacity and the rate of 8.32 mills/kilowatthour for energy which are sufficient to recover project expenses (including interest) and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in Fiscal Year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total annual revenue requirement of $135.2 million from firm power sales is sufficient to cover the expenses and capital requirements through September 30, 2003.

All documents made or kept by Western for developing the proposed extension of the firm power service and firm peaking power service rates will be made available for inspection and copying at the Upper Great Plains Customer Service Region, located at 2900 4th Avenue North, Billings, Montana.

Thirty days after publication of this notice, Rate Order No. WAPA–90 will be submitted to the Deputy Secretary for approval through September 30, 2003.

Dated: March 9, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7744 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6566–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Performance Evaluation Studies on Water and Wastewater Laboratories

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 continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Performance Evaluation Studies on Water and Wastewater Laboratories, EPA ICR #234.07, OMB Control #2080–0021, current expiration date is 9/30/2000. 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 30, 2000.

ADDRESSES: National Exposure Research Laboratory, 26 W. Martin L. King Drive, Room 525, Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Ray Wesselman, (513) 569–7194, FAX to (513) 569–7115 or Email to WESSELMAN.RAY@EPA.GOV

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are laboratories which produce results of official/required drinking water or wastewater analyses.

Title: Performance Evaluation Studies on Water and Wastewater Laboratories (OMB Control No. 2080–0021; EPA ICR NO. 234.07) currently expiring 9/30/2000.

Abstract: The EPA receives analytical results on drinking waters and wastewaters from a variety of laboratories and must rely on these data as a primary basis for many of its regulatory decisions. As a consequence, it has become desirable to have an objective demonstration that the contributing laboratories are capable of producing valid data. The subject Performance Evaluation Studies are designed to fulfill this need to document and improve the quality of analytical data for certain critical analyses within drinking water, major point-source discharge and ambient water quality samples. Participation in Water Pollution (WP) studies that relate to wastewater analyses, and Water Supply (WS) studies that relate to drinking water analyses, is only mandated by the EPA for those laboratories that receive federal funds to do such analyses; however successful performance in these studies is often required by states that certify laboratories for drinking water and wastewater analyses. Participation in the Discharge Monitoring Report—Quality Assurance (DMR–QA) studies is mandatory for those designated wastewater dischargers who are doing self-monitoring analyses required under a National Pollutant Discharge Elimination System (NPDES) permit.

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 annual public reporting and record-keeping burden for this collection of information is estimated to total 241,619 hours and $9,853,259. The total number of annual responses is estimated to be 23,430, which leads to an estimated average of 10.3 hours per response. 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 20, 2000.

Jewel Morris,

Acting Director, National Exposure Research Laboratory, Office of Research and Development.

[FR Doc. 00–7737 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00274B; FRL–6552–6]

Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a third public meeting to involve stakeholders in the design and development of a voluntary program to ensure that test data are publicly available for industrial chemicals to which children and prospective parents may have a high likelihood of exposure. The purpose of the voluntary testing program is to obtain data needed to assess the potential health risk of chemical exposure to children and prospective parents. At this meeting, stakeholders will have an opportunity to give their reactions to EPA's revised Framework Document for a testing program either as individuals or as representatives of organizations.

DATES: The meeting will be held on April 26 and 27, 2000, from 9 a.m. to 5 p.m. Requests to pre-register for the meeting must be received on or before April 21, 2000. Written comments on the Framework Document, identified by docket control number OPPTS–00274B, must be received on or before May 12, 2000.

ADDRESSES: The meeting will be held at the National Rural Electric Cooperative Association (NRECA) Conference Center at 4301 Wilson Boulevard, Arlington, VA.; telephone number: (703) 907–5500. Requests to pre-register for the meeting should be directed to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.D. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–00274B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office Program Management and Evaluation (7401), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ward Penberthy, Chemical Control Division (7405), OPPT, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–0508; e-mail address: chem.rtk@epamail.epa.gov. Electronic messages must identify docket control number OPPTS–00274B and the heading, ''Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process,'' in the subject line on the first page of your message.

SUPPLEMENTARY INFORMATION:

I. General Information:

A. Does this Notice Apply To Me?

This action is directed to the public in general. This action may, however, be of interest to those chemical manufacturers and processors who are or may be required to conduct testing of chemical substances under section 4 of the Toxic Substances Control Act (TSCA), individuals or groups concerned with chemical testing and children's health, animal welfare groups, or other members of the general public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or 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 the revised Framework Document, additional information about the third stakeholder meeting, an electronic copy of this document, or information on the first and second stakeholder meetings, you may go directly to the website at http://www.epa.gov/chemrtk/childhlt.htm. The Framework Document and the meeting agenda should be on this website by April 12, 2000.

2. *In person*. The Agency has established an official record for this meeting under docket control number OPPTS–00274B. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Voluntary Children's Health Chemical Testing Program, 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, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, 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.

3. *By telephone*. If you need additional information about this action, you may also contact the persons identified under **FOR FURTHER INFORMATION CONTACT**.

A copy of the Framework Document may be obtained by calling the TSCA Hotline at (202) 554–1404. A request to the TSCA Hotline can be made before April 12, 2000, but cannot be filled until April 12, 2000.

C. How Can I Pre-register for this Meeting?

You may request to pre-register for this meeting through the mail, by phone, or electronically. Direct your request to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Your request must be received by EPA on or before April 20, 2000, and must identify yourself, your organization, and a telephone number or e-mail address where you may be reached. To ensure proper receipt by EPA, you must identify docket control number OPPTS–00274B and the heading, ''Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process,'' in the subject line of the first page of your request.

D. 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–00274B in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), 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 above. 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–00274B. Electronic comments may also be filed online at many Federal Depository Libraries.

E. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit 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. Please note that, in the absence of steps by EPA leading to disclosure, none of the information marked ''CBI'' will be available for consideration in the Stakeholder Involvement Process; commenters may want to consider this point in developing their submissions. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

F. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the general approach presented in the ''Framework Document'' cited in Unit I.B. and discussed in Units II. and III. EPA also invites your views on new approaches we have not considered, the potential benefits or impacts of these various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of a voluntary testing program via the stakeholder process. 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 regarding benefits and impacts.

6. Offer alternative ways to improve the voluntary testing program.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number OPPTS–00274B in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

G. Are There Issues on Which EPA is Particularly Interested in Receiving Comment?

EPA encourages interested parties to submit comments on chemical toxicity testing and exposure information which are relevant to children's health and any aspect of this notice. Commenters are encouraged to identify other criteria for identifying children's exposure to industrial chemicals and additional relevant data sources. Comments on the test battery previously submitted to EPA's Scientific Advisory Panel (SAP) need not be resubmitted.

II. Background

EPA is holding a series of public meetings to involve stakeholders in the design and development of a voluntary program to ensure that toxicity test data and exposure information on industrial chemicals to which children and prospective parents may have a high likelihood of exposure are made publicly available. The toxicity and exposure data developed by the voluntary program will be used to assess the potential health risk to children and prospective parents associated with that chemical exposure. EPA is using a stakeholder involvement process to bring together and obtain the individual opinions of knowledgeable persons who represent parties that could be affected by any forthcoming program. The stakeholders that have provided their opinions so far include child health advocates, pediatricians, chemical manufacturers and processors, trade associations, Federal agencies, and animal welfare advocates. In the **Federal Register** notice announcing the stakeholder involvement process

published in the **Federal Register** of August 26, 1999 (64 FR 46673) (FRL–6089–1), EPA identified three issues on which the Agency would like to receive stakeholder input. These included:

1. Which chemicals should be tested?
2. Which tests should be used?
3. How should the program be implemented?

At the kickoff meeting held September 22, 1999, EPA oriented the stakeholders to the background and future plans and goals for this project. EPA informed the stakeholders of the Agency's initial efforts to identify the chemicals to which children and prospective parents may be highly exposed and the testing needed to assess the risk of that exposure. EPA then took comment on its initial efforts and on other issues which were of special interest to stakeholders. Also at the kickoff meeting, the Chemical Manufacturers Association (CMA) announced that its members had developed a voluntary testing program which would conduct the same testing contemplated by EPA but in three tiers and with hazard and exposure triggers. A summary of this meeting and the text of most of the presentations are available to the public; to access this information, see instructions provided in Units I.B.1. and I.B.2.

Following the first meeting, EPA initially developed a Framework Document which described how a voluntary program could be structured. The Framework Document addressed how chemicals could be selected for the program and how tests could be tiered and triggered. In mid November 1999, EPA released the Framework Document as a ''strawman'' proposal and announced it would be a major point of discussion at the second public stakeholder meeting on November 30–December 1, 1999. For the second stakeholder meeting, EPA invited participants from diverse stakeholder interests to participate in roundtable discussions with EPA. EPA had asked stakeholders to participate in the selection of the invited participants via a Nomination Process which had been announced at the first meeting and on the website: http://www.epa.gov/chemrtk/nominate.htm. EPA did not ask the invited participants to reach agreement or provide any collective recommendations. EPA's intent was to obtain information about their individual perspectives based on their unique experiences and background. Accordingly, EPA did not organize the stakeholder involvement process as an advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C. App. Although the meeting was centered around the discussions between EPA and the invited participants, this was a public meeting that other stakeholders and members of the public could attend and, at the conclusion of each discussion, present their opinions to the group. The primary focus of the second meeting was the Framework Document and how tiered testing and triggers could best be used to obtain needed toxicity data. A summary of this meeting is available to the public; to access this information, see instructions provided in Units I.B.1. and I.B.2.

III. Public Stakeholder Meeting

The third public meeting of the Stakeholder Involvement Process will be held April 26–27, 2000. This meeting will follow the format of the second meeting in which invited participants and EPA representatives discuss the issues of concern to stakeholders. EPA is preparing a revised Framework Document to reflect EPA's current thinking on how the voluntary program could be structured to meet EPA's objective of obtaining needed data to ensure that toxicity test data and exposure information are made publicly available. This Document will be the major focus of discussion at the third meeting, as it will serve as a second ''strawman'' proposal. The revised Framework Document and the meeting agenda will be made available by April 12, 2000. Instructions for obtaining a copy of the Framework Document are provided in Unit I.B. Instructions for obtaining the meeting agenda are provided in Units I.B.1. and I.B.2.

The meeting will be an open public meeting. As such, there will be opportunities for public comment from anyone who wishes to provide oral comments at the conclusion of each roundtable discussion between the invited participants and EPA. Oral comments from the public may be limited to 5 minutes to allow all those who wish to comment a chance to speak. Commenters with prepared statements are requested to provide at least 35 written copies of their statements. It is encouraged that commenters bring copies sufficient for the number of people who plan to attend the meeting; this number will be under ''Meeting Information'' on website www.epa.gov/chemrtk/childhlt.htm several days before the meeting. The written statements will become a part of the public version of the official record. To enable as many interested parties as possible to contribute their ideas and provide opinions, EPA plans to have a professional facilitator lead the meeting.

Although this is a public meeting, there may be space limitations. Therefore, EPA encourages those who wish to attend to register in advance by following the instructions in Unit I.C. Seating of others at the meeting will be on a first-come basis after those who have registered in advance of the meeting have been accommodated.

In addition to the opportunity to present oral comments at the meeting, the public may also submit written comments on the Framework Document. In order to provide sufficient time for persons interested in responding in writing, including those persons unable to attend the public meeting, the Agency will accept such comments until May 12, 2000. Instructions for submitting written comments are provided in Unit I.D.

The purpose of the meeting is for EPA to obtain information and the individual perspectives of the invited participants and the public. EPA is not asking the roundtable participants to reach agreement or provide any collective recommendations. Accordingly, EPA does not intend to organize the stakeholder involvement process as an advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C. App. The information which is obtained in the course of this process may also be considered in the development of a possible test rule under TSCA section 4.

List of Subjects

Environmental protection, Chemicals, Children, Hazardous substances, Health and safety.

Dated: March 24, 2000.

Susan H. Wayland,

Acting Assistant Administrator, Prevention, Pesticides and Toxics.

[FR Doc. 00–7738 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34168A; FRL–6551–5]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, pirimiphos-methyl. In addition, this notice starts a 60-day public

participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34168A, must be received by EPA on or before May 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34168A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on pirimiphos-methyl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically. You may obtain electronic copies of this document and other related documents 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 information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In person. The Agency has established an official record for this action under docket control number OPP–34168A. 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 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 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.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34168A in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described 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 computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34168A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit 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**.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, pirimiphos-methyl. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of

EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the pirimiphos- methyl preliminary risk assessments, which was released to the public January 8, 1999 (64 FR 5) (FRL–6055–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for pirimiphos-methyl. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific pirimiphos-methyl use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 30, 2000 at the addresses given under the ''ADDRESSES'' section. Comments and proposals will become part of the Agency record for the organophosphate pesticide specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 23, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–7741 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–928; FRL–6498–5]

Notice of Filing Pesticide Petition to Establish Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the intial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–928, must be received on or before April 28, 2000.

ADDRESS: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–928 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number PF–928. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–928 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–928. 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 wil be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additivies, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 2000

James Jones

Director, Registration Division, Office of Pesticide Programs.

American Cyanamid Company

0F6088

Summary of Petition

EPA has received a pesticide petition (0F6088) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide imazamox in or on the raw agricultural commodities alfalfa forage, seed and hay, canola seed, legume vegetable crop group and wheat forage, grain, bran, shorts, hay and straw at 2.0, 0.1, 4.0, 0.1, 0.1, 0.4, 0.3, 0.6, 0.6, 0.3, and 0.2 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism* . The qualitative nature of the residues of imazamox (AC 299263) in soybeans, alfalfa, canola, peas, and wheat is adequately understood. The metabolism of imazamox has been studied in soybeans, peas, and canola. EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox only. The metabolism of imazamox was also studied in wheat. EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox, and the desmethyl, hydroxy-methyl metabolite CL 263284. The metabolism of imazamox was further studied in alfalfa. EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox, metabolite CL 263284, the carboxylate of the CL 263284 metabolite, CL 312622 and the glucoside of the CL 263284 metabolite, CL 189215.

2. *Analytical method.* A practical analytical method for detecting and measuring levels of imazamox in soybean seed was submitted to and approved by EPA. This method (M 2248.01) is appropriate for enforcement purposes. A practical analytical method

for detecting and measuring levels of imazamox in canola seed was submitted to EPA. This method (M 3076) is appropriate for enforcement purposes. A practical analytical method for detecting and measuring levels of imazamox in legume vegetables (such as dry and succulent edible beans and peas) was submitted to EPA. This method (M 3076 with minor modifications) is appropriate for enforcement purposes. A practical analytical method for detecting and measuring levels of imazamox and its metabolite CL 263284 in wheat grain, forage, hay and straw was submitted to EPA. This method (M 3098) is appropriate for enforcement purposes. A practical analytical method for detecting and measuring levels of imazamox and its metabolites: CL 263284, its (CL 263284) glucose conjugate (CL 189215), and the carboxylate of AC 263284 (CL 312622) in alfalfa seed, forage and hay was submitted to EPA. This method (M 3178) is appropriate for enforcement purposes. All methods have undergone independent laboratory validation as required by PR Notices 88-5 and 96-1.

3. *Magnitude of residues—i. Magnitude of residues in crops*—a. Soybeans, legume, vegetables and canola: No apparent residues of imazamox were observed in soybeans, dry or succulent peas, or dry or succulent beans, or canola at or above 0.05 ppm (the limit of quantification for the analytical methods). The field studies, conducted at 1- 5x the highest intended label use rate, clearly support the proposed tolerances of 0.1 ppm. The requirement for a soybean processing study was waived by EPA based on the results of field trials at rates up to 5x the maximum label rate. In these trials, there was no measurable residue of imazamox in soybean seed above the validated sensitivity of the method (0.05 ppm). In addition, results from the plant metabolism study showed no detectable residues of imazamox in oil obtained from soybean seed that had been treated at an exaggerated use rate.

b. Wheat. A total of 20 field residue trials were conducted in 10 different states. Applications in the trials were consistent with the proposed label directions for use. Analysis of the treated samples showed that the maximum imazamox plus its metabolite CL 253284 was under the proposed tolerances of 0.3 ppm in the grain, 0.4 ppm in the forage, 0.3 ppm in the hay and 0.2 ppm in straw at the proposed labeled pre-harvest intervals (PHI). Wheat grain for processing was obtained from a 5x-rate field study and samples were processed into bran, middling, shorts, flour and aspirated grain fractions. Analysis of the treated samples showed that the total residue of the imazamox parent and the metabolite CL 263284 concentrated in bran and shorts. The appropriate concentration factor for bran and shorts is 2x. The proposed tolerance for these two fractions is at 2x the tolerance for the proposed grain tolerance of 0.3 ppm or 0.6 ppm.

c. *Alfalfa.* A total of 19 field residue trials were conducted in 12 different states. Applications in the trials were consistent with the proposed label directions for use. Analysis of the treated samples showed that the maximum residues of imazamox plus its three metabolites (CL 263284, CL 263284 glucose conjugate metabolite CL 189215, and CL 263284 carboxylate, CL312622) were under the proposed tolerances of 0.1 ppm in the seed, 2.0 ppm in the forage and 4.0 ppm in the hay at the proposed labeled (PHI)

ii. *Magnitude of the residue in animals—a. Ruminants.* The maximum dietary burden in beef and dairy cows results from a diet comprised of alfalfa hay and alfalfa forage for a total dietary burden that is significantly lower than levels that would require the proposal of tolerances in ruminants. This conclusion is based on exaggerated rate metabolism studies carried out on imazamox and its significant metabolites. Therefore, an exemption from tolerances in milk, meat and meat by-products under 40 CFR 180.6(a)(3) and (b) is proposed as it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

d. Poultry. The maximum poultry dietary burden results from a diet composed of alfalfa hay (meal) and wheat grain for a total dietary burden that is significantly lower than the levels that would require the proposal of tolerances in poultry. This conclusion is based on the exaggerated rate metabolism studies carried out on imazamox and its significant metabolites. Therefore, an exemption from tolerances in poultry meat, meat by-products, fat and eggs under 40 CFR 180.6(a)(3) and (b) is proposed as it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

B. Toxicological Profile

A complete battery of mammalian toxicity studies supports the tolerances for imazamox on soybeans and the rest of the legume vegetable crop grouping, canola, wheat and alfalfa. The data base is complete, valid and reliable, and all studies have been submitted to and approved by EPA. The toxicological data submitted to support the subject petition as amended include:

1. *Acute toxicity.* Imazamox technical is considered to be nontoxic (Toxicity Category IV) to the rat by the oral route of exposure. In the acute oral toxicity study in rats, the LD_{50} value of imazamox technical was greater than 5,000 milligrams/kilograms body weight (mg/kg bwt) for males and females. The results from the acute dermal toxicity study in rabbits indicate that imazamox is slightly toxic (Toxicity Category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazamox technical was greater than 4,000 mg/kg bwt for both male and female rabbits. Imazamox technical is considered to be nontoxic (Toxicity Category IV) to the rat by the respiratory route of exposure. The 4-hour LC_{50} value was greater than 6.3 mg/L (analytical) for both males and females. Imazamox technical was shown to be non-irritating to slightly irritating to rabbit skin (Toxicity Category IV). Based on the results of a dermal sensitization study (Buehler), imazamox technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicty.* Imazamox technical was tested in the following four assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazamox does not pose a mutagenic or genotoxic risk.

i. Bacterial Mutagenicity assay - Negative.

ii. *In vitro* structural chromosomal aberration assay - Negative.

iii. *In vitro* CHO/HGPRT assay - Negative.

iv. *In vivo* micronucleus aberration assay - Negative.

3. *Reproductive and developmental toxicity.* The development toxicity study in rats conducted with imazamox technical showed no evidence of teratogenic effects in fetuses and no evidence of developmental toxicity. Thus, imazamox is neither a developmental toxicant nor a teratogen in the rat. The results from this study supported a no observed adverse effect level (NOAEL) for developmental toxicity of 1,000 mg/kg bwt day, the highest dose tested and limit dose. The NOAEL for maternal toxicity was 500 mg/kg bwt day, based on reduced mean body weights, weight gains and food consumption at 1,000 mg/kg bwt day. Results from a developmental toxicity study in rabbits conducted with imazamox technical also indicated no evidence of teratogenicity or developmental toxicity. Thus, imazamox technical is neither a developmental toxicant nor a teratogen

in the rabbit. In the rabbit developmental toxicity study, the NOAEL for maternal toxicity was 300 mg/kg bwt day, based on decreased food consumption at 600 mg/kg bwt day, the next highest dose tested. The NOAEL for developmental toxicity was 900 mg/kg bwt day, the highest dose tested. The results from the two-generation reproduction toxicity study in rats with imazamox technical support a NOAEL for parental and reproductive toxicity of 20,000 ppm (or approximately 1,639 mg/kg bwt day, calculated from the food consumption data), the highest concentration tested. The NOAEL for growth and development of offspring is also 20,000 ppm (or approximately 1,639 mg/kg bwt day. Results from the reproduction study and the developmental toxicity studies conducted with imazamox technical show no increased sensitivity to developing offspring as compared to parental animals, because the NOAELs for growth and development of offspring were equal to or greater than the NOAELs for parental or maternal toxicity.

4. *Subchronic toxicity.* No treatment-related adverse effects were noted in subchronic toxicity studies at the highest doses tested. A short-term (28–day) dermal study in rabbits was conducted with imazamox technical. No dermal irritation or systemic toxicity was observed at dose levels up to and including 1,000 mg/kg bwt day (highest dose tested), supporting a NOAEL of 1,000 mg/kg bwt day. In a subchronic (13–week) dietary toxicity study in rats with imazamox technical, no signs of systemic toxicity were noted, supporting a NOAEL of 20,000 ppm (or approximately 1,661 mg/kg bwt day, calculated from food consumption data), the highest concentration tested. In a subchronic (90–day) dietary toxicity study in dogs with imazamox technical, no signs of systemic toxicity were noted, supporting a NOAEL of 40,000 ppm (or approximately 1,368 mg/kg bwt day, calculated from the food consumption data), the highest concentration tested.

5. *Chronic toxicity.* The low order of mammalian toxicity of imazamox technical is also evident from the chronic dietary toxicity studies. These studies showed no increased mortalities or clinical signs of toxicity attributed to imazamox treatment. Moreover, there were no treatment-related effects on food consumption, body weights, organ weights, or hematology, clinical chemistry, urinalysis or ophthalmologic parameters. There was no gross or microscopic evidence of treatment-related lesions or carcinogenicity in the three chronic studies conducted in dogs, mice, or rats.

A 1–year dietary study was conducted with imazamox technical in dogs at dietary concentrations of 0, 1,000, 10,000, and 40,000 ppm. The NOAEL for this study was 40,000 ppm (or approximately 1,165 mg/kg bwt day, based on food consumption), the highest concentration tested.

A chronic feeding/carcinogenicity study was conducted with imazamox technical in male and female rats at dietary concentrations of 0, 1,000, 10,000, and 20,000 ppm. The NOAEL for systemic toxicity and carcinogenicity was 20,000 ppm (or approximately 1,167 mg/kg bwt day, based on food consumption) the highest concentration tested.

A chronic feeding/carcinogenicity study was conducted with imazamox technical in male and female mice at dietary concentration of 500, 3,500, and 7,000 ppm. The NOAEL for systemic toxicity and carcinogenicity was 7,000 ppm (or approximately 1,201 mg/kg bwt day, based on food consumption), the highest concentration tested.

In the dietary exposure analysis for AC 299263 in/on Soybeans (PP 6F4649) dated March 24, 1997, EPA determined that AC 299263 cancer classification is classified as not likely (to induce tumors in humans) according to the proposed new guidelines.

6. *Animal metabolism.* The qualitative nature of the residues of imazamox and its metabolites CL 263284 and CL 263284 carboxylate CL 312622 in animals is adequately understood. Based on metabolism studies with goats, hens and rats, there is no reasonable expectation that measurable imazamox-related residues will occur in meat, milk, poultry or eggs from the proposed use.

7. *Metabolite toxicology.* No toxicologically significant metabolites were detected in plant or animal metabolism studies for soybeans or the rest of the crops in the legume vegetable crop grouping: (6) or canola. Therefore, no metabolites need to be regulated in these crops.

The plant metabolism study in wheat indicated very low residues of concern. A very small amount of the metabolite CL 263284 was found in the wheat grain.

The plant metabolism in alfalfa indicated very low residues in the alfalfa seed. However, the parent imazamox underwent metabolism to the metabolite CL 263284 (the same metabolite seen in wheat). This metabolite was captured by a glucose molecule to form the glucose conjugate CL 189215 and the hydroxymethyl AC 263284 was also further oxidized to the carboxylate metabolite CL 312622.

Both metabolites, CL 263284 and CL 312622 were present in the rat metabolism study.

No additional toxicologically significant metabolites were detected in any plant or animal studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the two-generation rat reproductive study, as well as from the sub-chronic and chronic toxicity studies conducted in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available that suggests that imazamox would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to imazamox has been calculated from the proposed tolerances for use on soybeans and other members of the legume vegetables crop grouping (6), canola, wheat and alfalfa. These very conservative chronic dietary exposure estimates used the tolerance value for all the raw agricultural commodities. In addition these estimates assume that 100% of the crops contain imazamox residues.

i. *Food.* The Theoretical Maximum Residue Concentrations (TMRC) of imazamox on or in soybeans and other members of the legume vegetable crop grouping (6), canola, alfalfa, wheat grain, and its processed fractions are; 0.00577 mg/kg bwt day for the general U.S. population; 0.000573 mg/kg bwt day for non-nursing infants; 0.001306 mg/kg bwt day for children 1 to 6 years of age; and 0.000887 mg/kg bwt day for children 7 to 12 years of age.

ii. *Drinking water.* As a screening level assessment for aggregate exposure, EPA evaluates Drinking Water Level of Comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. Based on the chronic reference dose (RfD) of 3.0 mg/kg bwt day, determined by EPA, and the EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazamox in water. For the adult population, the chronic DWLOC was 104,980 parts per billion (ppb), and for children, the DWLOC was estimated to be 29,987 ppb.

Chronic drinking water exposure analyses were calculated using EPA screening models (SCI-GROW for ground, water and GENEEC for surface

water). The calculated peak GENEEC value is 0.44 ppb and the SCI-GROW value is 0.055 ppb. For the U.S. adult population, the estimated exposures of imazamox residues in surface water and ground, water are approximately 0.0004% and 0.00005%, respectively, of the DWLOC. For children, the estimated exposures of imazamox residues in surface water and ground water are approximately 0.002% and 0.0002%, respectively of the DWLOC. Therefore, the exposures to drinking water from imazamox use are negligible.

Based on the dietary and drinking water assessments, aggregate exposure to residues of imazamox in food and water can be considered to be negligible.

2. *Non-dietary exposure*. There is no available information quantifying non-dietary exposure to imazamox. However, based on the physical and chemical characteristics of the compound, the proposed use pattern and available information concerning its environmental fate, non-dietary exposure is not expected.

D. Cumulative Effects

Imazamox belongs to the imidazolinone class of compounds. The herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxy acid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the extremely low toxicity of imazamox in mammals. Although other registered imidazolinones have a similar herbicidal mode of action, there is no information available to suggest that these compounds exhibit a similar toxicity profile in the mammalian system. We are aware of no information to indicate or suggest that imazamox has any toxic effects on mammals that would be cumulative with those of any other chemical. Since imazamox is relatively non-toxic, cumulative effects of residues of imazamox and other compounds are not anticipated. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of herbicidal action.

E. Safety Determination

1. *U.S. population*. Based on a RfD of 3.0 mg/kg bwt day determined from a NOAEL of 300 mg/kg bwt day, from the rabbit developmental toxicity study and a safety (uncertainty) factor of 100, the worse case estimate of chronic dietary exposure of imazamox from soybeans, the other members of the legume vegetable crop grouping (6), canola, wheat and alfalfa will utilize approximately 0.02% of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The complete and reliable toxicity data and the conservative chronic exposure assumptions support the conclusion that there is a reasonable certainty of no harm from dietary (food) exposure to imazamox residues. Moreover, as exposure to residues of imazamox via water is negligible, there is a reasonable certainty of no harm from aggregate exposure to imazamox residues.

2. *Infants and children*. The conservative estimates, as described above, indicate that dietary exposure of imazamox from soybeans, the other members of the legume vegetable crop grouping, canola, wheat and alfalfa will utilize: approximately 0.02% of the RfD for non-nursing infants; approximately 0.04% of the RfD for children ages 1 to 6; and approximately 0.03% of the RfD for children ages 7 to 12.

No developmental, reproductive, or fetotoxic effects were noted at the highest doses of imazamox tested in guideline reproductive or developmental toxicity studies. The only maternal effects in the rat and rabbit teratology studies were decreased body weights, body weight gains and/or absolute and relative feed consumption in the higher dose groups of each study.

Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete, valid and reliable. Results from the teratology studies and the two-generation reproduction study support NOAELs for fetal/developmental effects or reproductive/offspring effects, respectively, equivalent to the highest concentrations tested. As such, there is no increased sensitivity of infants and children to residues of imazamox. Therefore, an additional safety (uncertainty) factor is not warranted, and the RfD of 3.0 mg/kg bwt day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There is no Codex Maximum Residue Level Established for Residues of Imazamox on any Crops.

[FR Doc. 00–7739 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–925; FRL–6496–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–925, must be received on or before April 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–925 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *In person*. The Agency has established an official record for this action under docket control number PF–925. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–925 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5697.

3. *Electronically*. You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–925. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

0F6095

EPA has received a pesticide petition (0F6095) from Bayer Corporation, 8400 Hawthorn Road, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.527 by establishing a tolerance for residues of flufenacet, N-(4-fluorophenyl)-N-(1-methylethyl)-2-5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl oxyacetamide and metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on the raw agricultural commodities (RAC) wheat grain, wheat forage, wheat hay, wheat bran, wheat germ, wheat straw, seed-grass forage, seed-grass forage from re-growth, seed-grass hay from re-growth, seed-grass straw, sweet corn kernel plus cob with husks removed at 0.5, 9.0, 1.0, 1.0, 0.5, 0.5, 18.0, 0.1, 0.5, 0.5, 0.05 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in field corn, sweet corn, wheat, seed-grasses, soybeans, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are flufenacet parent and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of flufenacet on field corn, sweet corn, soybeans, wheat, and seed-grasses.

2. *Analytical method*. An adequate analytical method, gas chromatography/mass spectrometry (GC/MS) with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703–305–5937).

3. *Magnitude of residues*. Time-limited tolerances exist for the combined residues of flufenacet, N-(4-fluorophenyl)-N-(1-methylethyl)-2-5-(trifluoromethyl)-1,3,4-thiadiazol-2-yloxyacetamide and metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on field corn grain at 0.05 ppm, field corn forage at 0.4 ppm, field corn stover at 0.4 ppm, soybean seed at 0.1 ppm, alfalfa forage at 0.1 ppm, alfalfa hay at 0.1 ppm, alfalfa seed at 0.1 ppm, clover forage at 0.1 ppm, clover hay at 0.1 ppm, Crop Group 15 (cereal grains) at 0.1 ppm, Crop Group 16 (forage, stover and hay of cereal grains) at 0.1 ppm, and Group 17 (grass forage and grass hay) at 0.1 ppm.

B. Toxicological Profile

1. *Acute toxicity*—i. Technical grade flufenacet has a low to moderate order of toxicity in rats by the oral route of exposure. The acute oral LD_{50} was 1,617 milligrams/kilograms (mg/kg) for males and 589 mg/kg for females.

ii. A dermal toxicity study on technical grade flufenacet revealed low acute toxicity to rats. The dermal LD_{50} for both sexes was > 2,000 mg/kg, the highest dose tested (HDT).

iii. An acute inhalation study on technical grade flufenacet showed low toxicity in rats with a 4–hour liquid aerosol LC_{50} for males and females of > 3,740 mg/m^3 air, the highest concentration tested.

iv. An eye irritation study on technical grade flufenacet in rabbits showed minimal irritation to the conjunctiva completely reversible within 7 days.

v. A dermal irritation study on technical grade flufenacet in rabbits did not produced any irritation.

vi. Skin sensitization studies on technical grade flufenacet in guinea pigs have produced equivocal results. A skin sensitization potential was exhibited under the conditions of a maximization test, whereby, there was no skin sensitization potential when tested by the Buehler topical closed patch technique.

2. *Genotoxicity*. Flufenacet was negative for mutagenic/genotoxic effects in a Gene mutation/*in vitro* assay in bacteria, a Gene mutation/*in vitro* assay in Chinese hamster (CH) lung fibroblasts cells, a Cytogenetics/*in vitro* assay in CH ovary cells, a Cytogenetics/*in vivo* mouse micronucleus assay, and an *in vitro* unscheduled DNA synthesis assay in primary rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. A 2–generation rat reproduction study with a parental systemic no observed adverse effect level (NOAEL) of 20 ppm (1.4 mg/kg/day in males and 1.5 mg/kg/day in females) and a reproductive NOAEL of 20 ppm (1.3 mg/kg/day) and a parental systemic lowest observed adverse effect level (LOAEL) of 100 ppm (7.4 mg/kg/day in males and 8.2 mg/kg/day in females), based on increased liver weight in F_1 females and hepatocytomegaly in F_1 males, and a reproductive LOAEL of 100 ppm (6.9 mg/kg/day) based on increased pup death in early lactation (including cannibalism) for F_1 litters and the same effects in both F_1 and F_2 pups at the high dose level of 500 ppm (37.2 mg/kg/day in males and 41.5 mg/kg/day in females), respectively.

ii. A rat developmental study with a maternal NOAEL of 25 mg/kg/day and with a maternal LOAEL of 125 mg/kg/day based on decreased body weight gain initially and a developmental NOAEL of 25 mg/kg/day and a developmental LOAEL of 125 mg/kg/day based on decreased fetal body weight, delayed development mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages, and an increase in the incidence of extra ribs.

iii. A rabbit developmental study with a maternal NOAEL of 5 mg/kg/day and a maternal LOAEL of 25 mg/kg/day based on histopathological finds in the liver and a developmental NOAEL of 25 mg/kg/day and a developmental LOAEL of 125 mg/kg/day based on increased skeletal variations.

4. *Subchronic toxicity*—i. A 84–day rat feeding study with a NOAEL less than 100 ppm (6.0 mg/kg/day) for males and a NOAEL of 100 ppm (7.2 mg/kg/day) for females and with a LOAEL of 100 ppm (6.8 mg/kg/day) for males based on suppression of thyroxine (T4) level, and a LOAEL of 400 ppm (28.8 mg/kg/day) for females based on hematology, and clinical chemistry findings.

ii. A 13–week mouse feeding study with a NOAEL of 100 ppm (18.2 mg/kg/day for males and 24.5 mg/kg/day for females), and a LOAEL of 400 ppm (64.2 mg/kg/day for males and 91.3 mg/kg/day for females) based on histopathology of the liver, spleen and thyroid.

iii. A 13–week dog dietary study with a NOAEL of 50 ppm (1.70 mg/kg/day for males and 1.67 mg/kg/day for females), and a LOAEL of 200 ppm (6.90 mg/kg/day for males and 7.20 mg/kg/day for females), based on evidence that the biotransformation capacity of the liver has

been exceeded (as indicated by increase in LDH, liver weight, ALK and hepatomegaly), globulin and spleen pigment in females, decreased T4 and ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females.

iv. A 21–day rabbit dermal study with the dermal irritation NOAEL of 1,000 mg/kg/day for males and females, and a systemic NOAEL of 20 mg/kg/day for males and 150 mg/kg/day for females, and a systemic LOAEL of 150 mg/kg/day for males and 1,000 mg/kg/day for females based on clinical chemistry data (decreased T4 and FT4 levels in both sexes) and centrilobular hepatocytomegaly in females.

5. *Chronic toxicity*—i. A 1–year dog chronic feeding study with a NOAEL was 40 ppm (1.29 mg/kg/day in males and 1.14 mg/kg/day in females), and a LOAEL of 800 ppm (27.75 mg/kg/day in males and 26.82 mg/kg/day in females) based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T2, T4 and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve, and liver.

ii. A rat chronic feeding/carcinogenicity study with a NOAEL less than 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females), and a LOAEL of 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females) based on methemoglobinemia, and multi-organ effects in blood, kidney, spleen, heart, and uterus. Under experimental conditions the treatment did not alter the spontaneous tumor profile.

iii. In a mouse carcinogenicity study the NOAEL was less than 50 ppm (7.4 mg/kg/day) for males and the NOAEL was 50 ppm (9.4 mg/kg/day) for females. The LOAEL was 50 ppm (7.4 mg/kg/day) for males and the LOAEL was 200 ppm (38.4 mg/kg/day) for females based on cataract incidence and severity. There was no evidence of carcinogenicity for flufenacet in this study.

6. *Animal metabolism*. A rat metabolism study showed that radio-labeled flufenacet was rapidly absorbed and metabolized by both sexes. Urine was the major route of excretion at all dose levels and smaller amounts were excreted via the feces.

7. *Metabolite toxicology*. A 55–day dog study with subcutaneous administration of thiadone flufenacet metabolite supports the hypothesis that limitations in glutathione interdependent pathways and antioxidant stress result in metabolic lesions in the brain and heart following flufenacet exposure.

8. *Endocrine disruption*. EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect. The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the toxicological findings for flufenacet relating to endocrine disruption effects, flufenacet should be considered as a candidate for evaluation as an endocrine disrupter when the criteria are established.

9. *Other studies*—i. An acute rat neurotoxicity study with a NOAEL less than 75 mg/kg/day and a LOAEL of 75 mg/kg/day based on decreased motor activity in males.

ii. A rat subchronic neurotoxicity study with a NOAEL of 120 ppm (7.3 mg/kg/day in males and 8.4 mg/kg/day in females), and a LOAEL of 600 ppm (38.1 mg/kg/day in males and 42.6 mg/kg/day in females) based on microscopic lesions in the cerebellum/medulla and spinal cords.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. In evaluating food exposures, varying consumption patterns of major identifiable subgroups of consumers, including infants and children is taken into account. A refined dietary risk assessment was performed and adjustments were made to account for market share and processing factors. The residues in the diet (food only) are calculated to be 0.000078 mg/kg bwt day or 1.9% of the RfD for the general U.S. population and 0.000174 mg/kg bwt day or 4.4% of the RfD for non-nursing infants (> 1–year)

ii. *Drinking water*. Residues of flufenacet in drinking water may comprise up to 0.0039 mg/kg bwt day (0.0040-0.000078 mg/kg bwt day) for the U.S. population and 0.0038 mg/kg bwt day (0.00400-0.000174 mg/kg bwt day) for children 1–6 years old.

The drinking water levels of concern (DWLOCs) for chronic exposure to flufenacet in drinking water calculated for the U.S. population was 136 parts per billion (ppb) assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day. For children (1–6 years old), the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day.

The drinking water estimated concentration (DWECs) for ground water (parent flufenacet and degradate thiadone) calculated from the monitoring data is 0.03 ppb for chronic concentrations which does not exceed DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old).

2. *Non-dietary exposure*. There are no non-food uses of flufenacet currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

D. Cumulative Effects

Flufenacet is structurally a thiadiazole. EPA is not aware of any other pesticides with this structure. For flufenacet, EPA has not yet conducted a detailed review of common mechanisms to determine whether it is appropriate, or how to include this chemical in a cumulative risk assessment. After EPA develops a methodology to address common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine these tolerance decisions. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions, therefore, EPA has not assumed that flufenacet has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. As presented previously, the exposure of the U.S. general population to flufenacet is low, and the risks, based on comparisons to the RfD, are minimal. The margins of safety from the use of flufenacet are within EPA's acceptable limits. Bayer

Corporation concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to flufenacet residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of flufenacet, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Although there is no indication of increased sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to flufenacet in the standard developmental and reproductive toxicity studies, an additional developmental neurotoxicity study, which is not normally required, is needed to access the susceptibility of the offspring in function/neurological development. Therefore, EPA has required that a developmental neurotoxicity study be conducted with flufenacet and a threefold safety factor for children and infants will be used in the aggregate dietary acute and chronic risk assessment. Although there is no indication of additional sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to flufenacet in the developmental and reproductive toxicity studies; the Agency concluded that the FQPA safety factor should not be removed but instead reduced because: (i) There was no assessment of susceptibility of the offspring in functional/neurological developmental and reproductive studies; (ii) there is evidence of neurotoxicity in mice, rats, and dogs; (iii) there is concern for thyroid hormone disruption.

F. International Tolerances

Maximum residue levels are established or proposed for countries of the European Communities in the following commodities: cereals at 0.5 ppm, corn at 0.5 ppm, potato at 0.1 ppm, sunflower at 0.05 ppm, soybean at 0.05 ppm, animal meat at 0.05 ppm, animal edible offal's at 0.05 ppm, animal fat at 0.05 ppm, milk at 0.01 ppm, and eggs at 0.05 ppm.

[FR Doc. 00–7742 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–924; FRL–6495–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–924, must be received on or before April 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–924 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@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	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number PF–924. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–924 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–924. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional research Project Number 4 (IR-4)

0E6097 and 7F4873

EPA has received pesticide petitions (0E6097 and 7F4873) from IR-4, Rutgers, The State University of New Jersey, 681 U.S. Highway No. 1 South, North New Brunswick, NJ 08902, and Valent USA Corporation, Walnut Creek, CA 94596-8025 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of clethodim in or on the following raw agricultural commodities (RAC): Root vegetables subgroup at 1.0 parts per million (ppm), leaves of root and tuber vegetables group at 2.0 ppm, leafy petiole vegetables subgroup at 0.5 ppm, melon subgroup at 2.0 ppm, squash/cucumber subgroup at 0.5 ppm, cranberry at 0.5 ppm, clover forage at 10 ppm, clover hay at 20.0 ppm, strawberry at 5.0 ppm, and fruiting vegetables group at 1.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Valent USA Corporation, the registrant, Walnut Creek, CA 94596-8025.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of ^{14}C-clethodim labelled in the ring structure and in the side chain has been studied in carrots, soybeans, and cotton as well as in lactating goats and laying hens. The major metabolic pathway in plants is initial sulfoxidation, forming clethodim sulfoxide, followed by further oxidation to form clethodim sulfone. These reactions are apparently followed by elimination of the chloroallyloxy side chain to give the imine sulfoxide and sulfone, with further hydroxylation to form the 5-OH sulfoxide and 5-OH sulfone. Clethodim sulfoxide and

clethodim sulfone conjugates were also detected as major or minor metabolites, depending on plant species and subfractions. Once the side chain is cleaved from clethodim, the chloroallyloxy moiety undergoes extensive metabolism to eliminate chlorine and incorporate three-carbon moieties into natural plant components.

2. *Analytical method*. Practical analytical methods for detecting and measuring levels of clethodim and its metabolites have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The methods have been validated at independent laboratories, and EPA has successfully performed an analytical method trial. For most commodities, the primary enforcement method is EPA-RM-26D-3, an high performance liquid chromotography method capable of distinguishing clethodim from the structurally related herbicide sethoxydim.

3. *Magnitude of residues*. A summary of field residue data supporting the proposed tolerances on root vegetables subgroup (carrot and radish), leaves of root and tuber vegetables (sugarbeet tops and radish tops), leafy petioles (celery), cucurbits (cantaloupe, summer squash, and cucumber), strawberry, cranberry, and clover is presented below.

i. *Root and tuber vegetables*. Eight field trials for carrots were treated with two post-emergent applications of 0.24 lb. to 0.26 lb. active ingredient/acre (a.i./acre) and harvested approximately 29 to 31 days after the application. Residues in carrots ranged from < 0.25 ppm to 0.39 ppm total clethodim. Four field trials, radishes were treated with one post-emergent application of 0.25 lb. a.i./acre and harvested approximately 14–15 days after application. All residues in radish roots were less than 0.45 ppm.

ii. *Leaves of root and tuber vegetables*. Twelve field trials for sugarbeets were treated with two post-emergent applications of 0.25 lb. each. Sugar beet tops were harvested approximately 40 days after the last application. Clethodim residues in/on sugarbeet tops ranged from < 0.10 ppm to 0.88 ppm total clethodim.

iii. *Leafy petioles*. Five field trials for celery was treated with two post-emergent applications of 0.25 lb. a.i./acre each, approximately 14 days apart, and harvested approximately 30 days after the last application. Residues in celery ranged from < 0.1 ppm to 0.33 ppm total clethodim.

iv. *Cucurbits*. Seven field trials for cantaloupes were treated with two post-emergent applications of 0.25 lb. a.i/acre each and harvested approximately 13–20 days after the last application. Residues in/on cantaloupe ranged from < 0.10 ppm to 1.2 ppm total clethodim. Six field trials for summer squash were treated with two post-emergent applications of 0.25 lb. a.i./acre each and harvested approximately 13–14 days after the last application. Total clethodim residues ranged from < 0.10 ppm to 0.11 ppm.

v. *Strawberry*. Seven field trials for strawberries were treated with two post-emergent applications of 0.23 lb. to 0.27 lb. a.i./acre each. Strawberry fruit was harvested approximately 4–7 days after the last application. Clethodim residues in/on sugar beet tops ranged from 0.38 ppm to 2.28 ppm total clethodim.

vi. *Cranberry*. Three field trials for cranberries were treated with two post-emergent applications of 0.24 lb. to 0.28 lb. a.i./acre each. Cranberries were harvested 29–30 days after the last application. Residues ranged from 0.13 ppm to 3.2 ppm total clethodim.

vii. *Clover*. Three field trials for clover was treated with one post-emergent application of 0.25 lb. a.i./acre. Clover forage and hay were harvested 5 days after the last application. Residues in forage ranged from 3.3 ppm to 6.1 ppm total clethodim and residues in hay ranged from 12.2 ppm to 15.3 ppm total clethodim.

viii. *Fruiting vegetables*. Six field trials for bell peppers were conducted using two applications of 0.25 lb .a.i./acre and harvested 19 to 21 days after application. Residues in bell peppers ranged from 0.14 ppm to 0.89 ppm total clethodim. Five non-bell pepper field trials were conducted using two applications of 0.25 lb. a.i./acre and harvested 20 to 22 days after application. Residues in non-bell peppers ranged from 0.12 ppm to 0.92 ppm total clethodim. Combining the data with previously conducted field trials for tomatoes gives an overall average residue in fruiting vegetables of 0.42 ppm and supports a tolerance for fruiting vegetables (except cucurbits) of 1.0 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Clethodim technical is slightly toxic to animals following acute oral (Toxicity Category III), dermal (Toxicity Category IV), or inhalation exposure (Toxicity Category IV). Clethodim is a moderate eye irritant (Category III), a skin irritant (Category II), and does not cause skin sensitization in the modified Buehler test in guinea pigs. In addition, an acute oral no-observed adverse effect level (NOAEL) has been determined in rats to be 300 milligrams/kilograms (mg/kg).

2. *Genotoxicity*. Clethodim does not present a genetic hazard. Clethodim technical did not induce gene mutation in microbial *in vitro* assays. A weak response in an *in vitro* assay for chromosome aberrations was not confirmed when clethodim was tested in an *in vivo* cytogenetics assay up to the maximally tolerated dose level, nor was the response observed *in vitro* using technical material of a higher purity. No evidence of unscheduled DNA synthesis was seen following *in vivo* exposure up to a dose level near the lethal doese LD_{50} (1.5 g/kg). This evidence indicates that clethodim does not present a genetic hazard to intact animal systems.

3. *Reproductive and developmental toxicity*. No reproductive toxicity was observed with clethodim technical at feeding levels up to 2,500 ppm. Developmental toxicity was observed in two rodent species, but only at maternally toxic dose levels. Clethodim is therefore, not considered a reproductive or developmental hazard. These studies indicate no unique toxicity to the developing fetus or young, growing animals.

The developmental toxicity study conducted with clethodim technical in the rat resulted in a developmental and maternal NOAEL and lowest observed adverse effect level (LOAEL) of 100 and 350 milligrams/kilograms/day (mg/kg/day), respectively. The NOAEL and LOAEL for developmental toxicity were based on reductions in fetal body weight and increases in skeletal anomalies. The developmental toxicity study conducted with clethodim technical in the rabbit resulted in a maternal toxicity NOAEL and LOAEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore, the developmental toxicity NOAEL was 300 mg/kg/day, highest dose tested (HDT). The 2–generation reproduction study conducted with clethodim technical in the rat resulted in parental toxicity NOAEL and LOAEL of 500 ppm and 2,500 ppm, respectively, based on reductions in body weight in males, and decreased food consumption in both generations. The NOAEL for reproductive toxicity was 2,500 ppm, HDT.

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with clethodim technical in the rat and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weights,

increased liver size (increased weight and cell hypertrophy), and anemia (decreased erythrocyte counts, hemoglobin, or hematocrit) in rats and dogs. The NOAELs from these studies were 500 ppm milligrams/kilograms bodyweight/day (ca. 25 mg/kg bwt day) in rats and 25 mg/kg bwt day in dogs. A 21–day dermal toxicity study in rats with clethodim technical showed a LOAEL at 100 mg/kg bwt day and a NOAEL at 1,000 mg/kg bwt day, HDT.

5. *Chronic toxicity*. Clethodim technical has been tested in chronic studies with dogs, rats and mice. In chronic studies compound-related effects noted at high doses included decreased body weight, increased liver size (liver weight and hypertrophy), and anemia (decreased hemoglobin, hematocrit, and erythrocyte count). Bone marrow hyperplasia was observed in dogs at the HDT. No treatment-related increases in incidence of neoplasms were observed in any study. Chronic NOAELs were 200 ppm for an 18–month feeding study in mice and 500 ppm for a 24–month study in rats. EPA has established a chronic population adjusted dose (cPAD) for clethodim of 0.01 mg/kg bwt day, based on the NOAEL in the 1–year oral dog study and an uncertainty factor of 100. Effects observed at the LOAEL include, alterations in hematology and increased absolute and relative liver weights at 75 mg/kg/day.

6. *Animal metabolism*. Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-clethodim residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 0.5% of the administered dose (24 ppm in diet for 3 days), and were less than 0.4 ppm in all cases. In poultry treated at 2.2 mg/kg/day for 5 days, total ^{14}C-residues in eggs, muscle, and most tissues were less than 0.3 ppm, although higher in liver, kidney and the GI tract. Residues in eggs were less than 0.2 ppm.

Comparing metabolites detected and quantified from plant and animal metabolism studies shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. Based on these metabolism studies, the residues of concern in crops and animal products are clethodim and its metabolites containing the cyclohexene moiety, and their sulfoxides and sulfones.

7. *Metabolite toxicology*. Metabolism studies of clethodim in rats, crop plants, goats and hens demonstrate that the parent is very rapidly metabolized and, in animals, eliminated. Because parent and metabolites are not retained in the body, the potential for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the MTD and consequent chronic exposure to the internally formed metabolites.

Two metabolites of clethodim, clethodim imine sulfone and clethodim 5-hydroxy sulfone, have been tested in toxicity screening studies to evaluate the potential impact of these metabolites on the toxicity of clethodim. In general, these metabolites were found to be less toxic than clethodim technical for acute and oral toxicity studies; reproduction and teratology screening studies; and several mutagenicity studies.

8. *Endocrine disruption*. No special studies to investigate the potential for estrogenic or other endocrine effects of clethodim have been performed. However, a large and detailed toxicology data base exists for the compound including studies in all required categories. These studies include acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histology and histopathology of numerous tissues, including endocrine organs, following repeated or long-term exposure. The results of all of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, Valent USA Corporation concludes that clethodim does not possess estrogenic or endocrine disrupting properties.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Chronic dietary exposure to clethodim residues was calculated for the U.S. population and 26 population subgroups using anticipated residues (average residues from field residue studies) and accounting for the percent of the crop treated. A parallel analysis was performed assuming 100% of the crop treated. In addition to existing tolerances and those tolerances proposed in this notice, potential chronic dietary exposure to the following treated crops and crop groups is also included in this analysis: sunflower, canola, potato, sweet potato, yam (and other corm and tuberous vegetables), tomatoes, peppers (all) and other fruiting vegetables. These additional crops are being proposed for tolerances or registration by Valent USA Corporation in a separate petition. This chronic dietary exposure analysis can therefore be used to support both petitions.

Chronic dietary exposure was at or below 4.5% of the reference dose (RfD) when accounting for the percent of the crop treated. Calculated exposure increased to a maximum of 32.1% non-nursing infants (< 1–year old) using anticipated residues and assuming 100% of the crop treated. Generally speaking, the Agency has no cause for concern if total residue contribution for published and proposed tolerances is less than 100% of the cPAD.

ii. *Drinking water*. Since clethodim is applied outdoors postemergence to growing agricultural crops, the potential exists for clethodim and/or its metabolites to reach ground or surface water that may be used for drinking water. To model very conservative estimates of the potential concentrations of clethodim and its sulfoxide metabolite in drinking water, the Agency used SCI-GROW for ground water, and generic expected environmental concentration (GENEEC) for surface water. The sum of the parent and metabolite estimated concentrations in surface water greatly exceeded those in ground water. Dividing the GENEEC derived 56–day average concentration by three gives 10 micrograms per liter parts per billion (ppb) as the Agency's worse case estimate for drinking water contamination (April 8, 1998, 63 FR 1701) (FRL–5784–9). Using standard assumptions about body weight and water consumption, the chronic exposure from this drinking water would be 0.00029 and 0.001 mg/kg bwt day for adults and children, respectively; 10% of the cPAD for children. Based on this worse case analysis, the contribution of water to the chronic dietary risk exceeds food, but is still acceptable.

2. *Non-dietary exposure*. Clethodim is currently registered for use on the following residential non-food sites: ornamental plants, wooden containers for growing plants, along driveways, patios, golf course turf, walkways, trails, and paths. There are no indoor uses registered for clethodim. Clethodim kills grassey weeds and does not control broadleaf weeds. Therefore, clethodim is not used broadcast on turf, but only on edges and walkways, thus greatly reducing the risk of residential exposure. There is one exception, under several State 24(c) registrations clethodim can be used broadcast on winter dormant perennial turf to control annual grasses. It is conceivable that these outdoor uses could result in acute or short-term residential exposure. However, under current EPA criteria, the registered and proposed uses of clethodim would not constitute a chronic residential exposure scenario. The Agency did calculate that these potential exposures to homeowner

applicators and other potential exposed individuals lead to acceptable Margin of Exposure (MOE) (63 FR 1701). However, because the Agency did not identify short- or intermediate-term dermal toxic endpoints of concern, these risk analyses are no longer necessary.

D. Cumulative Effects

There are other pesticidal compounds that are structurally related to clethodim including sethoxydim, cycloxydim, and tralkoxydim. Analytical methods convert some of these herbicides and their metabolites to common moieties. Plant and animal metabolism data demonstrates that no common metabolites are formed. In consideration of potential cumulative effects of clethodim and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by clethodim would be cumulative with those of other chemical compounds. Thus, only the potential risks of clethodim have been considered in this assessment of aggregate exposure and effects.

Valent USA Corporation will submit information for EPA to consider concerning potential cumulative effects of clethodim consistent with the schedule established by EPA on August 4, 1997 (62 FR 42020) (FRL–5734–6), and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population—chronic exposure and risk*—i. *Adult sub-populations*. Using the dietary exposure assessment procedures described above for clethodim, calculated chronic dietary exposure -- taking into account percent of crop treated and using anticipated residues -- from existing and proposed uses of clethodim is minimal. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is 0.000151 to 0.000162 mg/kg bwt day, 1.5 to 1.6% of the cPAD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by 0.0003 mg/kg bwt day and the maximum occupancy of the cPAD from 1.6% to 4.6%. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the cPAD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population and many non-child/ infant subgroups from aggregate, chronic exposure to clethodim residues.

ii. *Acute dietary exposure and risk—Adult sub-populations*. An acute dietary endpoint was not identified. Thus, the risk from acute aggregate dietary exposure to clethodim is considered to be negligible.

iii. *Non-dietary exposure and aggregate risk—Adult sub-populations*. Acute, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure to clethodim are not required because no significant toxicological effects were observed.

2. *Infants and children*—i. *Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of clethodim, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating prenatal and postnatal toxicity for clethodim is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 3-generation reproductive toxicity study in rats. Valent USA Corporation concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed for clethodim to be further protective of infants and children.

ii. *Chronic exposure and risk—Infant and child sub-populations*. Using the conservative exposure assumptions described above (anticipated residues and percent of crop treated), the percentage of the cPAD that will be utilized by dietary (food only) exposure to residues of clethodim ranges from 0.7% for nursing infants (< 1–year old), up to 4.5% for children (1–6 years). Adding the worse case potential incremental exposure to infants and children from clethodim in drinking water (0.001 mg/kg bwt day) greatly increases the aggregate, chronic dietary exposure and the occupancy of the cPAD by 10.0% to 14.5% for children (1–6 years). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic exposure to clethodim residues.

iii. *Acute dietary exposure and risk—Infant and child sub-populations*. An acute dietary endpoint was not identified. Thus, the risk from acute aggregate dietary exposure to clethodim is considered to be negligible.

iv. *Non-dietary exposure and aggregate risk—Infant and child sub-populations*. Acute, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure to clethodim are not required because no significant toxicological effects were observed.

F. International Tolerances

Although some have been proposed, there are no Canadian, Mexican, or Codex tolerances or maximum residue limits established for clethodim. There are no conflicts between this proposed action and international residue limits.

2. Interregional Research Project Number 4 New Jersey Agricultural Station

8E5026 and 9E6049

EPA has received pesticide petitions (8E5026 and 9E6049) from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. The petitions propose, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fludioxonil 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3 carbonitrile).

1. *PP 8E5026* proposes the establishment of tolerances for strawberries at 2.0 ppm; dry bulb onion; great-headed garlic; shallot; and welsh onion at 0.2 ppm; and green onion and leek at 7.0 ppm.

2 *PP 9E6049* proposes the establishment of a tolerance for stone fruit group at 2.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of petitions prepared by Novaris Crop Protection, Inc. (Novartis), Greensboro, North Carolina, 27419.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of fludioxonil is adequately understood

for the purpose of the proposed tolerances.

2. *Analytical method*. Novartis, has developed and validated analytical methodology for enforcement purposes. This method (Novartis Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for fludioxonil. This method has also been forwarded to FDA for inclusion into PAM II. An extensive database of method validation data using this method on various crop commodities is available; acceptable method validation and concurrent method recovery data on stone fruits, strawberry, and onions were submitted. The validated limit of quantitation (LOQ) for residues of fludioxonil in/on stone fruit is 0.05 ppm and in/on strawberry and bulb vegetables is 0.02 ppm. For residues in/on representative rotational crop matrices is 0.01 ppm.

3. *Magnitude of residues*. The magnitude of residues for fludioxonil is adequately understood for the purpose of the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity*. Fludioxonil and end use formulations have very low toxicity to the mammalian species by the oral, dermal, or inhalation route. The dose needed to kill 50% of animals was calculated to be greater than 5,000 mg/kg (oral), 2,000 mg/kg (dermal), and 2.6 milligrams/liter (mg/L) (inhalation) in these studies. The eye and skin irritations seen in animals upon acute exposure indicate that no more than transient and slight irritation. No sensitizing potential was noted with either the technical material or the formulated product.

2. *Genotoxicity*. Mutagenicity potential of fludioxonil was tested in several studies. In the Chinese hamster ovary (CHO) cell assay, some clastogenic and polyploidogenic effects were seen at or near the precipitating concentration of the test substance. However, results were negative in the Ames assay, CHO V79 cell assay, hepatocyte DNA repair assay, rat hepatocyte micronucleus test, mouse bone marrow test, and Chinese hamster bone marrow test. A dominant lethal test conducted in the mouse was also negative.

3. *Reproductive and developmental toxicity*. Fludioxonil is not a developmental toxicant and does not affect reproduction or fertility. No fetal toxicity was observed even at the HDT in both the rabbit (300 mg/kg) and the rat (1,000 mg/kg) developmental toxicity studies. In a 2–generation rat reproduction study, a reduction of pup body weight was seen at the highest feeding level of 3,000 ppm in the presence of maternal toxicity. The NOAEL was 300 ppm for both maternal and fetal toxicity in this study.

4. *Subchronic toxicity*. In a 90–day dietary toxicity study the kidney and liver have been identified as target organs. In a subchronic study in rats, the NOAEL was 10 ppm based on liver toxicity. In a subchronic study in mice, the NOAEL was 100 ppm based on blue urine (a metabolite); the maximum tolerated dose was 7,000 ppm. In a subchronic study in dogs, the NOAEL was 200 ppm based on clinical observations; the maximum tolerated dose was 8,000 ppm.

5. *Chronic toxicity*. In an 1–year chronic toxicity study in dogs, the NOAEL was 100 ppm based on body weight effects; the maximum tolerated dose was 8,000 ppm. Two 18–month dietary carcinogenicity studies were performed in mice. While a NOAEL of 1,000 ppm was clearly established in the first study, its highest feeding level (3,000 ppm) did not meet the criteria for a maximum tolerated dose. In the second 18–month study, the maximum tolerated dose was determined to be 5,000 ppm based on kidney effects. There were no treatment-related increases in neoplasia at any dose level tested in either study. In a combined chronic toxicity/carcinogenicity study in rats, the incidence of liver tumors in top-dose females (3,000 ppm) was marginally higher than the concurrent controls but within historical control range. The NOAEL for chronic toxicity was 1,000 ppm in both sexes.

6. *Animal metabolism*. The metabolism of fludioxonil in rats is adequately understood.

7. *Metabolite toxicology*. The residues of concern for tolerance setting purposes is the parent compound. Consequently, there is no additional concern for toxicity of metabolites.

8. *Endocrine disruption*. Fludioxonil does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short- and long-term studies conducted with various mammalian species.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For purposes of assessing the potential dietary exposure under the proposed tolerance, Novartis has estimated aggregate exposure based on a Tier I assessment from the proposed tolerance level of 2.0 ppm in or on stone fruit and strawberry and 8.0 ppm in or on bulb vegetables including in these petitions, a pending 1.0 ppm grape tolerance, and all the currently established fludioxonil tolerances. This is deemed a worse case estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are proposed or established are treated except for strawberry and bulb vegetables where 50% and 28% market share estimates were utilized. Further, it was assumed that pesticide residues are present at the tolerance levels.

ii. *Drinking water*. Exposure of the general population to residues of fludioxonil from drinking water is considered unlikely since field dissipation studies demonstrate the movement of fludioxonil into ground water does not occur. In addition, EPA has not established a maximum contaminant level for residues of fludioxonil in drinking water.

2. *Non-dietary exposure*. Non-occupational exposure for fludioxonil has not been calculated since the current registration for fludioxonil is limited to commercial crop production. Since the chemical is not used in or around the home, Novartis considers the potential for non-occupational exposure to the general population to be non-existent.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since Novartis is unaware of any reliable information that indicates that toxic effects produced by fludioxonil would be cumulative with those of any other chemical compounds. Consequently, Novartis is considering the potential risks of only fludioxonil in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*—i. *Acute risk*. The risk from acute dietary exposure to fludioxonil is considered to be very low. Using an acute reference dose (RfD) of 0.1 mg/kg taken from the maternal toxicology NOAEL from a rabbit teratology study and a 100 fold safety factor and highly conservative exposure assumptions, 43.4% of the aRfD is utilized for the general U.S. population.

ii. *Chronic risk*. Based on the available chronic toxicity data, EPA has set the RfD for fludioxonil at 0.03 mg/kg/day. This RfD is based on a 1–year feeding study in dogs with a NOAEL of 3.3 mg/kg/day (100 ppm) and an uncertainty factor of 100. No additional uncertainty factor was judged to be necessary as body weight was the most sensitive indicator of toxicity in that study. Based on the highly conservative exposure assumptions described above, only 7.5% of the RfD will be utilized by the U.S. general population. Therefore,

based on the completeness and reliability of the toxicity data supporting these petitions, there is a reasonable certainty that no harm will result from aggregate exposure to residues of fludioxonil as a result of these requested tolerances.

2. *Infants and children*. Infants and children are not expected to show any particular sensitivity to fludioxonil. This can be demonstrated by referencing several data points, including the equivalence of the maternal and fetal toxicity NOAEL in the fludioxonil 2–generation rat study.

i. *Acute risk*. The risk from acute dietary exposure to fludioxonil is considered to be very low. Under the highly conservative exposure assumptions of residue levels being at tolerance level and 100% market share for the majority of crops with proposed and established fludioxonil registrations, the utilization of the acute RfD of the most exposed group is 83.4% (children, 1–6 years).

ii. *Chronic risk*. Using highly conservative aggregate exposures 23.0% and 19.2% of the RfD were obtained for the most sensitive sub-populations, non-nursing infants (< 1–year old) and children (1–6 years), respectively. Therefore, a reasonable certainty exists that no harm will result from aggregate exposure to fludioxonil if the proposed uses are registered.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fludioxonil in or on strawberrry, dry bulb onion, green onion, and stone fruit crop fruit.

[FR Doc. 00–7740 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

PF–919; FRL–6493–8

Notice of Filing Pesticide Petitions To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–919, must be received on or before April 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–919 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address	Petition number(s)
Mary Waller (PM 21)	Rm. 249, CM #2, 703-308-9354, e-mail:waller.mary@epamail.epa.gov	1921 Jefferson Davis Hwy, Arlington, VA	PP 9F3727
Joe Travano (PM 10)	Rm. 214, CM #2, 703–305–6411, e-mail: travano.joe@epamail.epa.gov.	Do.	PP 0F6069

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *In person*. The Agency has established an official record for this action under docket control number PF–919. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

imperative that you identify docket control number PF–919 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–919. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. McLaughlin Gormley King Company

0F6069

EPA has received a pesticide petition (0F6069) from McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427-4372 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pyriproxyfen in or on food products in food handling establishments at 0.1 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Radiocarbon plant and animal metabolism studies have been conducted with pyriproxyfen. These studies demonstrate that the nature of the residues in these matrices is primarily pyriproxyfen.

2. *Analytical method*. An analytical method is available to detect residues of pyriproxyfen in or on food commodities. Pyriproxyfen can be extracted from samples and analyzed by high performance liquid chromotography (HPLC), or nitrogen phosphorous/gas liquid chromotography (NP-GLC). The HPLC method has been validated by an independent laboratory.

3. *Magnitude of residues*. Studies were conducted to determine levels of residues resulting from the application of Nylar to representative food commodities in simulated feed and/or food processing and simulated warehouse situations. The representative foods were potatoes, loaves of bread, flour, lettuce, meat, candy, butter, banana cream pies, navy beans, Spanish peanuts, dried prunes, and granulated sugar. No significant residues were found in covered samples; however, residues were detectable in uncovered samples and samples with permeable wrapping.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of technical grade pyriproxyfen is low by all routes. The compound is classified as Category III for acute dermal and

inhalation toxicity, and Category IV for acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicity*. Pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for mutagenicity: Ames assay with and without S9, *in vitro* unscheduled DNA synthesis (UDS) in HeLa S3 cells, *in vitro* gene mutation in V79 Chinese hamster cells (CHO), and *in vitro* chromosomal aberration with and without S9 in CHO cells.

3. *Reproductive and developmental toxicity*. Pyriproxyfen is not a developmental or reproductive toxicant. Developmental toxicity studies have been performed in rats and rabbits, and multi-generational effects on reproduction were tested in rats. These studies have been reviewed and found to be acceptable to the Agency.

In the developmental toxicity study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 milligrams/kilograms bodyweight/day (mg/kg bwt/day) during gestation days 7-17. Maternal toxicity (mortality, decreased body weight gain and food consumption, and clinical signs of toxicity) was observed at doses of 300 mg/kg bwt/day and greater. The maternal no observed adverse effect level (NOAEL) was 100 mg/kg bwt/day. A transient increase in skeletal variations was observed in rat fetuses from females exposed to 300 mg/kg bwt/day and greater. These effects were not present in animals examined at the end of the postnatal period, therefore, the NOAEL for prenatal developmental toxicity was 100 mg/kg bwt/day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg bwt/day. The NOAEL for postnatal developmental toxicity was 300 mg/kg bwt/day.

In the developmental toxicity study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg bwt/day during gestation days 6-18. Maternal toxicity (clinical signs of toxicity including one death, decreased body weight gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg bwt/day or higher. The maternal NOAEL was 100 mg/kg bwt/day. No developmental effects were observed in the rabbit fetuses. The NOAEL for developmental toxicity in rabbits was > 1,000 mg/kg bwt/day.

In the rat reproduction study, pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through 2 generations of rats. Adult systemic toxicity (reduced body weights, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg bwt/day in males, 498 mg/kg bwt/day in females) during the pre-mating period. The systemic NOAEL was 1,000 ppm (87 mg/kg bwt/day in males, 96 mg/kg bwt/day in females). No effects on reproduction were produced at 5,000 ppm, the highest dose tested (HDT).

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weight gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit; altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, a decrease in survival rates. The NOAELs from these studies were 400 ppm (23.5 mg/kg bwt/day for males, 27.7 mg/kg bw/day for females) in rats, 1,000 ppm (149.4 mg/kg bwt/day for males, 196.5 mg/kg bwt/day for females) in mice, and 100 mg/kg bwt/day in dogs.

In a 4-week inhalation study of pyriproxyfen technical in rats, decreased body weight and increased water consumption were observed at 1,000 mg/m^3. The NOAEL in this study was 482 mg/m^3.

A 21-day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg bwt/day, the HDT.

5. *Chronic toxicity*. Pyriproxyfen technical has been tested in chronic studies with dogs, rats and mice. EPA has established a reference dose (RfD) for pyriproxyfen of 0.35 mg/kg bwt/day, based on the NOAEL in female rats from the 2-year chronic/oncogenicity study. Effects cited by EPA in the RfD tracking report include negative trend in mean red blood cell volume, increased hepatocyte cytoplasm and cytoplasm nucleus ratios, and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen have shown that repeated high dose exposures produced changes in the liver, kidney, and red blood cells, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2-year chronic feeding/oncogenicity study or in a 78-week study on mice. The oncogenicity classification of pyriproxyfen is ''E'' (no evidence of carcinogenicity for humans).

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300, and 1,000 mg/kg bwt/day for 1-year. Dogs exposed to dose levels of 300 mg/kg bwt/day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOAEL in this study was 100 mg/kg bwt/day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600, and 3,000 ppm in diet for 78 weeks. The NOAEL for systemic effects in this study was 600 ppm (84 mg/kg bwt/day in males, 109.5 mg/kg bwt/day in females), and a lowest observed adverse effect level (LOAEL) of 3,000 ppm (420 mg/kg bwt/day in males, 547 mg/kg bwt/day in females) was established based on an increase in kidney lesions.

In a 2-year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOAEL for systemic effects in this study was 600 ppm (27.31 mg/kg bwt/day in males, 35.1 mg/kg bwt/day in females). A LOAEL of 3,000 ppm (138 mg/kg bwt/day in males, 182.7 mg/kg bwt/day in females) was established based on a depression in body weight gain in females.

6. *Animal metabolism*. The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg bwt (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg bwt (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg bwt of unlabeled material. For all dose groups, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days after radiolabeled test material dosing, and 92–98% of the administered dose was excreted within 7 days. Seven days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radiocarbon concentrations in fat were higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

7. *Metabolite toxicology*. Metabolism studies of pyriproxyfen in rats, goats, and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days of dosing, and 92–98% of the administered dose was excreted within 7 days. Tissue residues were low 7 days

after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potential for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the MTD and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity (Ames) and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micrograms per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertant colonies in any of the test strains. Positive control chemicals showed marked increases in revertant colonies. The acute toxicity to mice of 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral LD_{50} values greater than 2,000 mg/kg bwt. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male) and 166 (female) mg/kg bwt, and 1,105 (male) and 1,000 (female) mg/kg/bwt, respectively.

8. *Endocrine disruption*. Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and some other arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects, and no pathology of the endocrine organs. Consequently, it is concluded that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. An evaluation of chronic dietary exposure to potential pyriproxyfen residues in all foods that may be exposed to pyriproxyfen through agricultural and food handling establishment treatments, including exposure from drinking water, was estimated for the overall U.S. population and 26 sub-populations, including infants and children.

Chronic dietary exposure was estimated using the chronic module of the DEEM™ software. Residue data used in the analysis included current and pending tolerances for agricultural crops, results from warehouse simulation studies, and processing data. The data base providing levels of food consumption was the USDA Continuing Surveys of Food Intake by Individuals conducted from 1994 through 1996. MGK provided estimated marketshare information.

Chronic dietary exposure was estimated to be 0.000550 mg/kg bwt/day, or 0.2% of the RfD. Exposure for the most highly exposed population subgroup, non-nursing infants, was calculated to be 0.002438 mg/kg bwt/day, or 0.7% of the RfD.

ii. *Drinking water*. The generic expected environmental concentration (GENEEC) modeling was used to estimate potential pyriproxyfen residues in surface water and/or ground water. The chronic drinking water estimated concentration value of 0.053 parts per billion (ppb) for pyriproxyfen was compared to the drinking water levels of concern (DWLOC) calculated for pyriproxyfen for adult males, adult females, and toddlers, that were 12,545 ppb, 10,489 ppb, and 5,229 ppb, respectively. There is reasonable certainty that no harm will result from aggregate exposure to potential pyriproxyfen residues.

2. *Non-dietary exposure*. Many products for indoor, non-food applications such as pet care products and carpet treatments containing pyriproxyfen as an active ingredient are registered with EPA. Typically, the directions for use of these products describe intermittent application, with no resulting chronic exposures. Since neither acute oral, dermal, or inhalation toxicity endpoints, nor doses and endpoints for short- and intermediate-term dermal or inhalation exposures have been identified for pyriproxyfen, the Agency has concluded that there is reasonable certainty of no harm from non-dietary exposures to pyriproxyfen.

D. Cumulative Effects

There are no other compounds that are structurally related to pyriproxyfen and have similar effects on animals. No other data are available that indicate that any toxicological effects produced by pyriproxyfen would be cumulative with those of any other compound, so only the potential risks of pyriproxyfen have been considered in the risk assessment.

E. Safety Determination

1. *U.S. population*. Based on the estimated aggregate exposures to residues of pyriproxyfen from food and drinking water, and the reliable toxicology data base, the chronic exposure to pyriproxyfen for the overall U.S. population is 0.000550 mg/kg bwt/day, representing only 0.2% of the RfD. EPA has no concerns about exposure which are less than 100% of the RfD as the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is therefore, safe to conclude that there is reasonable certainty that no harm to the overall U.S. population will result from chronic exposure to pyriproxyfen residues.

2. *Infants and children*. EPA has the right to apply an additional margin of safety, up to ten-fold, for the protection of infants and children due to their additional sensitivities, unless EPA can determine that a different margin of safety will adequately protect them. Rat and rabbit developmental toxicity studies and the 2–generation reproductive toxicity study in rats demonstrated that no special prenatal or postnatal toxicity concerns apply for exposure to pyriproxyfen. Therefore, an additional uncertainty factor does not need to be added for the safety determination of pyriproxyfen.

Based on the estimated aggregate exposures to residues of pyriproxyfen from food and drinking water, and the reliable toxicology data base, the chronic exposure to pyriproxyfen for infants and children ranged from 0.000739 mg/kg bwt/day for children 7–12 years old, representing 0.2% of the RfD, to 0.002438 mg/kg bwt/day for non-nursing infants < 1–year old, representing 0.7% if the RfD. It is safe to conclude that there is reasonable certainty that no harm to any subgroup of children will result from chronic exposure to pyriproxyfen residues.

F. International Tolerances

No Codex MRLs presently exist for pyriproxyfen, although they may be established in the future.

2. Uniroyal Chemical Company, Inc.

9F3727

EPA has received a pesticide petition (9F3727) from Uniroyal Chemical Company Inc., 74 Amity Rd, Bethany, CT proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by

establishing a tolerance for residues of carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its sulfoxide metabolite (5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide) in or on the RAC onions (dry bulb) at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of carboxin in plants is adequately understood. The major metabolites in all commodities of wheat were carboxin sulfoxide and sulfone. Metabolites in cotton seeds were at too low a level to be identified. The metabolism of carboxin in soybeans is characterized by the oxidation of sulfur (present as sulfoxides and sulfones), cleavage of the oxathiin ring, and conjugation with glucose.

2. *Analytical method*. The analytical method employed for analysis of residues of carboxin in the onions from the trials described below used a caustic reducing medium to hydrolyze extracted residues of carboxin and its sulfoxide metabolite to liberate aniline, which is distilled and concentrated. The aniline is analyzed with a gas chromatograph equipped with a microcoulometric nitrogen detector. The limit of detection by this method is 0.1 ppm. The current method for the analysis of residues of carboxin in animal tissues, milk and eggs employs alkaline hydrolysis with the liberated aniline derivatized with heptafluorobutyric anhydride. Analysis is by gas chromatography of the derivatized aniline, with mass selective detection (GC/MSD). Thus the sensivity of the method limit of quantitation (LOQ) in all tissue was 0.02 ppm, and the precision of the method as indicated by the coefficient of variation (COV) was 1.9%.

3. *Magnitude of residues*. Uniroyal Chemical Company has submitted data to determine residues of carboxin in mature onions grown from seed, which was treated prior to planting with PRO-GRO. Nine trials were conducted in the following States; Michigan (3), Oregon (2), Washington (1), New York (2), Illinois (1), and one trial was conducted in Ontario, Canada. At each trial site onion seed, which had been treated with 2.5 lbs. PRO-GRO containing 0.75 lbs. active ingredient per 100 lbs. seed (1x the label rate), was planted and onions were grown to maturity. Mature onions, depending upon variety, were harvested from 118 days to 197 days after treatment. Residues of carboxin, and its sulfoxide metabolite, both quantitated as carboxin, were as follows. Seventeen of 18 onion samples grown from seed treated at the 1x rate had residues of total carboxin less than the limit of detection of 0.1 ppm. One sample had a total carboxin residue value of 0.1 ppm. One onion sample grown from seed which had been treated with PRO-GRO at 2x the label rate had no carboxin residues above the 0.1 ppm limit of detection. The submitted field trial data indicate that residues of carboxin will not exceed the proposed tolerance of 0.2 ppm in mature onions grown from seed which had been treated with PRO-GRO at the label rate.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicity studies on carboxin demonstrate that the oral and dermal LD_{50} values for the technical material are 2.86 and > 4.0 g/kg, respectively. The 4-hour inhalation LC_{50} in rats is 4.7 milligrams/Liter (mg/L). Irritation tests in rabbits showed carboxin to be a mild eye irritant and non-irritating to the skin. Carboxin did not cause skin sensitization in studies with guinea pigs.

2. *Genotoxicity*. Bacterial/mammalian microsomal mutagenicity assays were performed and carboxin was found not to be mutagenic. Two chromosomal aberration assays were conducted, in CHO cells and in mouse bone marrow *in vivo*, and were also negative. A study was performed in rat hepatocytes and demonstated the induction of UDS.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study in rats conducted in 1989, carboxin was administered by oral gavage to pregnant, Sprague Dawley rats at dosage levels of 10, 90, and 175 mg/kg/day. Decreased maternal body weight gain was seen at dose levels of 90 and 175 mg/kg/day. The report states that there was a slightly reduced mean fetal body weight in the high dose group compared to controls (3.3 g vs. 3.5 g). However, a recent evaluation of 59 studies of the historical control data in the final report shows that between 10/83 and 4/87, the range for fetal weight was 3.1 g to 5.1 g. Therefore, a mean fetal weight of 3.3 g in the 175 mg/kg/day group is within the historical control range. Maternal toxicity was also noted at this dosage level. Therefore, the NOAEL for developmental toxicity is greater than 175 mg/kg/day and the NOAEL for maternal toxicity, based on decreased body weight gain, is 10 mg/kg/day.

In a developmental toxicity study in rabbits, carboxin was administered by oral gavage to pregnant White rabbits at dosage levels of 75, 375, and 750 mg/kg/day. There were no treatment related effects at any dose level with the exception of three abortions in the high dose group and one abortion in the mid dose group. An evaluation of historical control data from 28 studies conducted at that time shows abortion rates of 3/17, and 5/16 in two studies, as well as a number of studies in which there were one or two abortions each. Therefore, considering that there was no maternal toxicity at dose levels of 375 or 750 mg/kg/day of carboxin, it would have to be concluded that the 1/16 and 3/16 abortions seen in the mid and high dose groups were spontaneous. The NOAEL for maternal and developmental toxicity was considered to be greater than 750 mg/kg/day.

In a dietary 2-generation rat reproduction study, carboxin was fed to male and female Sprague Dawley rats at dietary concentrations of 20, 200, and 400 ppm in males, and 20, 300 and 600 ppm in females. At the high dose level there was a decrease in body weight gain in parental males and females and a reduction in pup growth during lactation. No effects on reproduction were observed. The NOAEL for systemic, adult toxicity was 200 ppm (10 mg/kg/day). The NOAEL for offspring growth was 300 ppm (15 mg/kg/day) and the NOAEL for reproductive effects was greater than 400 ppm (20 mg/kg/day).

4. *Subchronic toxicity*. A 13-week rat feeding study was conducted at dietary concentrations of 200, 800, and 2,000 ppm. A reduction in body weight gain was seen in males at 800, and 2,000 ppm, and in females at 2,000 ppm. A reduction in blood levels of glucose, protein and/or globulin was seen in males at 800, and/or 2,000 ppm, and an increase in urea nitrogen was seen in females at 2,000 ppm. Nephritis was seen in males and females given 800 and 2,000 ppm and in males given 200 ppm. The NOAEL for subchronic toxicity in rats was 200 ppm (10 mg/kg/day) in females and less than 200 ppm in males.

5. *Chronic toxicity*. Carboxin was fed to Beagle dogs for 1–year at dietary concentrations of 40, 500 and 7,500 ppm. There was a reduction in body weight gain in female dogs at dose levels of 500 and 7,500 ppm. At a dose level of 7,500 ppm, there was a decreased hematocrit in males and an increase in serum alkaline phosphatase

in males and females. The NOAEL for chronic toxicity was 1 mg/kg/day.

Carboxin was fed to Sprague Dawley rats for 2 years at dietary concentrations of 20, 200, and 400 ppm in males, and 20, 300, and 600 ppm in females in a study completed in 1991. Survival was reduced in high dose males and body weight gain was significantly reduced in high dose males and females. Chronic nephritis was seen in mid and high dose rats, and this effect was more severe in males. There was no treatment related increase in tumor incidence in rats. The NOAEL for chronic toxicity was 1 mg/kg/day.

Carboxin was fed to B6C3F1 mice for 18 months at dietary concentrations of 50, 2,500, and 5,000 ppm. At dosage levels of 2,500, and 5,000 ppm there was in increased incidence of liver hypertrophy. There was no treatment related increase in tumor incidence.

6. *Animal metabolism*. In the rat metabolism study, the percentage of dose did not exceed 0.21% in any tissue and the total percentage of dose in all tissues was 0.26-0.40%. The majority of the dose was excreted in the urine (about 80% within 72 hours). The predominant metabolite was *p*-hydroxy carboxin sulfoxide and the other major metabolite was 4-acetamidophenol. Unchanged carboxin was not detected in the excreta.

7. *Metabolite toxicology*. Although no toxicology studies have been conducted on carboxin metabolites per se, none of these would be expected to have significant toxicity. The residue of concern is the parent compound only.

8. *Endocrine disruption*. No specific studies have been conducted to evaluate potential estrogenic or endocrine effects; however, the standard battery of required studies has not demonstrated any evidence which is suggestive of hormonal effects. Evaluation of the rat multigenerational study demonstrated no effect on the time to mating or on the mating and fertility indices. Chronic and subchronic toxicity studies in rats and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract or to any endocrine organ associated with endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure*. The potential dietary exposure from food was assessed using the conservative assumptions that all residues would be at tolerance levels (existing tolerances and the proposed onion tolerance) and that all the commodities would contain residues (100% crop treated). Since onions are not a livestock feed item, the existing tolerances for animal commodities would be adequate.

i. *Food*. The dietary exposure estimate was determined using the tolerance assessment system (TAS) exposure 1® software (1977 food consumption data). The chronic RfD used in the analysis was 0.01 mg/kg/day, based on the NOAEL of 1 mg/kg/day in the rat and dog chronic studies and a 100-fold safety factor. The calculated exposure contribution from carboxin use on onions to the general population was 0.000021 mg/kg/day, 0.21% of the RfD. Infant exposure was 0.000008 mg/kg/day, < 0.1% of the RfD. For the population subgroup children 1–6, the exposure contribution from carboxin was 0.000036 mg/kg/day, 0.36% of the RfD. Total estimated dietary exposure to the general population from the combined existing carboxin uses and the proposed use on onions was determined as 0.001037 mg/kg/day (10.4% of the RfD). For infants and children, the exposure was 0.002444 mg/kg/day (24.4% of the RfD) and 0.002245 mg/kg/day (22.4% of the RfD), respectively.

ii. *Drinking water*. There are no established MCLs for residues of carboxin in drinking water. Health advisory (HA) levels for carboxin in drinking water for adults are 4 and 0.7 mg/L (longer term and life time HA levels respectively) and 1 day, 10 day, and longer term HA levels are all 1 mg/L for children. Seed treatment uses do not typically require a drinking water assessment. Use of carboxin as a seed treatment (at an application rate of < one half ounce active ingredient per acre) is not expected to impact ground water or surface waters or result in significant human exposure. The estimated acute and chronic DWLOC were compared to estimated maximum acute and chronic concentrations of carboxin in surface and ground water from the proposed onion use, as calculated using GENEEC and screning concentration in ground water (SCI-GRO) models. These maximum estimates were well below the DWLOC values by 2-6 orders of magnitude, indicating carboxin would not pose a drinking water concern.

2. *Non-dietary exposure*. Carboxin is registered only for commercial agricultural use, and not for homeowner use. Therefore, non-occupational exposure to the general population from carboxin is unlikely, and is not considered in the aggregate exposure assessments.

D. Cumulative Effects

The potential for cumulative effects of carboxin and other substances that have a common mechanism was considered. The mammalian toxicity of carboxin is well defined, with the kidney being identified as target organ. However, since the biochemical mechanism of toxicity of this compound is not known, it cannot be determined if toxic effects produced by carboxin would be cumulative with any other chemical compound. Thus, only the potential risk of carboxin is considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Exposure to carboxin would occur primarily from the dietary route. Maximum theoretical levels of carboxin in drinking water were well below drinking water levels of concern for adults and children. Non-occupational exposure to the general population is not expected. Because calculation of the dietary exposure used tolerance levels for all crops and animal commodities and assumed 100% of the crop was treated, the exposure values are considered to be overestimates. Consideration of anticipated residues and actual percent crop treated would likely result in a significantly lower dietary exposure.

Chronic dietary exposure to the general U.S. population from existing uses and the proposed onion use of carboxin was 10.4% of the RfD. For infants and children, the exposure was 24.4% and 22.4% of the RfD, respectively. Therefore, there is a reasonable certainty that no harm will result from dietary exposure to carboxin residues.

2. *Infants and children*. The potential for carboxin to induce toxic effects in children at a greater sensitivity than the general population has been assessed by the rat and rabbit developmental and 2–generation reproduction studies. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters as a result of carboxin exposure. The lowest NOAEL for any developmental effect in these studies (15 mg/kg/day reduced pup growth during lactation in the rat reproduction study) is considerably greater than the NOAEL for systemic toxicity in rats (1 mg/kg/day for nephritis in the rat chronic feeding study) which demonstrates that there is no prenatal or postnatal sensitivity to carboxin. Therefore, it is inappropriate to assume that infants and children are more sensitive than the general population to the effects from exposure to carboxin residues.

F. International Tolerances

A MRL has not been established for carboxin by the Codex Alimentarius Commission.

[FR Doc. 00–7231 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00629; FRL–6499–9]

Indoor Residential Insecticide Product Label Statements; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of a draft Pesticide Registration (PR) Notice that is part of EPA's continuing effort to reduce unnecessary exposures of human and pets to insecticides used in residential settings and to improve the safety of their use. The draft PR Notice is a guidance document, the intent of which is to clarify certain portions of residential insecticide product labels. In addition to helping reduce unnecessary exposure, the proposed label modification will help provide the Agency with additional methods of estimating residential exposure to pesticides as is mandated by the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA), August 3, 1996. Please note that the guidance in the draft PR Notice should not be viewed as a substitution for the policies required when completing residential risk assessments.

DATES: Comments, identified by docket control number OPP–00629, must be received on or before May 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00629 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mark Dow or Tracy Keigwin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (703) 305–5533 and (703) 305–6605 respectively; fax number: (703) 305–6596; e-mail addresses: dow.mark@epa.gov; keigwin.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to state regulatory agencies, medical personnel, pesticide registrants. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *Fax on Demand.* You may request to receive a faxed copy of the draft PR Notice titled ''Indoor Residential Insecticide Product Label Statements'' by using a faxphone to call (202) 401–0527 and selecting item 6121. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00629. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00629 in the subject line on the first page of your response.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person.* Deliver written comments to: Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00629. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified

under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is providing a draft guidance document, for public comment, proposed for use by pesticide registrants so that labels for residential insecticide products may be modified to help reduce unnecessary exposure, and to help provide the Agency with additional means with which to assess human and pet exposure to residential insecticide products.

List of Subjects

Environmental protection.

Dated: March 16, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–7630 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00648; FRL–6498–2]

List of Pests of Significant Public Health Importance; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a draft Pesticide Registration (PR) Notice that identifies pests of significant public health importance for the purpose of regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA, in coordination with the Department of Health and Human Services and the Department of Agriculture has identified pests of significant public health importance. The development of the list is required by FIFRA, but has no effect on the regulatory status of pesticide products used against the listed pests.

DATES: Written comments, identified by the docket control number OPP–00648, must be received on or before May 30, 2000.

ADDRESSES: Comments may be submitted by regular mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kevin Sweeney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 305–5063, fax: (703) 305–6596, e-mail: sweeney.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Apply to Me?

This action is directed to the public in general, but may be of particular interest to manufacturers of pesticides intended for use against public health pests, and those responsible for public health programs involved in the control or regulation of public health pests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice being made available today. If you have any questions regarding the applicability of the notice to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

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

2. *Fax on Demand*. You may request to receive a faxed copy of the draft PR Notice titled ''List of Pests of Significant Public Health Importance'' by using a faxphone to call (202) 401–0527 and selecting item 6125. You may also follow the automated menu.

3. *In person*. The official record for this notice, as well as the public version, has been established under docket control number OPP–00648, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically:

1. *By mail*. Submit written comments to: ''Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person*. Deliver written comments to: Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically*. Submit your comments and/or data electronically to opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00648. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle Information that I Believe is Confidential?

You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information

so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

II. Background

FIFRA section 28(d) charges EPA with identifying ''pests of significant public health importance.'' This process is aided considerably by FIFRA definitions of two key terms. First, FIFRA section 2 expressly defines the term ''pest'' as meaning:

(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

EPA in its regulations in 40 CFR 152.5 has broadly defined the term pest to cover each of the organisms mentioned except with respect to the organisms specifically excluded by the definition.

Second, although FIFRA does not define a ''public health pest,'' it does define a ''public health pesticide'' and this definition supplies important information for interpreting the term ''public health pest.'' Among other things, a ''public health pesticide'' must be used for ''vector control or for other recognized health protection uses, including the mitigation of viruses, bacteria, or other microorganisms (other than viruses, bacteria, or other microorganisms on or in living man or other living animal) that pose a threat to public health.'' FIFRA section 2(oo) defines the term ''vector'' used in the above definition as ''any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, or other insects and ticks, mites, or rats.''

Moreover EPA's task of identifying pests of ''significant'' public health importance requires EPA to identify those FIFRA pests that are significant vectors or other significant pests affecting public health. The statute does not define what aspects of a vector render it of significant public health importance. Nonetheless, the definition of a ''public health pesticide'' identifies an important criterion for establishing the significance of a vector. Not only must a public health pesticide be a pesticide used for vector control, it must be a pesticide ''used predominantly in public health programs.'' EPA believes that significant vectors can be identified by determining which vectors have been deemed sufficiently important that federal, state, or local public entities have devoted substantial resources to their eradication. Using this criterion, EPA has identified the pests in Appendix A of the draft PR Notice.

III. Use of the List of Pests of Significant Public Health Importance by the Agency

The Agency will use the list of pests of significant public health importance to:

1. Identify pesticide products with public health uses that are used predominantly in recognized public health programs. These may include pesticides to control, attract or repel these pests.

2. Identify critical public health minor uses.

3. Together with the Public Health Service, develop and implement programs to improve and facilitate the safe and necessary use of chemical, biological and other methods to control pests of significant public health importance.

IV. Specific Topics for Comment

Please comment on all aspects of the draft PR Notice. The Agency is particularly looking for comments to the following questions:

1. Should EPA also publish a list of public health pests which may become significant? This would be equivalent to identifying the universe of public health pests.

2. Is cockroach control in publicly funded housing a public health program *per se*, or is it merely a component of a building maintenance program?

3. Should the use of public funds for the purpose of controlling public health pests by pesticide application be the criterion for identifying a public health program?

4. For a pesticide product to qualify as predominantly used in a public health program, should more than half of the use of the pesticide product, taking into account all registered uses for the pesticide product, be used in a public health program?

V. Contents of Docket

The document referenced in this notice will be placed in the public docket under the docket control number ''OPP–00648.''

List of Subjects

Environmental protection, Public health pests, Public health pesticides.

Dated: March 22, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–7631 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 28, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Auditor's Annual Independence and Objectivity Certification.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 7 respondents; 14 responses.

Estimated Time Per Response: 10 hours per response; filed twice annually.

Frequency of Response: On occasion reporting requirement and annual reporting requirement.

Total Annual Burden: 70 hours.

Total Annual Cost: N/A.

Needs and Uses: In the Responsible Accounting Officer (RAO) letter, the Accounting Safeguards Division (ASD), Common Carrier Bureau, is simply making a current GAAS (generally accepted auditing standards) requirement for financial statement audits explicitly applicable to the Section 64.904 audit, *i.e.,* applying the section 64.904 requirement that the audits be performed in accordance with GAAS. Specifically, the RAO requires that carriers' independent auditors: (a) disclose to the ASD, in writing, all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgement may reasonably be thought to bear on independence; (b) confirm in writing to ASD that in its professional judgement, it is independent of the carrier, and (c) discuss the auditor's independence with ASD.

The above requirements will be used by ASD to determine whether the independent auditors are performing their audits independently and unbiased of the carrier they audit.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7705 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 30, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.

Agency form numbers: FR 2018.

OMB control number: 7100–0058.

Frequency: Up to six times per year.

Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks.

Annual reporting hours: 1,008.

Estimated average hours per response: 2.0.

Number of respondents: 84.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2018 is conducted with a senior loan officer at each respondent bank, generally by means of a telephone interview, up to six times a year. The interview is administered by a Reserve Bank officer having in-depth knowledge of bank lending practices. The reporting panel consists of sixty large domestically chartered commercial

banks, distributed as evenly as possible across Federal Reserve Districts, and twenty-four large U.S. branches and agencies of foreign banks. The purpose of the survey is to provide primarily qualitative information pertaining not only to current price and flow developments but also to evolving techniques and practices in the U.S. banking sector. A significant fraction of the questions in each survey consists of unique questions on topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or corporations) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally.

2. *Report title:* Senior Financial Officer Survey.

Agency form number: FR 2023.

OMB control number: 7100–0223.

Frequency: Up to four times per year.

Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders.

Annual reporting hours: 240.

Estimated average hours per response: 1.0.

Number of respondents: 60.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a), and 263); confidentiality will be determined on a case-by-case basis.

Abstract: The FR 2023 requests qualitative and limited quantitative information about liability management and the provision of financial services from a selection of sixty large commercial banks or, if appropriate, from other depository institutions or corporations. Responses are obtained from a senior officer at each participating institution through a telephone interview conducted by Reserve Bank or Board staff. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest.

3. *Report title:* Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB control number: 7100–0086.

Frequency: Quarterly.

Reporters: Edge and agreement corporations.

Annual reporting hours: 3,566.

Estimated average hours per response: 14.7 banking corporations, 8.5 investment corporations.

Number of respondents: 30 banking corporations, 53 investment corporations.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 602 and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects a balance sheet, income statement, and ten supporting schedules from banking Edge corporations and investment (nonbanking) Edge corporations. Information collected on the FR 2886b is used by the Federal Reserve to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

The Federal Reserve proposes to make several clarifying updates to the reporting instructions to reflect the implementation of FASB Statement No. 133, ''Accounting for Derivative Instruments and Hedging Activities,'' to address the reporting of inactive corporations, and to clarify the reporting of certain International Banking Facility transactions.

Proposal To Approve under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report:

1. *Report title:* Report of Repurchase Agreements (RPs) on U.S. Government and Federal Agency Securities with Specified Holders.

Agency form number: FR 2415.

OMB control number: 7100–0074.

Frequency: Weekly, quarterly, or annually.

Reporters: U.S.-chartered commercial banks, U.S. branches and agencies of foreign banks, and thrift institutions.

Annual reporting hours: 2,754.

Estimated average hours per response: 0.5.

Number of respondents: 84 weekly, 153 quarterly, and 528 annually.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects one data item—repurchase agreements (RPs) in denominations of $100,000 or more, in immediately-available funds, on U.S. government and federal agency securities, transacted with specified holders. It is filed by three reporting panels of depository institutions with different reporting frequencies (weekly, quarterly, and annual). The weekly panel reports daily data once each week. The quarterly panel files daily data for four one-week reporting periods that contain quarter-end dates. The annual panel reports daily data only for the week encompassing June 30 each year. Data from the FR 2415 supply information necessary for construction of the M3 monetary aggregate.

Current Actions: The Federal Reserve proposes two changes to this report: (1) to raise the thresholds for re-screening existing respondents on two of the three reporting panels (weekly and quarterly) and (2) to adjust the cutoff for screening thrift institutions that do not file the FR 2415 to accommodate a definition change on the report of condition for thrift institutions. The Federal Reserve estimates the proposed revision would decrease the annual reporting burden by 314 hours and annual respondent costs by approximately $6,280.

Board of Governors of the Federal Reserve System, March 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7689 Filed 3–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EDT); April 10, 2000.

PLACE: 4th Floor, Conference Room 4506, 1250 H. Street, N.W. Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 13, 2000, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 27, 2000.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 00–7862 Filed 3–27–00; 2:45 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is cancelled because of low usage: OF 68, Record of Travel Expense.

DATES: Effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: March 15, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Office.

[FR Doc. 00–7725 Filed 3–28–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Hanford Community Health Project Survey—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. These activities include conducting public health assessments at sites on the Environmental Protection Agency's (EPA) National Priorities List (NPL) to determine whether exposure to hazardous substances at these sites are harmful to human health.

The Hanford Nuclear Reservation, located in south central Washington State, is on EPA's National Priorities List. Between 1944 when it opened until its closing in 1972, an estimated 740,000 curies of radioactive Iodine were released to the air from chemical separation facilities used to produce plutonium for atomic weapons development. The Hanford Environmental Dose Reconstruction project (HEDR) estimates that the majority of releases of Iodine-131 occurred between 1944 and 1951. Radioactive Iodine accumulates in the thyroid gland. Studies indicate that exposure to radioactive Iodine is associated with an increased risk of developing thyroid cancers and other thyroid diseases. Children up to five years of age may be at higher risk than the general population of developing cancer after exposure.

The objective of this survey is to collect information on utilization of health care services, knowledge of and information needs related to radioactive Iodine releases from Hanford, health risk and exposure awareness, use of and interest in thyroid medical evaluations, and demographic information. This information will assist ATSDR staff in determining health education needs and planning effective health education activities for people exposed to radioactive Iodine and/or at risk for thyroid disease. This work may have applicability to other sites where exposure to radioactive Iodine has occurred. In previous ATSDR work (OMB No.0923–0006) approximately 6,000 people were located who were born between 1940 and 1951 in three counties (Benton, Franklin and Adams) nearest the Hanford site. For this proposed project, ATSDR plans to randomly select and complete 500 individual interviews from this cohort of 6,000 persons.

To reduce the amount of time required by the respondents, Computer Assisted Telephone Interviews (CATI) will be conducted. The information collected in this proposed survey will provide reliable baseline information for developing effective educational materials and outreach activities. Other than their time to participate, there are no costs to the respondents.

Respondents	Number of respondents per year	Number of responses per respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Individuals born near Hanford site	500	1	.25	125

Date: March 22, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7703 Filed 3–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1033]

Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank.'' The draft guidance provides recommendations for sponsors of investigational new drug applications (IND's) on submitting information about clinical trials for serious or life-threatening diseases to a clinical trials data bank developed by the National Library of Medicine (NLM) at the National Institutes of Health (NIH). Section 113 of the Food and Drug Administration Modernization Act (Modernization Act) required the establishment of this data bank and specified what information was to be submitted for it.

DATES: Submit written comments on the draft guidance by May 30, 2000. The deadline for submission of comments on the information collection requirements is May 30, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance or on the collection of information requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Theresa A. Toigo (HF–12), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460.

SUPPLEMENTARY INFORMATION:

I. Description of Guidance

FDA is announcing the availability of a draft guidance for industry entitled ''Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank.'' The draft guidance is intended to provide recommendations for sponsors of IND's on submitting information about clinical trials for serious or life-threatening diseases to a clinical trials data bank developed by the NLM, NIH.

The Modernization Act (Public Law 105–115), enacted on November 21, 1997, amends section 402 of the Public Health Service Act (the PHS Act) (42 U.S.C. 282) and directs the Secretary of Health and Human Services (the Secretary), acting through the Director of NIH, to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions (hereafter referred to as the Clinical Trials Data Bank).

The Clinical Trials Data Bank is intended to be a central resource, providing current information on clinical trials to individuals with serious or life-threatening diseases, to other members of the public, and to health care providers and researchers. Specifically, the Clinical Trials Data Bank will contain information about both federally and privately funded studies of experimental treatments for patients with serious or life-threatening diseases conducted under FDA's IND regulations (part 312 (21 CFR part 312)). This Clinical Trials Data Bank expands upon currently available information on federally-sponsored trials in various data bases within NIH (e.g., NIH Intramural Clinical Center Studies, Physician's Data Query/National Cancer Institute) and information about federally and privately sponsored human immunodeficiency virus/acquired immune deficiency syndrome HIV/AIDS trials made available through the AIDS Clinical Trials Information Service (ACTIS).

The NLM is developing the Clinical Trials Data Bank and implementing it in a phased approach. The first version of the Clinical Trials Data Bank was made available to the public on February 29, 2000. The new data base can be reached at http://clinicaltrials.gov. It includes primarily NIH-sponsored trials. Later in 2000, data from other Federal agencies and the private sector will be incorporated.

The draft guidance provides recommendations for industry on the submission of protocol information to the Clinical Trials Data Bank. It includes information on the types of clinical trials for which submissions will be required under section 113 of the Modernization Act, as well as the types of information to be submitted. An implementation plan, addressing procedural issues, will be available later in 2000. The implementation plan will include information on how to submit protocols to the Clinical Trials Data Bank, and how to provide certification to the Secretary that disclosure of information for a particular protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. It will also discuss issues related to the voluntary submission of information not required by section 113 of the Modernization Act (e.g., study results, trials for non-serious or non-life-threatening diseases). Until the implementation guidance document is available, sponsors submitting clinical trials information for inclusion in the ACTIS data bank should continue to follow procedures currently in place. Non-NIH sponsors of clinical trials for other serious or life-threatening diseases need not provide clinical trials information to the data bank until after procedures are described in the implementation plan that will be available later this year. When the procedures are issued, we will establish a timeframe for submitting the information.

In developing a plan for making publicly available information from the Clinical Trials Data Bank, FDA and NIH considered comments submitted to Docket No. 98D–0293, ''Section 113 NIH Data Bank—Clinical Trials for Serious Diseases.'' A phased approach was used for developing guidance. This first document addresses general information on the scope of the data bank. The second guidance will be on implementation and will be developed

based on the initial data bank experience using NIH-sponsored trials.

In addition to NLM's development of the Clinical Trials Data Bank, NIH will be evaluating options for making available clinical trials information through a toll-free telephone system. Further, section 113(b) of the Modernization Act directed the Secretary to submit a report to Congress to determine the public health need, if any, for inclusion of device investigations in the data bank, and the adverse impact, if any, on device innovation and research in the United States if such information is required to be publicly disclosed. A report entitled ''A Device Clinical Trials Data Bank—Public Health Need and Impact on Industry'' was sent to Congress in November 1999. The report is available on the Modernization Act guidance page at http://www.fda.gov/cdrh/modact/modguid.html.

Section 113(a) of the Modernization Act requires that sponsors of IND's submit to the Clinical Trials Data Bank a description of the purpose of each experimental drug, eligibility criteria for participation in the trial, the location of clinical trial sites, and a point of contact for those wanting to enroll in the trial. The statute requires that the information be provided in a form that can be readily understood by members of the public. This draft guidance provides information on how IND sponsors can fulfil the requirements of section 113(a) of the Modernization Act by submitting information in the following four areas: (1) Descriptive information, (2) recruitment information, (3) location and contact information, and (4) administrative information. FDA and NIH developed these data elements based on the legislative requirements and comments submitted to Docket No. 98D–0293.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on submitting information on clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the NLM. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m and 4 p.m., Monday through Friday.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank.

Description: FDA is issuing a draft guidance to industry on recommendations for IND sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the NLM, NIH. The draft guidance describes procedures for IND sponsors to submit information about clinical trials of experimental treatments for serious or life-threatening diseases. This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases.

The draft guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

A. Mandatory Submissions

Section 113 of the Modernization Act requires that sponsors ''shall'' submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease and (2) is intended to assess the effectiveness of the treatment.

The draft guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

B. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness or not for serious or life-threatening diseases to the Clinical Trials Data Bank. This notice of proposed collection only applies to the voluntary submission of information pertaining to studies that are not trials to test effectiveness or not for serious or life-threatening diseases. Any paperwork burden associated with the voluntary submission of information pertaining to the results of clinical trials will be discussed in the implementation document.

C. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product

regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the PHS Act who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under part 312, and this collection of information is approved by OMB under Control Number 0910–0014 until September 30, 2002, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Although the procedures (where and how) for the actual submission of this information have not yet been developed, the agency believes it has an adequate basis for the determination of the hourly burden related to extracting and reformatting this information. The chart below provides an estimate of the annual reporting burden for the submission of information to satisfy requirements of section 113 of the Modernization Act .

CDER is currently receiving 99.2 new protocols per week (mean value, March through May, 1999), or 5,158 new protocols per year. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 5,158 protocols per year is 3,439 new protocols per year. An estimated 65 percent of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Sixty-five percent of 3,439 protocols per year is 2,235 new protocols per year subject to mandatory reporting. The remaining 2,923 new protocols per year are subject to voluntary reporting.

CBER is currently receiving 29 new protocols per month, or 348 new protocols per year. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 348 new protocols per year is 232 new protocols per year. An estimated sixty-five percent of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Sixty-five percent of 232 protocols per year is an estimated 151 new protocols per year subject to the mandatory reporting requirements under section 113. The remaining 197 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 2,235 for CDER plus 151 for CBER, or 2,386 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (5,506) minus the protocols subject to mandatory reporting requirements (2,386) will be subject to voluntary reporting, or 3,120 protocols.

It is anticipated that original protocol submissions to the data bank will be updated 2.5 times each (mean value, based on an average of 1.5 updates for protocol changes or addition of investigational sites, plus one update regarding completion of recruitment for the protocol), for a total of 13,765 responses (5,965 mandatory responses and 7,801 voluntary responses) per year under section 113 of the Modernization Act.

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing IND's, and consideration of the above information, FDA estimates that approximately 5.6 hours on average would be needed per response (mean value), based on an estimated 3.2 hours for data extraction and 2.4 hours for reformatting. Expenditure of 5.6 hours per submission, for 13,765 submissions, results in a total of 77,084 hours spent per year by respondents in response to section 113(a) of the Modernization Act (33,404 hours for mandatory responses and 43,680 hours for voluntary responses).

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. However, it is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 of this document reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Submissions	Number of CDER Respondents	Number of CBER Respondents	Total Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Total mandatory submissions	2,235	151	2,386	2.5	5,965	5.6	33,404
Total voluntary submissions	2,923	197	3,120	2.5	7,800	5.6	43,680
Total	5,158	348	5,506	2.5	13,765	5.6	77,084

[1]There are no capital costs associated with this collection of information.

Dated: March 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7654 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 65 FR 12021–4, dated March 7, 2000).

This notice reflects the organizational and functional changes in the Bureau of Primary Health Care, Division of Program for Special Populations (RCA).

Delete the functional statement for the Division of Program for Special Populations in its entirety and replace with the following: This Division researches issues and develops program plans which identify and address the health care needs of special population groups. Specifically the Division: (1) Develops and implements health care policies and programs for homeless people, substance abusers, the elderly, residents of public housing, at-risk children and youth, Native Hawaiians, Asian Americans and Pacific Islanders, people living with Black Lung Disease, people with mental health disorders, immigrant populations and people living with the threat of lower extremity amputation; (2) coordinates the identification of issues and establishes Agency/Bureau priorities with other Department/ Agency/Bureau programs; (3) directs nationwide efforts to coordinate health care needs of special populations and stimulates State and local assistance in meeting needs; (4) provides guidance and direction in the development of health care partnerships and networks and coordinates management plans with field offices, other Federal programs, State and private organizations and foundations; (5) develops guidance materials and implements plans to assure attainment of measurable outcomes and desired results; (6) coordinates health needs of special populations with other Agency and Bureau programs, ensuring that funds are allocated according to Agency/Bureau priorities and legislative intent; (7) develops and conducts evaluations of service delivery programs for special populations preparing analytic reports and recommendations for increasing scope, effectiveness and efficiency; (8) administers the budget and related grant awards, contracts, and cooperative agreements; and (9) provides leadership and technical guidance in the development and expansion of community-based systems of care that increase access for all and reduce disparities for special populations.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: March 21, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–7656 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved Information Collection (OMB Control Number 1010–0095).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before April 28, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0095), 725 17th Street, NW, Washington, DC 20503. Copies of these comments should also be sent to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, PO Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

Public Comment Procedure: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Request to Exceed Regulatory Allowance Limitation, Form MMS–4393, OMB Control Number 1010–0095, and your name and return address in your

Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: Request to Exceed Regulatory Allowance Limitation.

OMB Control Number: 1010–0095.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

MMS Royalty Management Program (RMP) is proposing to continue the use of Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, to be used by royalty payors on Federal or Indian mineral leases. The payors will use the form when requesting MMS approval to exceed established transportation or processing allowance limits.

To request permission to exceed an allowance limit, royalty payors must write a letter to MMS providing the reasons why a higher allowance limit is necessary. Although the request to exceed an allowance limit is voluntary on the part of the payors and results in a benefit to them, many times payors have not provided all of the data needed by MMS to approve or deny a request. The followup necessary to obtain required information creates an additional burden for both the payor and the Government. RMP developed Form MMS–4393 to be included with the payor's request for approval to exceed the allowance limit. The form ensures that MMS receives the lease data required to make a decision on the request by including the Accounting Identification Number identifying the lease, the product code identifying the product being transported or processed, and the selling arrangement used to identify the marketing outlet for the product. These are the necessary data that have been missing from many of the requests in the past. We estimate the annual reporting and recordkeeping burden to complete this information collection per respondent is 30 minutes.

The PRA provides that 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. A 60-day **Federal Register** Notice soliciting comments on this collection of information was published on December 8, 1999 (64 FR 68699). No comments were received.

Respondents/Affected Entities: Royalty payors.

Frequency of Response: Annually.

Estimated Number of Respondents: 75 payors.

Estimated Annual Reporting and Recordkeeping ''Hour.''

Burden: 37 burden hours. Refer to the following chart:

Citation	Reporting & recordkeeping requirements	Frequency	Number of respondents	Burden	Total annual burden hours
§ 206.104(b)(1); § 206.156(c)(3); and § 206.158(c)(3).	Submit request in writing and complete Form MMS–4393.	Annually	75	.50 hour	37
Total	.....	.....	75	.....	37

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 28, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: March 24, 2000.

Lawrence E. Cobb,

Acting Associate Director for Royalty Management.

[FR Doc. 00–7758 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1820–01; GP0–0107; OR–06519]

Public land order No. 7438; Revocation of Public Land Order No. 2407; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety the remaining 2,230 acres withdrawn by Public Land Order No. 2407. The original order withdrew National Forest System lands as a roadside zone. The lands are no longer needed for the purpose for which they were withdrawn. Of the lands being revoked, 225 acres are within an overlapping Forest Service withdrawal and will remain closed to surface entry, mining, and mineral leasing. The revocation is needed to make lands available for several land tenure adjustments in accordance with the provisions of Section 206 of the Federal Land Policy and Management Act of 1976. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands and to mining, subject to valid existing rights. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

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. 2407 dated June 21, 1961, which withdrew National Forest System lands for road side zone purposes, is hereby revoked in its entirety as to the remaining withdrawn lands described in the order published in **Federal Register** Volume 26 page 5756, dated June 28, 1961.

2. At 8:30 a.m. on April 28, 2000, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. Appropriation of lands 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 the 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 determinations in local courts.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7668 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0135).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before April 28, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0135), 725 17th Street, NW., Washington, DC 20503. Copies of these comments should also be sent to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

Public Comment Procedure: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Royalty-In-Kind Small Refiner Sale Program, OMB Control Number 1010–0135, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303)231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Royalty-In-Kind Small Refiner Sale Program.

OMB Control Number: 1010–0135.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil

for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments must be submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil will be required to provide a surety instrument with their bid package. This surety instrument must be a Letter of Credit, Form MMS–4071, or a Royalty-In-Kind Contract Surety Bond, Form MMS–4072. We estimate the annual reporting burden for refiners submitting either surety document is 1 hour.

The PRA provides that 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. A 60-day **Federal Register** Notice soliciting comments on this collection of information was published on December 8, 1999 (64 FR 68699). No comments were received.

Respondents/Affected Entities: Royalty payors.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25 payors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 25 burden hours. Refer to the following chart:

Reporting and recordkeeping requirements	Frequency	Number of respondents	Burden	Annual burden hours
Complete and submit Forms MMS–4071 and MMS–4072	Yearly	25	25 × 1 hours	25 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 28, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: March 7, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–7682 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the OMB for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by April 28, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0048), 725 17th Street, NW., Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 251, Geological and Geophysical (G&G) Exploration of the OCS

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that, permits to conduct

such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. MMS uses information collected to understand the G&G characteristics of oil-and-gas bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

The PRA provides that 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. We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on November 12, 1999 (64 FR 61659).

Frequency: On occasion, annually, or as specified in permits.

Estimated Number and Description of Respondents: Primarily, approximately 150 Federal OCS permittees or notice filers.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 8,109 burden hours, averaging approximately 54 hours per respondent. Refer to the following chart.

Citation 30 CFR 251	Reporting and recordkeeping requirement	Number	Burden	Annual burden hours
251.4; 251.5; 251.6(c)	Apply for permits (form MMS–327) or file notices; consult with other users of the area.	150 Notices or Applications	6 hours	900
251.6(b); 251.7(b)(5)(iii)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.).	1 Notice	1 hour	1
251.7	Submit information on test drilling activities under a permit; including form MMS–123.	Burden included with 30 CFR 250.201, 250.203, & form MMS–123 (1010–0049 & 1010–0044)		0
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.).	1 Agreement	1 hour	1
251.7(d)	Submit bond on deep stratigraphic test	Burden included under 30 CFR part 256 regs (1010–0006)		
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.).	1 Request	1 hour	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	150 Respondents × 4 Reports = 600.	8 hours	4,800
251.9(c)	Notify MMS to relinquish a permit	8 Notices	.5 hour	4
251.10(c)	File appeals	Burden included with 1010–0121		0
251.11; 251.12	Submit to MMS G&G data/information collected under a permit; including license agreements/notifications to MMS.	50 Respondents × 2 Submissions = 100.	4 hours	400
251.13	Request reimbursement for certain costs associated with reproducing data/info.	50 Respondents × 2 Submissions = 100.	20 hours	2,000
251.14(c)(2)	Submit comments on MMS intent to disclose data/info.	1 Comment	1 hour	1
251.14(c)(4)	Contractor/agent submit written commitment not to sell, trade, license, or disclose data/info without MMS consent.	1 Commitment	1 hour	1
Total Reporting Burden		963 Responses		8,109

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed

collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 28, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 24, 2000.

Elmer P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–7701 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Jicarilla Apache Indian Tribe of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 14,138.983 acres, more or less, as an addition to the reservation of the Jicarilla Apache Indian Tribe of New Mexico on March 21, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Deputy Director, Office of Trust Responsibilities, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tracts of land described below. The land was proclaimed to be an addition to and part of the reservation of the Jicarilla Apache Indian Tribe of New Mexico for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Jicarilla Apache Indian Tribe of Indians

Arriba County, New Mexico

All of the following described tracts, pieces, or parcels of land comprising 14,138.983 acres of land, more or less, situated in Rio Arriba County, New Mexico, to wit:

Tract I—14,117.08 acres, more or less

Beginning at a northeasterly corner of the herein described tract of land, a stone marked ''BNE'' on the west side of the Chama River, from whence N.M.S.E.O. brass cap stamped ''Escondida 1973'' and having New Mexico State Plane Coordinates, Central Zone, of x = 407,662.02′ y = 2,116,662.34′, bears S. 18° 14′ 50″ E., 7,645.65 feet; thence N. 89° 56′ 25″ E., 240.01 feet to the centerline of the Chama River and Point #1, this point is also common with an intersection between Points 63 and 64 on the Tyree survey done on 4/3/72 for Rio Chama Estate; thence S. 55° 24′ 45″ W. 377.69 feet (S. 54° 59′ 45″ W., 377.69 feet) along the centerline of the Chama River to Point #2, this point being common to Point #64 on the Tyree survey (This survey follows the Tyree survey from Point #1 to Point #36); thence following the centerline of the Chama River S. 27° 37′ 30″ W. 153.93 feet (S. 27° 12′ 30″ W., 153.93 feet) to Point #3; thence S. 15° 27′ 20″ E., 258.21 feet (S. 15° 52′ 20″ E., 258.21 feet) to Point #4; thence S.10° 04′ 00″ W., 338.53 feet (S. 09° 39′ 00″ W., 338.53 feet) to Point #5; thence S. 25° 34′ 35″ W., 289.37 feet (S. 25° 09′ 35″ W., 289.37 feet) to Point #6; thence S. 06° 53′ 00″ W., 122.21 feet (S. 06° 28′ 00″ W., 122.21 feet) to Point #7; thence S. 23° 38′ 45″ E., 193.39 feet (S. 24° 03′ 45″ E., 193.38 feet) to Point #8; thence S. 14° 37′ 25″ E., 504.54 feet (S. 15° 02′ 25″ E., 504.54 feet) to Point #9; thence S. 00° 20′ 05″ W., 111.57 feet (S. 00° 04′ 55″ E., 111.57 feet) to Point #10; thence S. 16° 43′ 55″ W., 184.67 feet (S. 16° 18′ 55″ W., 184.67 feet) to Point #11; thence S. 32° 19′ 35″ W., 172.40 feet (S. 31° 54′ 35″ W., 172.40 feet) to Point #12; thence S. 19° 36′ 45″ W., 138.92 feet (S.19° 11′ 45″ W., 138.92 feet) to Point #13; thence S.15° 43′ 55″ E., 142.65 feet (S. 16° 08′ 55″ E., 142.65 feet) to Point #14; thence S. 42° 38′ 25″ E., 192.23 feet (S. 43° 03′ 25″ E., 192.23 feet) to Point #15; thence S. 28° 21′ 40″ E., 285.93 feet (S. 28° 46′ 40″ E., 285.93 feet) to Point #16; thence S. 21° 10′ 30″ E., 336.34 feet) (S. 21° 35′ 30″ E., 336.34 feet) to Point #17; thence S. 01° 36′ 30″ W., 461.23 feet (S. 01° 11′ 30″ W., 461.23 feet) to Point #18; thence S. 01° 59′ 15″ W., 205.16 feet (S. 01° 34′ 15″ W., 205.16 feet) to Point #19; thence S. 24° 06′ 15″ W., 479.80 feet (S. 23° 41′ 15″ W., 469.80 feet) to Point #20; thence S. 00° 49′ 05″ W., 117.99 feet (S. 10° 24′ 05″ W., 117.99 feet) to Point #21; thence S. 15° 09′ 10″ E., 123.03 feet (S. 15° 34′ 10″ E., 123.03 feet) to Point #22; thence S. 40° 39′ 40″ E., 148.02 feet (S. 41° 04′ 40″ E., 148.02 feet) to Point #23; thence N. 77° 26′ 05″ E., 93.50 feet (N. 77° 01′ 05″ E., 93.50 feet) to Point #24; thence S. 77° 39′ 05″ E., 88.39 feet (S. 78° 04′ 05″ E., 72.96 feet) to Point #25; thence S. 00° 27′ 10″ E., 204.66 feet (S. 00° 52′ 10″ E., 204.66 feet) to Point #26; thence S. 21° 53′ 10″ W.,145.42 feet (S. 21° 28′ 10″ W., 145.42 feet) to Point #27; thence S. 03° 08′ 20″ W., 226.69 feet (S. 02° 43′ 20″ W., 226.69 feet) to Point #28; thence S. 34° 25′ 15″ W., 319.34 feet (S. 34° 00′ 15″ W., 319.34 feet) to Point #29; thence S. 45° 34′ 00″ W., 326.96 feet (S. 45° 09′ 00″ W., 326.96 feet) to Point #30; thence S. 33° 14′ 20″ W., 222.40 feet (S.32° 49′ 20″ W., 222.40 feet) to Point #31; thence S.14° 20′ 35″ W., 140.16 feet (S. 13° 55′ 35″ W., 140.16 feet) to Point #32; thence S. 10° 55′ 05″ E., 312.95 feet (S. 11° 20′ 05″ E., 312.95 feet) to Point #33; thence S. 32° 40, 00″ W., 230.31 feet (S. 32° 15′ 00″ W., 230.31 feet) to Point #34; thence S. 43° 23′ 50″ W., 231.85 feet (S.42° 58′ 50″ W., 231.85 feet) to Point #35; thence S. 23° 24, 05″ W., 178.78 feet (S. 22° 59′ 05″ W., 178.78 feet) to Point #36 in the middle of the Chama River, this point being common to Point #99 on the Tyree survey and also common to the northwest corner of the Valdez survey done in November 1981 for Leo Smith; thence following the centerline of the Chama River which is the common boundary line between the Willow Creek Ranch and the grantor's tract (This survey follows the Valdez survey of the centerline of the river from Point #36 to Point #40); thence S. 19° 25′ 27″ W., 307.13 feet to Point #37 (S. 19° 27′ 27″ W., 307.13 feet); thence S. 05° 21′ 22″ W., 532.35 feet to Point #38 (S. 05° 23′ 22″ W., 532.35 feet); thence S. 71° 17′ 59″ W.. 781.09 feet to Point #39 (S. 71° 19′ 59″ W., 781.09 feet); thence S. 22° 41′ 40″ W., 314.14 feet to Point #40 (S. 24° 16′ 58″ W., 318.28 feet) this point being the southwest corner of the Smith property at the centerline of the Chama River; thence following the south boundary of the Smith (Bren) property N. 88° 37′ 38″ E., 130.11 feet to a set 1/2″ rebar with cap at Point #111, a fence corner; thence S. 09° 16′ 46″ W., 252.69 feet to a found rebar at Point #110; thence S. 29° 47′ 59″ W., 489.91 feet to a set 1/2″ rebar at Point #109; thence S. 79° 29′ 04″ W., 219.61 feet to a found

rebar with AGV cap at Point #108; thence S. 36° 19′ 32″ W., 115.97 feet to a found rebar with AGV cap at Point #107; thence N. 57° 47′ 39″ W. crossing the Chama River a distance of 217.15 feet to a found rebar at Point #52; thence S. 59° 38′ 51″ W. 437.01 feet to a found rebar at Point #53; thence S. 17° 01′ 47″ W., 166.31 feet to a found rebar with AGV cap at Point #84; thence S. 01° 45′ 46″ E., 111.60 feet to a found rebar with AGV cap at Point #85; thence S. 08° 22′ 24″ W., 47.35 feet to a found rebar with AGV cap at Point #86; thence S. 17° 13′ 50″ W., 213.91 feet to Point #87; thence S. 03° 13′ 21″ E., 625.01 feet to Point #88; thence S. 04°14′ 41″ W., 95.29 feet to Point #89; thence S. 02° 05′ 10″ W., 728.28 feet to Point #90; thence S. 08° 26′ 10″ W., 504.50 feet to Point #91; thence S. 04° 54′ 36″ W., 315.30 feet to Point #92; thence S. 12° 29′ 35″ E., 199.88 feet to a found rebar with AGV cap at Point #93; thence S. 03° 17′ 08″ W., 397.02 feet to a found rebar with AGV cap at Point #94; thence S. 19° 57′ 53″ E., 1139.15 feet to a found rebar with AGV cap at Point #95; thence S. 24° 26′ 26″ E., 1285.76 feet to a found rebar with AGV cap at Point #96; thence S. 41° 55′ 00″ W., 628.05 feet to Point #65, a 1/2″ iron pipe and the northwest corner of the Max Olivas tract at the top of the hill; thence following the top of the hill S. 34° 47′ 13″ E., 1024.10 feet to Point #66, a 1/2″ iron pipe; thence S. 48° 05′07″ E., 1918.11 feet to Point #67, a 1/2″ rebar; thence S. 43° 33′ 54″ E., 1261.04 feet to Point #68, a 5/8″ rebar set an angle point in fence; thence S. 36° 45′ 40″ E., 1245.58 feet to Point #69, a 1″ solid rod and being the southwest corner Blackmar Tract and the northwest corner of the Martinez tract; thence S. 36° 28′ 06″ W., 1697.90 feet to a 5/8″ rebar being a southwest corner; thence N. 37° 57′ 57″ W., 10,670.86 feet along the Theis fence line to a stone marked ''TDB11,'' whence a blazed 24″ cedar bears S. 74° W., 115 feet; thence S. 89° 45′. 30″ W., 21,223.93 feet to a 1½″ iron pipe in a mound of limestone, whence a 30″ blazed pine bears S. 68° W., 100 feet; thence N. 48° 33′ 13″ W., 1410.94 feet to a 2″ perforated pipe and ''TDB #4,'' whence an 18″ blazed pine bears N. 42° W., 116 feet; thence S. 89° 47′ 13″ W., 7574.33 feet to a 2″ iron pipe and ''TDB #3,'' whence a double pine blazed bears N. 64° E., 18 feet; thence N . 48° 30′ 28″ W., 2242.57 feet to an angle point in the fence and a set 5/8″ rebar, ''TDB #2,'' whence a blazed 20″ Pine bears S. 71° W., 93 feet; thence N. 69° 14′ 00″ W., 2444.57 feet to a 2″ flattened pipe and ''TDB #1,'' whence a 20″ blazed pine tree bears N. 43° W., 122 feet; thence N. 70° 39′ 31″ W., 1995.81 feet to a 2″ flattened pipe and the southwest corner whence a spring bears N. 42° E., 45 feet, this corner is common to Theis and the New Mexico State Game and Fish property; thence N. 00° 00′ 21″ W., 15,572.90 feet along the New Mexico State Game and Fish line to a 2″ iron pipe and the northwest corner; thence S. 89° 58′43″ E., 17,856.35 feet to a northeast corner; thence S. 00° 04′ 57″ W., 4619.33 feet to a stone marked ''SWH'' thence S. 89° 54′ 38″ E., 29,955.52 feet to a stone marked ''NWB''; thence S. 00° 03′ 30″ W., 2401.41 feet to a stone marked with a 6′ fence post; thence N. 89° 56′ 21″ E., 21,233.65 feet to a stone marked ''BNE,'' the point of beginning, containing 14,558.88 acres within the boundary traverse, less 441.80 acres taken in the Azotea Willow Creek tracts by the U.S. Government, giving a net acreage of 14,117.08 acres, more or less.

Tract 2—21.903 acres, more or less

A tract of land in the Tierra Amarilla Land Grant, Rio Arriba County, New Mexico, being a part of Section 17, 8 and 9, Township 1 South, Range 2 East, of the Martin & Borders Subdivision as filed in the Rio Arriba County Courthouse, also lying in the projected reappraisal area of Township 31 North, Range 2 East, and Range 3 East, N.M.P.M.

This is the ''Willow Creek Ranch Access Road'' parcel and is more particularly described as follows:

Beginning at the Northeast corner, a point on the southerly right-of-way of U.S. Highway 84 whence USC&GS Brass Cap ''Willow'' bears S. 84–32–19E. a distance of 1156.09 feet; Thence southerly along the easterly boundary of the herein described access road as follows:

S. 01–33–16E. a distance of 1034.04 feet to a point;

S. 23–55–59W. a distance of 459.36 feet to a point;

S. 26–53–59W. a distance of 967.00 feet to a point;

S. 78–37–35W. a distance of 705.10 feet to a point;

S. 63–04–56W. a distance of 409.58 feet to a point;

S. 43–07–59W. a distance of 505.17 feet to a point;

S. 38–58–07W. a distance of 384.05 feet to a point;

S. 35–12–07W. a distance of 24.80 feet to a point;

S. 27–18–41W. a distance of 171.98 feet to a point;

S. 25–39–37W. a distance of 291.94 feet to a point;

S. 03–08–10W. a distance of 251.89 feet to a point;

S. 04–48–49E. a distance of 373.17 feet to a point;

S. 20–08–59W. a distance of 521.24 feet to a point;

S. 49–07–04W. a distance of 640.02 feet to a point;

S. 49–08–17W. a distance of 166.30 feet to a point;

S. 26–33–17E. a distance of 327.70 feet to a point;

S. 04–02–17E. a distance of 483.09 feet to-the southeast corner;

Thence N. 89–33–10W. a distance of 100.00 feet to the southeast corner;

Thence northerly along the westerly boundary of said access road as follows:

N. 04–02–17E. a distance of 714.20 feet to a point;

N. 48–17–22E. a distance of 933.48 feet to a point;

N. 32–06–23E. a distance of 301.04 feet to a point;

N. 00–46–08W. a distance of 745.07 feet to a point;

N. 24–41–14E. a distance of 682.37 feet to a point;

N. 42–23–22E. a distance of 1164.40 feet to a point;

N. 83–15–50E. a distance of 639.41 feet to a point;

N. 53–29–20E. a distance of 479.01 feet to a point;

N. 23–36–47E. a distance of 998.61 feet to a point;

N. 08–52–50E. a distance of 161.94 feet to a point;

N. 03–29–38E. a distance of 886.85 to the northwest corner, a point on the southerly right-of-way of said U.S. Highway 84;

Thence following said southerly right-of-way along a curve to the left having a delta of 03–01–12 and radius of 1972.45 feet a distance of 103.97 feet to the point and place of beginning. This parcel contains 21.903 acres, more or less.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: March 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–7658 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Morristown National Historical Park, Morris & Somerset Counties, New Jersey; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public Meetings

In accordance with the National Environmental Policy Act of 1969 Pub. L. 91–109 section 102(c)), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the Morristown National Historical Park (NHP), located in Morris and Somerset Counties, New Jersey. The purpose of the EIS is to assess the impacts of alternative management strategies that will be described in the general management plan for Morristown NHP. A range of alternatives will be formulated for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold two (2) public meetings during the week of April 10, 2000 which will provide an opportunity for public input into the scoping for the GMP/EIS. On Wednesday, April 12 at 4:00 PM, a meeting will be held at the Cross Estate, New Jersey Brigade Unit, Morristown NHP, 61C Old Jockey Hollow Road, Bernardsville, New Jersey. On Thursday, April 13 at 7:30 PM, a meeting will be held at the Morristown NHP Museum, Washington Headquarters Unit, 30 Washington Place, Morristown, New Jersey. The purpose of these meetings is to obtain both written and verbal comments concerning the future direction and development of Morristown NHP. Those persons who wish to comment verbally or in writing or who require further information should contact Michael D. Henderson, Superintendent, Morristown NHP, 30 Washington Place, Morristown, NJ, (973) 539–2016 ext. 205.

The draft GMP/EIS is expected to be completed and available for public review in mid 2001. After public and interagency review of the draft document comments will be considered, and a final EIS followed by a Record of Decision will be prepared.

Dated: March 16, 2000.

Michael D. Henderson,

Superintendent, Morristown National Historical Park.

[FR Doc. 00–7679 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) SRC Roll Call and Confirmation of Quorum.

(3) Welcome and Introductions.

(4) Review and Adopt Agenda.

(5) Review and adopt minutes from the March 29–30, 1999 meeting.

(6) Commission Purpose.

(7) Status of Membership.

(8) Public and Agency Comments.

(9) Old Business:

a. Status of Air Taxi/Outfitter Guide Concession Permit Program.

b. Request For Resident Zone Community Status: Perryville and Ivanoff Bay.

c. Review Secretary's Response To Subsistence Hunting Program Recommendations:

1. Geographic Place Names Request.

2. Roster Regulation Proposed Rule Publication.

3. For Customary and Traditional Use Determinations: Unit 9E Brown Bear.

4. Cooperative Wildlife Studies: Unit 9E Moose and Caribou.

5. Aniakchak National Monument and Preserve Access Study Project Statement.

d. Aniakchak National Monument and Preserve Subsistence Management Plan Update.

(10) New Business:

a. October 1999 SRC Chairs Workshop Report.

1. NPS Customary Trade Regulations.

2. Resident Zone Community One-Year Residency Requirement.

3. Trapping With Firearms.

b. Federal Subsistence Program Update.

1. Bristol Bay Federal Subsistence Regional Advisory Council Report.

2. Federal Subsistence Board Proposals—Unit 9E.

(11) Public and Agency Comments.

(12) SRC Work Session (draft proposals, letters, and recommendations).

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will begin at 1 p.m. on Tuesday, April 4, 2000 and conclude at approximately 6 p.m. The meeting will reconvene at 9 a.m. on Wednesday, April 5, 2000 and adjourn at approximately 1 p.m.

LOCATION: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Deb Ligget, Acting Superintendent, or Donald Mike, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 00–7681 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday April 28, 2000 at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretations of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows: Rose Ochi, Chairperson, William Michael, Vice Chairperson, Keith Bright, Martha Davis, Sue Kunitomi Embrey, Gann Matsuda, Vernon Miller, Mas Okui, Glenn Singley, and Richard Stewart.

The main agenda will include:

• Status reports on the development of Manzanar National Historic Site by Acting Superintendent Debbie Bird;

• General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues;

• Public comment period.

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 Commission. A transcript will be available after June 1, 2000. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: March 10, 2000.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 00–7680 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ocmulgee Old Fields Historic District; Determination of Eligibility for the National Register of Historic Places

ACTION: Discussion of previous determination of eligibility.

This is to advise that, on the basis of consideration of the comments received in response to the Federal Register notice dated November 5, 1999, as well as all other information collected by the National Park Service, including a visit to the site, the National Park Service has determined that it did not receive authoritative information which, evaluated in conjunction with documentation already on file, resulted in a finding that the boundary for the Ocmulgee Old Fields Historic District, in Bibb and Twiggs Counties, Georgia, as defined by the Keeper of the National Register of Historic Places on August 14, 1997, and July 23, 1999, does not accurately delineate the scope of the District in accordance with National Register standards. The determination of eligibility for the Ocmulgee Old Fields Historic District remains in effect.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 00–7678 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Marina Coast Water District Recycled Water Pipeline Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental document (Environmental Impact Report/ Environmental Assessment or Environmental Impact Statement).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, and § 21061 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Marina Coast Water District (MCWD) propose to prepare an environmental document on constructing a new pipeline to deliver reclaimed wastewater for municipal and industrial use. The reclaimed water would be supplied by the Monterey Regional Water Pollution Control Agency (MRWPCA) as part of the Castroville Seawater Intrusion Project and the Salinas Valley Reclamation Project (SVRP) that currently provides agricultural users with recycled water to reduce use of groundwater in the Salinas Valley. The project is planned in order to provide up to 300 acre-feet/year of recycled water from the SVRP for municipal and industrial uses which may include a golf course, open space landscaping, and construction water uses.

At present, it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact report/ environmental impact statement (EIR/ EIS) instead of an environmental impact report/environmental assessment (EIR/ EA). However, to ensure the timely and appropriate level of NEPA compliance and to limit potential future delays to the project schedule, Reclamation is proceeding as if the project impacts would require preparation of an EIR/EA. Reclamation will reevaluate the need for an EIR/EIS after obtaining written comments on the project scope, alternatives, and environmental impacts and after Reclamation's evaluation of potential impacts of the proposed project. Reclamation will publish a notice of change if a decision is made to prepare an EIR/EIS rather than an EIR/EA. However, the scoping process to be conducted will suffice for either course of action.

MCWD completed a CEQA Notice of Preparation on December 15, 1999. No scoping meetings have been scheduled.

DATES: Send any comments to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action to the address below by April 28, 2000.

ADDRESSES: Written comments on the scope of the environmental document should be sent to Dave Meza, Marina Coast Water District, 200 Twelfth Street, Building 2788, Marina CA 93933.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Dave Meza, Marina Coast Water District, at (831) 582–2665.

SUPPLEMENTARY INFORMATION: Reclamation provided a loan to the MRWPCA for construction of the SVRP. Reclamation completed an EIS on the SVRP in 1993 for construction of the SVRP, and delivery of reclaimed water as an agricultural supply for crop irrigation. The contract for the loan specified that reclaimed water from the SVRP could also be delivered for municipal and industrial water only if Reclamation completed additional NEPA documentation. The SVRP began operation in 1997, and began delivering recycled water to growers in 1998. In 1999, the SVRP produced 10,000 acre-feet of recycled water. The SVRP can produce up to about 33,200 acre-feet of reclaimed water per year.

The proposed action would consist of the following:

1. At the SVRP site, two 75-hp vertical turbine pumps would be installed at the SVRP contact basin. Approximately 850 linear feet (LF) of 24-inch pipeline would be installed from the pumps to the edge of the SVRP boundary.

2. From the edge of the SVRP boundary, approximately 4,300 LF of 12-inch pipeline would be installed above ground along an existing dirt service road that extends to the Armstrong Ranch boundary.

3. From the Armstrong Ranch boundary, approximately 10,000 LF of 30-inch pipeline would be installed along a route through the City of Marina Municipal Airport to Reservation Road with various water service turnouts.

The proposed project has design elements that could become part of a regional system, if that system were ever to be expanded. The feasibility of such a regional system, the regional urban recycled water distribution project, is currently being studied. This system would require a storage reservoir as outlined in the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands (1996). In addition, other elements of the regional project are not clearly defined. These elements are discussed in the 1996 Monterey Peninsula Reclaimed Water Urban Reuse Feasibility Study Update as developed by the MRWPCA. The planning effort for a regional urban distribution system may serve sites within the Cities of Marina, Seaside, Del Rey Oaks, Sand City, and Monterey. Additional environmental documentation would be necessary to implement this regional system.

Dated: March 22, 2000.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 00–7704 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–474 and 475 (Review)]

Chrome-Plated Lug Nuts From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on chrome-plated lug nuts from China and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. In the course of considering the record in these expedited reviews, the Commission now determines that full reviews are warranted. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). A schedule for these reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Commission determined that it should expedite these reviews pursuant to 751(c)(3)(B) of the Act. The Commission found that the domestic interested party group response to its notice of institution (64 FR 41949, August 2, 1999) was adequate and that the respondent interested party group response was inadequate. Therefore, it voted to conduct expedited reviews. The Commission has found, however, that circumstances warrant conducting full reviews. Therefore, on March 22, 2000, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission's statement on proceeding to full reviews and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 23, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7767 Filed 3–28–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–556 (Review)]

DRAMs of One Megabit and Above From Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on dynamic random access memory semiconductors (DRAMs) of one megabit and above from Korea.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on DRAMs of one megabit and above from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 7890, February 16, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on September 28, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on October 19, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 11, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 16, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is October 10, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 30, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before October 30, 2000. On November 22, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 27, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7768 Filed 3–28–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–412]

The Year in Trade 1999

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: March 21, 2000.

SUMMARY: Following receipt of a request on February 14, 2000, from the Committee on Ways and Means of the U.S. House of Representatives (the Committee), the Commission instituted investigation No. 332–412, The Year In Trade 1999, a report to the Congress and the President on the operation of the U.S. trade agreements program, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Thomas F. Jennings, Project Leader (202–205–3260), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Committee requested the investigation and report pursuant to section 332(g) of the Tariff Act of 1930 and H.R. 3425 (enacted as part of Pub. L. 106–113 (Nov. 29, 1999)). Pursuant to Pub. L. 104–66 (Dec. 21, 1995), the requirement to submit such reports under section 163(c) was to terminate on December 21, 1999. Pub. L. 106–113 extended the requirement to May 15, 2000. As requested by the Committee, the Commission will provide a factual report on the operation of the trade agreements program and major trade-related activities for calendar year 1999. The report will be similar in scope to the annual report that the Commission has previously submitted under section 163(c) of the Trade Act of 1974 (19 U.S.C. 2213(c)).

The Commission plans to submit its report, The Year in Trade 1999: Operation of the Trade Agreements Program, in August 2000.

Written Submissions

The Commission has not scheduled a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 30, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects:

WTO, OECD, FTAA, NAFTA, APEC, GSP, CBERA, ATPA exports, imports, Canada, European Union, Mexico, China, Japan, Taiwan, Korea, and Brazil.

Issued: March 21, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7766 Filed 3–28–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Wilbur S. Doyle and Lillie T. Doyle,* Civil Action No. 4:00CV–00014 was lodged with the United States District Court for the Western District of Virginia on March 15, 2000. This Consent Decree resolves the United States' claims against Wilbur S. Doyle and Lillie T. Doyle (''Settling Defendants'') under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, for response costs incurred at the Doyle Wood Treating Superfund Site (''the Site'') located near Martinsville, Virginia. The Consent Decree requires the Settling Defendants to pay $50,000 in reimbursement of response costs relating to the Doyle Wood Treating Superfund Site removal action.

The Department of Justice will accept written comments on the proposal Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Wilber S. Doyle and Lillie T. Doyle,* DOJ #90–11–3–06367.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, VA 24011; EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; and at the U.S. Department of Justice, Consent Decree Library, 1425 New York Avenue, NW., Washington, DC 20005.

A copy of the proposed Consent Decree may be obtained by mail from U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $8.75, and please reference *United States* v. *Wilbur S. Doyle and Lillie T. Doyle,* DOJ No. 90–11–3–06367.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 00–7684 Filed 3–28–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2044–00; AG Order No. 2295–2000]

RIN 1115–AE26

Designation of Angola Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon a finding that such states are experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions. Due to the armed conflict in Angola, which prevents the safe return of nationals of that country, this notice designates Angola for the TPS program for a period of 12 months, until March 29, 2001. This notice provides information regarding eligibility and application procedures.

DATES: This designation is effective on March 29, 2000, and will remain in effect until March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Why Did the Attorney General Decide To Designate Angola Under the TPS Program?

Based on a thorough review by the Departments of State and Justice, the Attorney General finds that there is significant ongoing armed conflict in Angola, and that the return of aliens who are nationals of Angola (as well as aliens having no nationality who last habitually resided in Angola) would pose a serious risk to their personal safety. A Department of State memorandum on Angola states that: ''Fighting is now once again widespread throughout much of Angola. Some 70% of Angola's area is currently outside effective government control. The United Nations High Commissioner for Refugees has called for a moratorium on returns to Angola as a result of the conflict and resulting insecurity within the country.''

Based on these and other findings, the Attorney General has determined that

the armed conflict in Angola and related extraordinary and temporary conditions prevent the safe return of aliens who are nationals of Angola (as well as aliens having no nationality who last habitually resided in Angola). The Attorney General further finds that permitting such aliens to remain temporarily in the United States is not contrary to the national interests of the United States.

Who Is Eligible for TPS Under This Designation?

In order to be eligible for TPS under this designation, an alien must:

- Be a national of Angola (or an alien having no nationality who last habitually resided in Angola);
- Have been continuously physically present in the United States since March 29, 2000.
- Have continuously resided in the United States since March 29, 2000.
- Be admissible as an immigrant except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act; and must
- Apply for TPS within the registration period which begins on March 29, 2000, and ends on March 29, 2001.

Does Applying for TPS Affect an Application for Asylum or Any Other Immigration Benefit?

No. Any national of Angola who has already applied for, or plans to apply for asylum, but whose asylum application has not yet been approved may also apply for TPS. An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's ability to register for TPS, although the grounds of denial of that application may also lead to denial of TPS. For example, an alien who has been convicted of an aggravated felony is not eligible for asylum or TPS.

How Do I Register for TPS?

Applicants from Angola may register for TPS by:

- Filing an Application for Temporary Protected Status, Form I–821, with a $50 filing fee and a $25 fingerprint fee;
- Providing two identification photographs (1½″ x 1½″);
- Providing supporting evidence, as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence); and
- Filing an Application for Employment Authorization, Form I–765.

The chart below contains information regarding payment of the $100 fee for filing Form I–765, and information regarding fee waivers.

If	Then
You are applying for employment authorization through March 29, 2001.	You must complete and file the Form I–765, Application for Employment Authorization, with the $100 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee for the Form I–821 and/or the $100 fee for the Form I–765.	You must complete and file the Form I–821, the Form I–765, a the requisite fee waiver request and affidavit (and any other information), in accordance with 8 CFR 244.20.

Where Should I Submit My Application for TPS?

You should submit your application for TPS at the Service district office that has jurisdiction over your place of residence.

What Happens After March 29, 2000, the Date the Initial Designation Expires?

Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before March 29, 2001, the conditions in Angola to determine whether the conditions for designation of Angola under the TPS program continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the initial TPS designation is extended at that time, an alien who is granted TPS must register for any extension of the TPS program in order to maintain TPS. On the other hand, if the TPS designation is not extended after March 29, 2001, those aliens granted TPS will revert back to the immigration status they had prior to TPS, if still available, unless they have been granted another benefit.

Notice of Designation of Angola Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that:

(1) There is an ongoing armed conflict within Angola and, due to such conflict, requiring the return of aliens who are nationals of Angola (as well as aliens having no nationally who last habitually resided in Angola) would pose a serious threat to their personal safety;

(2) There exist extraordinary and temporary conditions in Angola that prevent aliens who are nationals of Angola (as well as aliens having no nationally who last habitually resided in Angola) from returning to Angola in safety; and

(3) Permitting nationals of Angola (or aliens having no nationality who last habitually resided in Angola) to remain temporarily in the United States is not contrary to the national interests of the United States. Accordingly, I order as follows:

(1) Angola is designated for TPS under section 244(b)(1)(A) and (C) of the Act. Nationals of Angola (or aliens having no nationality who last habitually resided in Angola) who have been ''continuously physically present'' and have ''continuously resided'' in the United States since March 29, 2000, may apply for TPS within the registration period, which begins on March 29, 2000, and ends on March 29, 2001.

(2) I estimate that there are no more than 1,700 nationals of Angola (or aliens having no nationality who last habitually resided in Angola) in the United States who are eligible for TPS.

(3) Information concerning the TPS program for nationals of Angola (or aliens having no nationality who last habitually resided in Angola) will be available at the Service website, located at http://www.ins.usdoj.gov, or at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 22, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7683 Filed 3–28–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1265]

Statistical Methodologies for Analysis of Disproportionate Minority Confinement

AGENCY: Office of Justice Programs, Bureau of Justice Statistics (BJS), Justice.

ACTION: Notice of solicitation.

SUMMARY: The purpose of this notice is to announce a solicitation for a

methodological study that would examine how juvenile records can be used to better understand racial disparities in arrests and confinement of minority juveniles and the impact of such disparities on subsequent processing of the same people if they are arrested as adults.

DATES: Proposals are due by 5 p.m., ET on May 30, 2000.

ADDRESSES: Proposals should be mailed to: Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, DC 20531, (202) 307–6166. [This is not a toll free number].

FOR FURTHER INFORMATION CONTACT: Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, DC 20531, (202) 307–6166. [This is not a toll free number].

SUPPLEMENTARY INFORMATION:

Program Goals

The major purpose of this award is to support a methodological study of the use of records in investigating racial disparities in arrests and confinement of minority juveniles, and the impact of disparate treatment within the juvenile justice system on subsequent processing of the same individuals if and when they become exposed to the adult criminal justice system.

Background

For over a decade, the Juvenile Justice and Delinquency Prevention (JJDP) Act has required States to determine whether the proportion of juvenile minorities in confinement is greater than the proportion of juvenile minorities in the overall population. Furthermore, the ''disproportionate minority confinement'' requirement of the Act forces those States that do find disparate representation among juvenile minorities to advance efforts to reduce it (see ''Juvenile Offenders and Victims: 1999 National Report'' by Howard N. Snyder and Melissa Sickmund.). Since time-series data have been collected by States under OJJDP's Disproportionate Minority Confinement (DMC) Program, and research expertise in using these data has developed in the States, the Bureau of Justice Statistics (BJS) would like to capitalize on the data and expertise as a basis from which to better understand the complex factors that contribute to minority over-representation in the juvenile justice system, and how disparate treatment of minorities within the juvenile justice system can affect subsequent outcomes, net of legally-relevant factors, of the same people if they are arrested as adults. Additional information about OJJDP's DMC Program can be found at http://www.ojjdp.ncjrs.org/pubs/correctionsum.html. While studies which evaluate racial disparities in various stages of juvenile justice processing are widespread, few studies use and document rigorous statistical methodologies (see ''Minorities and the Juvenile Justice System, Research Summary'' by Carl E. Pope and William Feyerherm). Copies of this report can be downloaded from the OJJDP web site at http://www.ncjrs.org/pdffiles/minor.pdf. Moreover, little or no research examines the extent to which racial disparities in handling by the juvenile justice system may be identified and tested as an explanatory factor for disparate subsequent treatment of adults involved in criminal court processing. Thus, research based on this award should seek to design a methodology which could be used to answer the question of whether a youth's juvenile record acquired through disparate treatment has a carry-over effect on subsequent adult level encounters with the criminal justice system.

Scope of Work

The objective of the proposed project is to develop, test, and document statistical methodologies which are appropriate for examining the nature and extent of racial disparities in arrests and confinement of minority juveniles and for better understanding the impact of identifiable biases within the juvenile justice system on adults criminal court processing, recognizing the numerous interrelated decision points within the juvenile justice process. The methods must be tested using an actual data set, but it is not the intent of this solicitation to fund extensive data-collection activities. Analyses which demonstrate the conceptual capabilities of models or forecasts may be based on invented or simulated data but may not comprise the entire project.

Specifically, the recipient of funds will:

1. Identify the subgroups of the population, defined by race, ethnicity or other factor, that will be distinguished in the analysis, and specify definitions of the subgroups. Consideration to OMB's revised Statistical Policy Directive No. 15, Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, should be given (see http://www.whitehouse.gov/OMB/fedreg/ombdir15.html).

2. Identify the stages of processing within the juvenile or adult justice system that will be incorporated in the analysis, and identify those factors which cannot be incorporated or measured.

3. Specify definitions and criteria that will be used in the study to quantify disparities among the studied subgroups and to distinguish between racial disparities and other factors explaining the disparities.

4. Specify a replicable statistical model to be used, conceptually and in the form of algorithms or software.

5. Identify and acquire one or more data sets suitable for the analysis. Demonstrate a knowledge of the data set(s) by defining and constructing relevant variables. If necessary, clean or augment the data so they are suitable for the study as designed, test the statistical model against the data set, and demonstrate the capability of the model to distinguish whether the data provide an indication of racial disparities. If the study uses only data about juvenile processing, it must discuss the relevance of the data and variable definitions to subsequent processing of juveniles who are arrested when they become adults.

6. Prepare the data and documentation in a format suitable for archiving without individual identifiers.

7. Prepare for public dissemination, a written report that describes in detail the issues, statistical methods, analysis, and conclusions of the study.

Appropriation and Assistance Program

Assistance will be made in the form of a cooperative agreement or interagency agreement which may be in the form of a BJS Fellowship. BJS Fellows are expected to spend a substantial portion of their research time at BJS's offices in Washington, DC, where they are provided with work space and necessary computing facilities. Further information about the BJS Fellowship program is available on the BJS web site at http://www.ojp.usdoj.gov/bjs/

Application and Award Process

An original and three (3) copies of a full proposal must be submitted on SF–424. Proposals must be accompanied by OJP Form 4000/3, 4061/6 and SF–LLL. In addition, fund recipients are required to comply with regulations designed to protect human subjects and ensure the confidentiality of data. In accordance with 28 CFR Part 22, a Privacy Certificate must be submitted to BJS. Furthermore, a Screening Sheet for Protection of Human Subjects must be completed prior to the award being issued. Copies of required forms, including the Screening Sheet for Protection of Human Subjects, can be obtained by contacting Timothy C. Hart,

Bureau of Justice Statistics, 810 7th Street NW, Washington, D.C. 20531, (202) 307–6166.

Proposals must include both narrative descriptions and a detailed budget. The narrative shall describe activities as discussed in the previous sections. The budget shall contain detailed costs of personnel, travel, equipment, supplies, and other expenses.

Proposals should describe in appropriate detail the efforts to be undertaken in furtherance of each of the activities described in the Scope of Work. The application must demonstrate:

• A familiarity with relevant research on racial disparity, with particular reference to the technical difficulties of isolating the effect of the race variable.

• A conceptual understanding of the limitations of the past research and the kind of improvements that would be helpful in analysis of racial disparities.

• A familiarity with the stages in juvenile justice processing that are the focus of data collection in the DMC initiative.

• The feasibility of acquiring and analyzing a relevant data set or data sets, including any issues of confidentiality of the data and/or protection of the human subjects of research.

• The approximate numbers or proportions of individuals represented in the data set who belong to the subgroups being studied.

• A familiarity with any analyses that have already been conducted or are ongoing with the selected data set.

Applicants are encouraged to define the terms ''racial disparity'' or ''racial discrimination'' as they consider appropriate to the context. They may examine any subgroups defined by race, ethnicity, country of origin, or other factor which is believed to be a source of discrimination, and conceptual advances in defining ''discrimination'' are welcome.

Applications will be evaluated on the overall extent to which they respond to the goals of improving the methodological research in the area of disproportionate minority representation in the juvenile justice system; the quality and feasibility of the proposed design; their expertise in relation to the proposed activities; and the reasonableness of estimated costs for the total project and for individual cost categories.

Proposals should be mailed to: Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, D.C. 20531, (202) 307–6166.

Timing

This award will be made for a period of 12 months. Costs are estimated at not to exceed $200,000 for the 12-month period. Each element of the Scope of Work must be successfully completed within 12-months of this award.

Statutory Authority

The grant and/or Fellowship awarded through this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate under 42 U.S.C. § 3732(c) (Sec. 302.).

Eligibility Requirements

BJS especially invites applications from researchers who have been active at the national or state level in OJJDP's Disproportionate Minority Confinement (DMC) initiative. However, the solicitation is open to any applicant who can demonstrate statistical expertise related to improving current research focusing on disproportionate minority representation in the juvenile justice system. Individuals currently working for a State agency may be eligible for this award through a cooperative agreement with their agency or an interagency agreement.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–7688 Filed 3–28–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of Labor (DOL) has submitted the following public informaiton collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation of ESA, MSHA, OSHA, and VETS contact Darrin King (202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the informaiton to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0070.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 123.

Estimated Time per Response: 20 minutes (0.33 hour).

Total Burden Hours: 41.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657). In the event an employee is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and employee's names, workplace address, injury sustained, task being performed when the injury occurred, number of operators involved, cause of the accident, type of clutch and safeguard(s) used, and means used to actuate the press.

OSHA's Office of Electrical, Electronic, and Mechanical Engineering

Safety Standards collects and reviews the accident information for the purpose of monitoring the effectiveness of the Mechanical Power Press Standard. The accident information also is forwarded to the National Institute for Occupational Safety and Health for analysis and compilation of an epidemiology database on point-of-operation injuries. In addition, OSHA's Office of Compliance Programs is conducting a national emphasis program aimed at reducing the number and severity of power press injuries. It needs the accident information provided in these reports to evaluate the types of injuries that occur, and to identify the equipment and conditions associated with these injuries.

In summary, as production evolves and new technologies arise (or old ones decline), it is necessary to have up-to-date accident information. This information is useful in revising the standard, planning enforcement strategies, and training compliance officers, as well as for developing hazard alerts that address exceptionally hazardous equipment or operations.

Ira L. Mills,

Department Clearance Officer.

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BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Comprehensive Incumbent/Dislocated Worker Retraining Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGAs).

This notice contains all of the necessary information and forms need to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the ability of the workforce development system to create projects or industry-led consortia for the purpose of upgrading current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas such as plastics, telecommunications and the environment, and to recruit/retrain workers in these occupations. The dislocated and/or incumbent workers who will be assisted by these efforts include specific groups such as agricultural workers, low skilled workers, and those needing assistance in overcoming barriers to employment. These barriers to employment may be caused by living in rural communities, having limited options for transportation to work, having inadequate or obsolete skills or having skills in declining occupations. The focus of these efforts will be on skills training in skills shortage occupations including welding and metals, new and growing occupations in technological fields such as information technology, telecommunications, and other fields in which technology skills are critical parts of the jobs emerging in their regional labor markets. Any consortia established as a result of this competition would also be expected to enhance the strategic planning efforts and policy efforts of local boards under the Workforce Investment Act in these areas.

DATES: The closing date for receipt of applications is Thursday, April 27, 2000. Applications must be received by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Marian G. Floyd, Reference: SGA/DFA 00–103; 200 Constitution Avenue, N.W., Room S–4203, Washington, DC 20210.

Hand-Delivered Proposals. Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated address by 4 p.m., Eastern Time on Thursday, April 27, 2000. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Telegraphed, electronic, or faxed proposals will not be honored. Failure to adhere to these instructions will be a basis for determination of nonresponsiveness.

Late Proposals. A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and was either:

(1) Sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term ''working days'' excludes weekends and the U.S. Federal holidays.

(2) Sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th). The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Fax questions to Marian G. Floyd, Division of Federal Assistance at (202) 219–8739 (this is not a toll-free number). All inquiries sent via fax should include the SGA /DFA–00–103 and contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's (ETA) Home Page at *http://www.doleta.gov.* Award notifications will also be published on the ETA Home Page.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for comprehensive incumbent and

dislocated worker retraining program. It is envisioned that the upgrading of current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas.

This announcement consist of six (6) parts.

(1) Part I—Background
(2) Part II—Eligible Applicants and Application Process
(3) Part III—Proposal Submission
(4) Part IV—Statement of Work/Government's Requirement
(5) Part V—Rating Criteria & Award Selection
(6) Part VI—Monitoring, Reporting & Evaluation Requirements

Part I. Background

A. Authority

Section 323(a)(6) of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under Section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under Section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees must comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

During periods of economic expansion, reports of robust growth often overshadow news about pockets of persistent worker dislocation. Each year, there are over 3.3 million people laid off from their jobs, with many of these individuals served by federal, State and local career services. At the same time, the demand to create a better educated, higher skilled labor force for the 21st Century continues to rise. With 70% of the workforce for the year 2020 already in place, many observers have recognized that workplace learning is a priority investment for businesses, as well as incumbent workers. With real wages and productivity on the decline in some rural and urban areas, partnerships forged by employers, labor, unions, community colleges, technology centers and Government provide both the support and the expertise to train and retrain workers.

Because technology and manufacturing are cornerstones of the economy, efforts to provide the highest levels of quality in meeting the training needs of workers are essential both to step-up productivity and to increase industrial competitiveness worldwide. Training machinists and engineers to replace workers who have retired or will be retiring from U.S. manufacturing industries during the next several years has created severe problems for both the industry and employed workers unable to move into more complex, skilled professions. Subsequently, expanding the manufacturing base is a key factor in moving people from poverty into skilled professions where rising standards of living will directly impact regional economies.

Building the capacity for workers to continually develop skill sets and to apply new learning to job specific tasks is a fundamental strategy in an era of global competition, trade deregulation, and rapid technological change. Developing critical thinking and problem solving abilities, while improving fluency in reading, writing, English as a Second Language and mathematics are requirements of today's high performance workplace. Bureau of Labor Statistics data report occupations that require at least an associates degree will account for 40 percent of all job growth out to 2008, compared to a one-quarter share of all jobs that existed in 1998. In a knowledge-driven economy, investing in worker skill advancement may be as important to competitiveness as investments in advanced machinery or technology or even the rise and fall interest rates. Greater schooling and training lead to higher wage rates. In fact, of all the factors studied, the wage premium for knowledge is highest. On average, wages go up about 10 percent to 15 percent as knowledge requirements go up one level and all other factors of the job are fixed.

In the Report on the American Workforce, 1999, the Secretary of Labor emphasized that ''Workers must enter the workforce with strong basic and job-related skills, and they must be prepared to learn new skills continuously in their places of employment, over the course of their lives.'' Instruction for adult literacy and numeracy, and the integration of knowledge from computer-based training are essential elements of successful business practice that cut across geographic regions or employment sectors. Moreover, using community-based expertise to provide agricultural and business training in rural areas appears to parallel efforts in urban communities to move people from poverty into the skilled labor market by targeting funds for training in local skill shortage occupations. Furthermore, by fostering training consortia, the vast majority of the costs associated with training incumbent workers by companies involved in the consortium would be fully paid by the companies themselves.

A $7.2 million dislocated and incumbent worker demonstration program will support the creation of projects to respond to employer-identified skill shortages in regional labor markets. This program will build on the Department's June 1998 $7.7 million dislocated worker technology demonstration and the new $9.5 million manufacturing technology demonstration awarded in June 1999. In part, it will support the creation of industry-led projects which can design or adapt training curricula in skill shortage occupational areas or in key regional businesses.

Part II. Eligible Applicants and the Application Process

1. Eligible Applicants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. This is a risk free Federal program; therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant. All participants in projects funded under this demonstration program must be either:

(a) Eligible dislocated workers as defined at JTPA Section 301(a)(1), and 314(h)(1) of the Job Training Partnership Act. These sections of the law may be viewed at *http://doleta.gov/regs/statutes/jtpalaw.htm.* Proposed projects may target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, nature of dislocation, and reason for unemployment. Note: Individuals whose eligibility is based upon their status as long-term unemployed (Section 301(a)(1)(C)) must have a demonstrated attachment to the labor force; or

(b) Incumbent workers. These are currently-employed workers whose employers have determined that the workers require training in order to help keep their firms competitive and the subject workers employed, avert layoffs, upgrade workers' skills, increase wages earned by employees and/or keep workers skills competitive. Such training would support further job retention and career development for improved economic self-sufficiency for employed workers, especially those most vulnerable to job loss, and increase the capability of the employing firm(s) to access and retain skilled workers.

2. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the types described at Section 314(c) and (d) of JTPA. Supportive services may be provided

when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. (Use ETA's web site referenced above to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with the provisions of 20 CFR 627.240. In addition to the limitations and requirements provided in JTPA, particularly at Part C of Title I, prospective applicants should be aware that grant funds may not be used for the following purposes:

(a) for training that an employer is in a position to provide and would have provided in the absence of the requested grant;

(b) to pay salaries for program participants; and

(c) for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award, however, the level of detail in the project plan may affect the amount of funding provided.

Grant activities may include:

(a) development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand employment as quickly as possible;

(b) working with employers to develop and apply worksite-based learning strategies that utilize cutting-edge technology and equipment;

(c) development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers with new skills;

(d) development and initial application of contextual learning opportunities for participants to learn occupational theory in a classroom setting while applying that learning in an on-the-job setting;

(e) use of curriculum and skills training programs that are designed to impart learning to meet employer-specified or industry specific skill standards or certification requirements;

(f) convening of an Employer Advisory Board to identify skills gaps of job applicants and present workers affecting the ability of the employer to offer a competitive product and develop a strategy for retraining;

(g) innovative linkage and collaboration between employers and the local JTPA Substate Grantee and/or One-Stop/Career Center system to ensure a steady supply of targeted workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation. However, successful applicants must demonstrate the direct involvement by employers experiencing skill shortages in the design and operation of the project as well as provide substantive documentation about the existence of skill shortages for the industry or occupations to be targeted by the proposed project. Documentation should include a description of the employer involvement anticipated in the project. An employer advisory committee may be one means of accomplishing employer involvement.

3. Coordination

In order to maximize the use of public resources and avoid duplication of effort, applicants will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within a project area fulfill this requirement. The use of Pell Grants for eligible workers or the use of State training or education funds provided for dislocated workers or certain types of employers should also be addressed in the application. Where appropriate, partnerships should also include trade unions, manufacturing extension programs, economic development organizations, training institutions, and other local stakeholders. Any efforts proposed in isolation will not have the maximum impact on building capacity within that region or industry and are not likely to be funded.

4. Grant Awards

It is anticipated that $7.2 million will be available to fund these projects. Approximately six to ten grants will be awarded, with an estimated range of $200,000 to $3 million per grant, with no individual grant exceeding $3 million.

5. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government.

6. Option To Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of demonstration funding under the Workforce Investment Act, successful program operation, and the determination that a grantee's initial program findings could further inform the workforce development system through refinement of the present demonstration.

Part III. Proposal Submission

A. Contents

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) distinct parts, Part I and Part II.

1. Financial Application

Part I of the proposal shall contain the Standard Form SF424, ''Application for Federal Assistance'' (Appendix # A) and Budget Information Form (Appendix # B). The Catalog of Federal Domestic Assistance number is 17.246. Applicants shall indicate on the SF424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The individual signing the SF424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

The budget must include on separate pages detailed breakouts of each proposed budget line item found in the budget information sheet including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services, supportive services, and retraining services. The Salaries line item shall be used to document the project staffing plan by providing a detailed listing of each staff position providing more than .05 FTE support to the project, by annual salary, number of months assigned to demonstration responsibilities, and FTE percentage to be charged to the grant. In addition, for the Contractual line item, list each of the planned contracts and the amount of the contract. For each budget line item that includes funds or in-kind contributions from a source other than the requested grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

Costs associated with the development of curriculum and other one-time costs should be noted separately in order for reviewers to identify costs associated with development and start-up as well as on-going participant costs.

In addition, the budget shall provide sufficient funds for approximately four persons' trips to meetings in Washington, DC and other locations.

2. Technical Proposal

Part II, the technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part IV of this solicitation, and following the outline of the Rating Criteria in Part V, a grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Each application must include the Checklist provided as Appendix C, a Time line outlining project activities provided as Appendix D, and an Executive Summary not to exceed two (2) pages. No cost data or reference to price shall be included in the technical proposal.

Part IV. Statement of Work

A. Background

Each grant application is required to fully address items A thru H of this Part as they relate to the rating criteria in Part V.

Information required under A and B below shall be provided separately for each labor market area where dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

A. Target Population

Describe the characteristics of the proposed target population for the project, *e.g.,* educational level, previous occupation, age range, likely transferrable skills, length of unemployment, and language limitations. Describe the size and needs of the target population in the local area as they relate to the services available to the grant. Provide documentation showing there is a significant number of dislocated workers with the target population's characteristics in the project area(s).

If the project seeks to serve under-represented subgroups such as minority groups, women, older workers (50 years of age and older), disabled individuals, within a particular occupation and the selected subgroup has unique characteristics or needs, such characteristics or needs should be identified. Substantive and timely documentation of the subgroup's under-representation must be included.

Indicate how the number of workers to be enrolled was determined. Sufficient documentation should be provided to show that workers with appropriate characteristics to meet the purposes of this grant are available in sufficient numbers to meet the recruitment goals of the grant recognizing that not all workers with appropriate characteristics will choose to participate.

B. Available Jobs

Describe the jobs that will be available and targeted for placement to project participants upon completion of training and placement services including the strategy(ies) for identifying job openings that appear appropriate to the training planned and meet the target wage-at-placement goals established in the proposal. Include information about the number and type of jobs, wage information and the specific set of skills, knowledge or duties (industry-sponsored standards of certifications). Provide documentation (footnote sources) that a shortage of qualified workers exists in the local area to fill positions in the targeted occupations in the absence of the proposed project. Anecdotal data should not be used. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee local job training plans may also be considered. Other sources from the private sector such as Chamber of Commerce, local Technology Council surveys, as well as university studies, are also acceptable. Data must relate to local employment shortages. Substantive linkages with specific employers who are experiencing skill shortages among their present workforce and/or the demand for additional employees with skills in documented occupational shortages must be provided. Letters from employers who have made a commitment to the demonstration project are the most appropriate form of documentation.

If some placements will be made with employers who have not been identified at the time of application, describe the job development and placement strategy to be used to assure placement of demonstration participants.

C. Project Design

(1) Purpose. Describe the specific purpose or purposes of the proposed project.

(2) Service Plan. Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include recruitment, eligibility determination, assessment, retraining, job placement, and supportive services.

(a) Outreach and recruitment. Describe how eligible dislocated workers will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching dislocated workers, especially the targeted population. It is highly recommended that non-JTPA applicants partner with the appropriate JTPA Title III Substate Grantee(s) or local One-Stop Career Center System to plan and implement effective outreach and recruitment strategies.

(b) Eligibility determination. Describe the process to be used in determining the JTPA Title III eligibility of potential participants in the project. It is highly recommended that non-JTPA applicants partner with the appropriate JTPA Title III substate grantee(s)or local One-Stop Career Center System to carry out eligibility determination.

(c) Selection criteria. Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project. Identify any assessment tools that will be used as part of the selection process.

(d) Training Services. Describe the training to be provided-classroom, experiential, on-the-job, internships, etc. Include the length (days and hours) and schedule, any prerequisite courses, and

customization to account for transferable skills, previous education (note whether the training requires new and higher educational levels than previous skill training in the same industry), and particular circumstances of the target population and the skill needs of the hiring employer(s). Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed, if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services including courses provided by both public and private providers in the local area. If the training is be customized to account for individual differences in skills levels of participants or employer hiring needs, describe how these considerations will be taken into account in the delivery of the training. The planned training must be supported by the information provided regarding skill shortages and demand for jobs using such skills.

(e) Job Placement. Describe the role of the employer linkages previously addressed in assuring the availability of jobs for participants completing training. If an Employer Advisory Committee is the primary employer linkage, the members of the committee should be listed and the type of expertise they bring to the committee noted. Provide a discussion of the role(s) of the advisory committee and its projected meeting frequency. A neutral chair (someone other than the grantee) should direct the advisory committee. Describe any additional job seeking skills training or assistance provided to participants completing training.

(f) Post placement services. Describe any post placement services to be provided and explain their value to the achievement of the project's purpose and planned outcomes.

(g) Supportive services. Describe those supportive services determined to be appropriate to the target population's needs. Describe policies and procedures to ensure that supportive services are provided only when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. Indicate how the participants' financial needs during the period of training will be addressed.

(h) Relocation. Describe the limitations and eligibility criteria for relocation assistance, if such assistance is included in the proposal.

(3) Participant flow. Provide a flowchart noting length of time for various activities (such as one day for assessment, *etc.*) to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Show the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note where service choice options will be available to participants. Indicate the average length of participation from eligibility determination and enrollment in the demonstration project to placement in an unsubsidized job.

(4) Relationship to prior experience. Discuss how the applicant's prior experience in working with dislocated individuals affects or influences the design of the proposed project. Note especially lessons learned or positive experiences that will be replicated.

D. Planned Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures must include, but are not limited to:

(1) The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs (a minimum of 80 percent entered-employment rate is required); to retain their jobs after specified periods of time; to learn new skills which will assist them in retaining or upgrading their current positions or in moving to a new job; to be ''placed'' into new, enhanced jobs with their current employers, or jobs in another occupational class with their current employers, or another occupation.

(2) Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

(3) Wages of participants prior to, at placement, and 90 days after placement: (a) for dislocated worker participants: a minimum of 90 percent wage replacement rate is required for at least 75 percent of the participants and an average 90 percent wage replacement for the overall demonstration project is required; (b) for incumbent worker participants: a minimum of 100 percent wage retention is required for all participants successfully completing training and meeting the competencies/skills levels specified by the employer prior to the training.

(4) As part of the targeted outcome for wage after training, each project should benchmark the average weekly wage in the relevant sector or industry in the labor market in which each project will operate. For projects serving dislocated workers, as part of the targeted outcome for wage at placement, each project should benchmark at least two key wage averages for the labor market in which each project will operate. Suggested benchmarks might include:

(a) The average weekly wage in the relevant sector; or the average weekly wage for technical and skilled trade jobs; and (b) the average wage at placement for the JTPA Title III, dislocated worker program operated by the local Substate Grantee. Provide an explanation of the particular benchmarks chosen for the project. For incumbent workers, indicate the present wage level of the workers to be trained, their projected wage after training, and discuss how these wage levels compare with the appropriate benchmark wage for the local labor market area.

(5) For each project serving dislocated workers, at least 80 percent of the individuals placed shall be placed at a wage that meets or exceeds (a) the average benchmarked wage in the labor market area, or (b) the average wage at placement for the last program year completed (currently 1998) for the JTPA Title III dislocated worker program operated by the local Substate Grantee in the targeted labor market, whichever is greater. Wages for labor markets may be obtained from the Covered Wages and Employment Program administered by each State's Employment Service.

(6) Customer satisfaction of participants with the project services at critical points in the service delivery process as well as upon placement, and employer satisfaction with the skills and preparation of the participants placed with their organization; participant and employer satisfaction with project services and with the participants' skill level and work, should be measured not only at the end of the project but also at critical points identified by the applicant during the progress of the demonstration's implementation in order to allow for service strategy correction as required.

(7) Planned average cost per placement (amount of the grant request divided by the number of program-related placements or continued placements); and

(8) Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of services and comparison

with other available service strategies. Where possible, it would also be useful to look at production improvement and other measures the employer uses regarding efficiency, product quality and output. [**Note:** An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.]

E. Collaboration

Describe the nature and extent of collaboration and working relationships between the applicant and other workforce development partners in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Provide documentation that the collaboration described can reasonably be expected to occur. Signed letters of agreement and/or the charter of a formally established advisory council are considered the strongest evidence, while letters of support are considered weaker evidence.

Describe the number and types of employers to be directly involved in implementation of the demonstration through activities as participation on an advisory council, provision of input to curriculum development and design, training provider, internship supervision, participation in establishment of local skill standards, etc. Describe activities, presently in place or to be undertaken to link activities to program interventions under this grant to employers, industry, or curriculum/learning centers currently designing and developing occupational/job skill standards and certifications. Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications. Employer linkages must be specifically addressed in the application and documentation provided of the specific role(s) the employer(s) will play in implementation of the grant provided.

Skill standards play an important role in ensuring participants are meeting the accepted standards of industries. Grant applicants may show how skills standards and O*NET are used to help dislocated/incumbent workers acquire training and new jobs. Skill standards can mean National Skill Standards (NSS) developed under the auspices of the NSS Board or other skill standards recognized by employers as valid requirements for jobs. O*NET refers to the Occupational Information Network that replaces the Dictionary of Occupational Titles and defines all jobs in terms of worker requirements, occupational requirements, experience requirements, worker characteristics, occupational characteristics and occupation-specific requirements. The applicant may request a brochure explaining O*NET at the following e-mail address: rrann@doleta.gov. Skill standards and O*NET are useful for structuring training curriculum, assessing dislocated/incumbent workers' skills and interests, and defining career paths from one occupation to another. Their application in the proposed project's training design would indicate close links to employers and an understanding of the demands faced by workers in high performance workplaces.

Applicants are encouraged to commit matching funds to the implementation and management of their proposed programs. Matches may be in the form of cash or in-kind contributions. These may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; and provision of staff time at no cost to the project. Sources of matching funds may include but are not limited to employers, employer associations, labor organizations, and training institutions. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions.

Note: National Reserve Account grants for specific plant closures and layoffs may not be used to match demonstration grant funds, these grants provide sufficient funds to meet the needs of any worker in the targeted area. However, NRA grant funds may be used to purchase 50 percent or less of the total training slots in training developed with demonstration grant funds.

Documentation of consultation on the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs where a labor organization represents a substantial number of workers engaged in similar work. Where the union has been involved in bargaining relative to the introduction of either technology or the addition of new skilled workers at the workplace, provide information as to any role the union played in the design and delivery of the training as well as any impact on the workers with respect to the growth or shrinkage in the number of jobs, the selection of workers for retraining.

F. Innovation

Describe key innovations in the proposed project, including (but not limited to) innovations in concept to be tested, type of participant to be served, services provided, delivery of services, training methods, job development, or job retention strategies. These innovations should be unique to the ongoing knowledge base of service delivery and training presently available to the workforce system. Explain the impact of such innovation on project costs to substantiate the budget items designated as development and start-up costs.

G. Previous Experience

If the applicant has had a demonstration grant with the Department of Labor, Education or HHS within the last three years, list the title of the grant, the amount of the grant, the funding agency, a Federal contact phone number and a brief summary of purpose of the grant. For those grants funded by the Department of Labor, explain how this grant application differs from the previous grant's activity. Explain how the proposed project is similar to and differs from the applicant's prior and current operations.

H. Project Management

(1) Structure. Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project and assures that sufficient staff are available to implement the project in a timely and effective manner. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project, in the overall structure of the applicant's organization. Note: It is highly recommended for applicants requesting $500,000 or more that a full-time project director be available to ensure timely and effective implementation of the project.

(2) Program Integrity. Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to determine the

achievement of project outcomes as indicated in section D of this part; and report on participants, outcomes, and expenditures.

(3) Monitoring and Reporting. Describe how the project will keep records of its activities, as required in 29 CFR parts 95 and 97 and 20 CFR 631.63 as appropriate, which will include information such as the following:

(a) Benchmarks. Provide a Timeline of implementation and projected performance benchmarks covering the period of performance of the project (Appendix E). Include a monthly schedule of planned implementation activities and start-up events (such as curriculum development, selection of advisory council, advisory council meetings, hiring of staff, and completion of lease arrangement for space, development of an internal program progress reporting system, design of customer satisfaction measures, initiation of customer satisfaction activities for participants/for employers); quarterly projections of planned participant activity, showing cumulative numbers of enrollments, participation in training and other services, placements, and terminations; and quarterly cumulative expenditure projections. The quarterly performance projection data may be shown in the same implementation benchmark timeline or separately.

(b) Participant progress. Describe how a participant's continuing participation in the project will be monitored, including determination of successful progress in training activities.

(c) Project performance. Identify the information on project performance that will be collected on a short-term basis (*e.g.*, weekly or monthly) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary. Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Describe the process for effecting needed corrective action that may be identified through this feedback. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

(d) Impact of Collaboration and Innovation. Describe the process for assessing and reporting on the impact of collaboration and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

(4) Grievance Procedure. If the applicant is a JTPA administrative entity or service provider, assure that a grievance procedure is presently in place. Otherwise, describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at Section 144 of JTPA and 20 CFR 631.64(b) and (c).

(5) Previous Project Management Experience. Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

(6) Sustainability and Replicability. Provide assurances that if the project is successful, the demonstration grantee and partners will continue to improve and develop the demonstrated approach. Describe the aspects of the demonstration approach that will allow other workforce development entities to replicate the proposed project. Note: The cost per participant will be a consideration in any replication consideration by other entities. Discuss the potential applicability of the project, or aspects of the project (such as new assessment tools, *etc.*), to other dislocated worker programs.

V. Rating Criteria & Award Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed in the SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award grants with or without discussions with the offerors. In situations without discussions, an award will be based on the offeror's signature on the Standard Form SF 424, which constitutes a binding offer. The Government reserves the right to make awards under this section of the solicitation to ensure geographical balance. The Grant Officer will make final award decisions based upon what is most advantageous to the Federal Government in terms of technical quality, responsiveness to this Solicitation (including goals of the Department to be accomplished by this solicitation) and other factors.

Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population (10 Points)

The description of the characteristics of the target group to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service need. Documentation is provided showing that a significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The project identifies under represented groups to be trained in the targeted occupation(s).

B. Targeted Jobs (15 Points)

The jobs are clearly available to workers who have received appropriate training and preparation given:

(1) The match between the documented skill shortage and the training planned;

(2) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications;

(3) The substantial level of involvement of employers in making known their needs regarding requisite worker skills necessary for hiring program completers;

(4) The documentation and reliability of job availability is based upon recognized, reliable and timely sources of information;

(5) Where appropriate, the role of workers or representatives of a labor organization representing the workers in the design and/or delivery of training in enhancing worker skills during workplace change

C. Service Plan (20 Points)

The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances;

(2) The complexity of the training and the skills to be developed relative to their characteristics and previous job experience;

(3) The jobs in which they are to be placed relative to targeted wage at placement goals;

(4) The length of program participation planned prior to placement.

D. Costs (20 Points)

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including One-Stop/Career Center organizations. The cost information provided regarding similar training available through other training providers is within an acceptable range or sufficient rationale is provided for the cost differences. The impact of development/start-up and innovation on costs is explained clearly in the proposal and is reasonable.

Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

The degree to which other interested partners in the workforce development system invest resources to test the concepts put forth in the application.

E. Management (13 Points)

The project management plan is designed to track project performance in such a way as to assure that benchmarks are achieved in a timely manner, issues affecting performance such as employer involvement, collaboration partners commitments, *etc.* are quickly identified and addressed, and planned outcomes will be achieved in a cost effective manner.

The applicant (as a part of a collaborative approach) has experience working with the relevant training. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

F. Collaboration (12 Points)

The proposal includes evidence of direct participation by JTPA SubState Grantees and One-Stop/Career Center entities (where present) in the planning and management of this grant. Evidence of participation of employers whose positions are targeted under the grant is present. Evidence of coordination with other programs and entities for project design or provision of services is also provided. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

G. Innovation (5 Points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. ''Innovation'' refers to the degree to which such concept(s), design and/or services are not currently found in dislocated worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

H. Sustainability and Replicability (5 Points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using JTPA Title III formula-allotted funds or other public or private resources. The likelihood that the approach may be applicable to a broad range of dislocated worker programs across the country. The proposal provides evidence that the approach and training strategy(ies) used can be replicated by other workforce development partners to address skill shortages in their local area.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, targeted jobs, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance SF424 constitutes a binding offer.

Part VI. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically. Applicants selected as grantees will be required to provide the following reports:

1. Monthly progress reports, during initial start-up and implementation of the project, and Quarterly Progress Reports.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis.

3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department. A draft of the final report is due to the Department 45 days prior to the termination of the grant.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers as well as project financial and management data and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC, this 24th day of March, 2000.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

Appendices

1. Appendix A—Application for Federal Assistance SF 424
2. Appendix B—Budget Information
3. Appendix C—Checklist
4. Appendix D—Implementation Benchmarks and Time Line

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

17-246

TITLE: **Comprehensive Incumbent/Dislocated Worker Retraining Demonstration Program**

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	©)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual (Consultants)			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C APPLICATION CHECKLIST

Name of Applying Organization: _____

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the solicitation. This document is not intended to be comprehensive or address every aspect of the solicitation.

Application Process (Please check below)

_____ Application is 20 pages or less.

_____ Attachments limited to 10 or fewer.

_____ An original and three copies submitted.

_____ SF424 (Appendix A) included.

_____ Budget Information Form (Appendix B) included.

_____ Checklist (Attachment C) included.

_____ Implementation schedule (Attachment D) included.

_____ Executive Summary of two pages or less included.

Financial and Technical Provisions (Provide page number in space below)

____ Target Population identified, with supportive documentation

____ Industry's jobs targeted are described and SIC codes are listed

_____ Role & involvement of employers experiencing skill shortages discussed

_____ Role of local JTPA Substate Grantee & 1-Stop/Career Center system discussed

_____ Discussed number & type of targeted jobs & requisite skill sets for employment

_____ Specific skill standards & certification for targeted occupations discussed.

_____ Sources and credibility of labor market/job data cited.

_____ Approach to identifying and recruiting eligible participants included.

_____ Eligibility determination approach discussed.

_____ Process in selecting eligible participants discussed.

_____ Job placement strategy included.

_____ Sequence of services and activities to be provided discussed.

_____ Flowchart of participant services included.

_____ Applicants' prior experience with dislocated workers addressed.

_____ All project outcomes and measures of success specified are addressed.

_____ Method of assessing impact of coordination included.

_____ Coordination with other entities discussed.

_____ Innovation and impact of the project discussed.

_____ Management structure and staffing plan addressed

_____ Organizational chart and relationships included.

_____ Mechanism to ensure financial accountability discussed.

_____ Basis for applicant's administrative authority addressed.

_____ System to collect, track, manage, report,& utilize data on the project's progress

_____ Ability to collect and submit SPIR data indicated.

_____ Benchmarks to indicate planned implementation schedule included.

_____ Method to obtain feedback from participants and employers discussed.

_____ Past experience in Federal demonstration grant projects discussed.

_____ Project's sustainability addressed.

Appendix D

COMPREHENSIVE INCUMBENT/DISLOCATED WORKER RETRAINING DEMONSTRATION GRANT IMPLEMENTATION STRATEGY BENCHMARKS AND TIMETABLE FORM

Below are examples of the types of tasks found in implementing a demonstration grant. The tasks, methodology and tangible results for any particular project may be different and probably include more tasks than those illustrated below. It is important, however, for any demonstration planning process to set forth the all of the necessary tasks to be accomplished and to think through the sequencing of subtasks and timing requirements necessary to assure the project can be accomplished effectively and efficiently within the period of performance. The time frames should be realistic ones that project administrators and operators can fulfill.

SPECIFIC TASKS TO BE COMPLETED	*(for use of grantee not to be included in application submittal)* ACCOUNTABLE PERSON (specify agency/ organization if outside grantee organization)	METHODOLOGY/APPROACH TO BE USED	TANGIBLE RESULT	TIME FRAME *(begin with Day 1 when notification of grant award is received)*	
				FROM	TO
1. Hire staff		a.Write job description b. Announce opening c. Interview candidates d. Select individual e. Individual reports for work f. All staff positions filled	a. Completed job description b. Announcement published c. Personnel papers completed on candidate d. Project at full staff complement		

2. Ensure adequate facilities to operate project		a. Determine space needs b. Arrange for space c. Negotiate lease d. Obtain necessary furniture and other equipment e. Review maintenance and security needs	Lease signed		
3. Establish participant reporting procedures		a. Review and identify participant data to be collected b. Form prepared to collect participant data or contract prepared for processing of data c. Staff trained in collection and coding of data d. Management report of data designed and tested			
4. Development of customer satisfaction measures		a. Identify the areas in which to determine customer satisfaction b.With consultant, design and test customer satisfaction survey c. Train staff in customer satisfaction philosophy e. Determine schedule for collection of customer satisfaction data f. Analyze and report on customer satisfaction findings g. Use findings to make appropriate program adjustments	a. Areas identified with regard to participant, employer and training provider satisfaction b & c. Surveys developed and pilot tests conducted d. Staff training completed on customer satisfaction e. Schedule for customer satisfaction data collection established f. Report analyzing customer satisfaction prepared and shared with appropriate staff g. Data used to initiate program adjustments		

5. Develop procedures for collection and reporting of financial data		a. Review required data and report forms to ensure that financial reporting system will collect required information. b. Develop internal report that will ensure that project personnel with operational responsibility will be able to keep informed of project expenditures c. Assign staff responsibility to review reports regularly d..... e....		
6. Develop and implement participant recruitment plan.		a. Establish responsibility for recruitment results b. Determine appropriate entities to participate in recruitment efforts c. Design recruitment materials		
7. Develop and implement agreements as necessary with other appropriate agencies and entities		a. Establish contact with ..... b. Develop draft agreements as necessary c. Negotiate and obtain necessary signatures....		

8. Develop and implement job development plan		a. Identify likely employers b. Survey of potential employers to determine need for additional workers and their characteristics c. ..... d.....			
9. Establish training needs, curriculum and select training provider(s)		a. Using information from employers, identify training required for placement with interested employers b. Ensure that curriculum to meet employers' needs is available or develop curriculum in collaboration with employers c. Determine method for selection of training providers	a. Areas most in need of trained workers per area's employers are identified b. Curriculum reviewed with employers c. Training provider(s) selected. d. Any necessary special arrangements with training provider(s) completed.		
10. Establish job search and placement assistance plan for participants		a.			
11. Establish Advisory Panel		a. Identify appropriate members b. Select desired members and issue invitation to participate c. Conduct training of panel regarding responsibilities to project d. Schedule meetings and tentative agendas			

12. Develop management benchmarks for program review and improvement		a. Identify data to be used to determine effectiveness of project activities (recruitment, assessment, training enrollments, training completions, job placements, wage rate, follow-up placement rate) b. Determine how data will be collected, the frequency of review, possible use of data collected, etc.		

[FR Doc. 00–7746 Filed 3–28–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA), H–1B Technical Skill Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for skill training programs for unemployed and employed workers. Funding for these grants is coming from the user fee mandated for applicants for new H–1B nonimmigrant visa workers and established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The grants will have the longer term goal of raising the skill levels of domestic workers so that they can fill high skill jobs which are presently being filled by temporary workers being admitted to the United States under the provisions of H–1B. Eligible applicants for these grants will be private industry councils (PICs) established under Section 102 of the Job Training Partnership Act (JTPA), local Workforce Investment Boards (WIBs) established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through one-stop delivery systems established under section 121 of WIA, or regional consortia of PICs or local boards. Regional consortia may be interstate.

WIA provides a framework for a national workforce investment and employment system designed to meet both the needs of the nation's businesses and the needs of job seekers and workers who want to further their careers. ACWIA will provide resources for skill training in occupations that are in employer demand; one measure of this demand is employer H–1B applications for workers. In particular, industries that appear to generate the most H–1B demand include information technology and health. Appendix A to this Solicitation provides information on the kinds of occupations certified under the H–1B program by the Department of Labor for Fiscal Year 1999 (Oct.1, 1998 to May 1999), and the number of job openings certified in each occupation.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. It is anticipated that about $40 million will be available for funding the projects covered in this second-round solicitation, that approximately fifteen projects will be selected for funding, and that the maximum grant award will not exceed $3.0 million.

This solicitation is one of a series. It is expected that the third-round solicitation will be announced in early August.

DATES: Applications for grant awards will be accepted commencing immediately. The closing date for receipt of applications shall be June 5, 2000, at 4:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Diemle Phan, SGA/DFA 00–104, 200 Constitution Avenue, NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll free number. All inquiries should include the SGA number (DFA 00–104) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at http://www.doleta.gov. Award notifications will also be published on this Homepage.

Background

This initiative will build on similar ETA initiatives that deal with the issue of skill shortages including the June 1998 dislocated worker technology demonstration, the new dislocated worker technology demonstration, the regional skills consortium building awards just announced, the individual training account demonstration grant awards just made and the skills strategies, partnership training/system building demonstration competitive procurement which was announced in the **Federal Register** on February 28. These efforts were intended to strengthen linkages between employers experiencing skill shortages in specific occupations and the publicly funded workforce development system. In June 1998, $7.5 million in JTPA Title III dislocated worker funds was awarded to 11 organizations throughout the country to train workers in skills related to the information technology industry. In June 1999, over $9.57 million was awarded to 10 grantees to train dislocated workers in the skills necessary to obtain work requiring advanced skills in occupations in manufacturing industry settings, including computers and electronics manufacturing, machinery and motor vehicles, chemicals and petroleum, specialized instruments and devices, and biomedics. On March 2, 2000, 23 awards totaling $15.2 million were announced for the regional skills consortium competition. Finally, this Solicitation is taking into account the experience gained from the first round of the H–1B competition for which 9 awards totaling $12.4 million were announced on February 10, 2000.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of demonstration projects to provide technical skills training for workers, including both employed and unemployed workers.

This announcement consists of three parts:

- Part I Application Process.
- Part II Statement of Work/Reporting Requirements.
- Part III Review Process/Rating Criteria.

Legislative Mandate

The relevant portions of ACWIA dealing with the establishment of a fund for implementing a program of H–1B skill training grants state:

''Section 286(s)—H–1B Nonimmigrant Petitioner Account

(1) In General—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B Nonimmigrant Petitioner Account.' Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

(2) Use of fees for job training—56.3 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 104(c) of the American Competitiveness and Workforce Improvement Act of 1998.''

''Section 104(c) Demonstration Programs and Projects to Provide Technical Skills Training for Workers.—

(1) In general—In establishing demonstration programs under section

452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act, or demonstration programs of projects under section 171(b) of the Workforce Investment Act of 1998, the Secretary of Labor shall use funds available under section 286(s) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) Grants—The Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C.1512), as in effect on the date of the enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998; or

(B) regional consortia of councils or local boards described in subparagraph (A).

The Immigration and Nationality Act (INA)(section 101(a)(15)(H)(i) (b)) defines the ''H–1B alien as one who is coming temporarily to the United States to perform services in a specialty occupation or as a fashion model.''

The INA (Section 214(i)) sets criteria to define the term ''specialty occupation:''

(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph 2, a ''specialty occupation'' means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States

(2) For purposes of section 101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—

(A) full state licensure to practice in the occupation, if such licensure is required.

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Part I—Application Process

A. Eligible Applicants

ACWIA specifies under Section 104(c)(2) that the Secretary shall award grants to private industry councils (PICs) established under section 102 of the Job Training Partnership Act (JTPA), or local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act (WIA) of 1998, or regional consortia of councils or local boards. This Solicitation contemplates that the local boards will designate a fiscal agent to be the recipient of grant funds.

While the statute is quite specific about the fact that only PICs, local boards (through their designated fiscal agents) and consortia may apply for and receive these grant awards, it does not preempt the participation of other concerned entities which are integral to the process of planning for and conducting skill training in skill shortage areas. The Department of Labor is requiring that eligible applicants must demonstrate that they have the involvement of a wide representation of the business community in their region. They are also strongly encouraged to reach out widely and involve a broad spectrum of other organizations such as labor unions, community colleges and other postsecondary educational institutions, and community based and faith based organizations in a partnership or consortium arrangement.

Applicants are encouraged to associate with entities which possess a sound grasp of the job marketplace in the region and which are in a position to address the issue of skill shortage occupations. Such organizations would include private, for profit businesses—including small-and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. Also, those entities should include businesses and business associations which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations. This Solicitation will not prescriptively define the roles of individual entities within the partnership beyond requiring, as ACWIA states, that the PICs, local workforce investment boards, or consortia be the applicant and the recipient of(or fiscal agent for receiving) grant funds. It is anticipated, however, that the proposal will provide a detailed discussion of participating organizations' respective responsibilities. The proposal should describe a consortium of several employers that will lead the consortium and provide matching funds and who intend to employ workers participating in the technical skills training. Based on Department of Labor experiences, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be successful. In general, applicants will be encouraged to include a broad spectrum of stakeholder groups, including such employers, in their partnership effort. Also, PICs or local workforce investment boards or consortia thereof representing more than one region that share common economic goals may band together as one applicant rather than applying individually.

The application must clearly identify who the applicant is (or in the case of a local board, who the fiscal agent is). As part of this certification, the applicant must identify who the grant recipient (and/or fiscal agent) is and describe its capacity to administer this project; it shall also indicate that the project is consistent with and will be coordinated with the workforce investment system(s) that are involved in technical skills activities in the region(s) encompassed by the applicant.

Part III of this announcement enumerates and defines in depth a series of criteria that will be utilized to rate applicant submissions. Briefly, these criteria are:

- Statement of Need
- Service Delivery Strategy
- Target Population
- Sustainability
- Linkages with Key Partners
- Outcomes
- Cost Effectiveness

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

• Part I of the proposal shall contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix B) and the Budget Information Form (Appendix C). The individual signing the (SF) 424 on behalf of the applicant shall represent the responsible financial and administrative entity for a grant should that application result in an award. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in

Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA is specific in stating that grant resources are to be expended for programs or projects to provide technical skills training. Therefore, ACWIA grant resources to be utilized for the costs of administration will be limited to no more than 10 percent of the request and should clearly support the goals of the project. Administrative costs include such items as project staff, travel, and fungible supplies. In general, however, this does not contemplate or permit the purchase of capital equipment. The budget narrative should discuss precisely how the administrative costs support those goals.

• Part II must contain a technical proposal that demonstrates the Offeror's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5 inch × 11 inch pages with 1-inch margins. The Offeror may provide statistical information and related material in attachments. Attachments may not exceed fifteen (15) pages. Letters of commitment from partners or from those providing matching resources may be submitted as attachments; however, letters of support are not required. Such letters will not count against the allowable maximum page total. The Applicant must briefly enumerate those entities in the text of the proposal. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 20 page limit. No cost data or reference to price is included in the technical proposal.

C. Hand Delivered Proposals

If proposals are hand delivered, they must be received at the address identified above by June 5, 2000, at 4:00 p.m., Eastern Time. All overnight mail will be considered to be hand delivered and must be received at the designated place by 2:00 on the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

• Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* a proposal submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term ''working days'' excludes weekends and U.S. Federal holidays. The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Period of Performance

The initial period of performance will be up to 24 months from the date of execution of the grant documents. It is anticipated that about $40 million will be disbursed. Department of Labor may elect to exercise its option to extend these grants for an additional period not to exceed 36 months, based on the availability of funding and successful program operation.

F. Definitions

For purposes of this solicitation:

• Technical skills training includes occupational skills training—that may combine academic and work-place learning and related instruction, customized training with a commitment of an employer or group of employers to employ an individual upon successful completion of training, and that may be tailored to meet the needs of the individual participant. Section 134 (d)(4)(D) of WIA provides a definition of training services that shall be viewed as generally applicable to the term ''technical skills training'' in this Solicitation. This definition of technical skills training specifically allows the use of grant funds to provide necessary books.

• Region means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with a couple of adjacent rural districts, a few special purpose districts, or a few contiguous PICs or local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.

G. Sustainability

No applicant may receive a grant unless that applicant agrees to provide resources equivalent to at least 25 percent of the grant award amount as a match. That match may be provided in cash or in kind, however, Federal resources may not be counted against the matching requirement. In view of the fact that the singular focus of grant resources is to provide skill training, ETA particularly encourages the provision of essential capital equipment, such as computer equipment, as part of the match. The match will not be tied to the drawdown of funds, however, the amount and nature of it must be clearly described in the application.

The 25 percent matching requirement should be viewed as a minimum designed to assist grantees in developing sustainability. The Department is particularly interested that applicants demonstrate clear evidence through matched and/or leveraged resources (those Federal resources which may not be counted against match but which are integral to strengthening the quality of technical skills training provided and which contribute materially to sustainability) that the project will have the capacity to continue its training activities after the expiration date of the grant.

Part II—Statement of Work/Reporting Requirements

A. Principles

Five basic key principles underlie this effort:

• *Partnership Sustainability:* The grant awards will be of relatively short duration—up to 24 months. Although the primary focus of these awards is technical skill training, ETA intends that regional partnerships sustain themselves over the long term—well after the federal resources from this initiative have been exhausted. The 25 percent non-Federal matching requirement is an integral part of ensuring sustainability; matching resources will help sustain the skill

shortages training effort beyond the term of the grant. This concept relates to Links with Key Partners and Sustainability (What resources does each partner bring to the table and how does this contribution assist in building the foundation for a permanent partnership?)

• *Business Involvement:* Business is an essential partner. It articulates skill requirements, hires skilled workers, and provides support for lifelong learning. Under WIA, business plays a critical role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of State and local boards be business representatives, and that the State and local board chairs be drawn from business. For the purpose of these grants, it is imperative that businesses represented include businesses with current skill shortages who intend to hire graduates of the technical skills training. This concept relates to three Rating Criteria: Statement of Need (Assists in determining what skill shortage occupations are in demand in the region), Linkages with Key Partners and Sustainability (What private sector involvement is there in the partnership; what resources does each of the partners bring to the table; how do contributions assist in building the foundation for a permanent partnership?), and Outcomes (Businesses involved in the partnerships will provide a key resource in hiring/upgrading workers who have been trained).

• *Current Skills Gap:* Current skill shortages are the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as skill shortage areas. This concept relates to Statement of Need (The most important issue to be addressed under this section is identifying the particular skill shortages that manifest themselves in the region.) and Service Delivery Strategy (How will skill training meet the skill needs of the region.)

• *Innovative and Effective Tools:* The grantees will use innovative or proven tools and approaches to close particular skills gaps and provide strategies for training that promote regional development. This concept relates to Service Delivery Strategy (There can be innovation in the way training services are provided.) and Cost Effectiveness (Innovative tools and approaches may more effectively deliver training services to individual participants thereby resulting in better employment outcomes and higher levels of skill achieved by those participants for the same cost.)

• *Target Population:* The primary emphasis of the ACWIA technical skills training will be to focus on employed and unemployed workers who can be trained and placed directly in the highly skilled H–1B occupations. As part of identifying people with the appropriate backgrounds that would benefit from such training, there should be a special outreach effort to target women, minorities, persons with disabilities, and other underrepresented groups. This relates to the rating criterion, Target Population (Discussion of who the targeted workers are.)

B. Skills Shortages

Section 104(c) of ACWIA mandates that the grants awarded under this authority be used for technical skill training to employed and unemployed workers. The basis of the funding for the grants, however, is a user fee paid by an employer seeking nonimmigrant alien workers (H–1B) that possess qualifications in occupations with skill shortages at high skill levels in American industry. Thus, training conducted under these auspices should be in occupations that have been demonstrated to be in short supply.

What is a skills shortage? In the simplest terms possible, such shortages occur in a market economy when the demand for skilled workers for a particular occupation is greater than the supply of workers who are qualified, available, and willing to do that job. Although, some of the explanations for why this demand or supply disequilibrium exists are fairly complex, the basic concept is straightforward. In many instances, labor markets adjust quickly and the skill shortage is resolved.

Problematic skills shortages occur when there is imbalance between worker supply and demand for an unusual period of time. The H–1B visa program is a response to those shortages, and this skill training grant program helps alleviate such shortages. It should be noted that the concept of skill shortages also may include an imbalance between the demand and supply of workers at some definable skill level.

C. Skills Standards

As noted earlier, the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i) of INA, speaks to a very high skill level for these ''specialty occupations'' (8 U.S.C. 1184 (i)). To reiterate, these are occupations that require ''theoretical and practical application of a body of highly specialized knowledge,'' and full state licensure to practice in the occupation (if it is required). These occupations also must require either completion of at least a bachelor's degree or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Skill standards represent a benchmark by which an individual's achieved competence can be measured. Much work has been done in this area—some by private industry and trade associations, some by registered apprenticeship training systems, some by public and private partnerships, including local School-to-Work partnerships, and the Job Corps. Succinctly stated, well-defined skill standards can be a useful tool in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their communities. Do companies that will be seeking skilled workers for H–1B occupations have a clearly defined set of expectations for the requisite capabilities of those workers?

D. Regional Planning

Applicants must describe the local area or region that will be served with particular emphasis on its skill shortages. That discussion should include an articulation of the dimensions, nature and specifics of those skill shortages. The proposal must also identify the political jurisdictions to be included as well as provide an enumeration of the specific local areas under JTPA or WIA. Although comprehensive occupational vacancy data do not exist, current H–1B applicant data should be utilized to the extent feasible to describe occupational shortages. Attachment A to this Solicitation is a listing by occupation of the most current H–1B applicant data. Applicants may take into consideration that occupations listed in high demand among those for which H–1B visas were sought nationally also might be in short supply in their region. However, applicants should avail themselves of all available local data including data provided by area businesses and business associations in making determinations as to shortages. They are encouraged to research widely and be inclusive in utilization of labor market information. In addition to the sources already described, applicants are encouraged to analyze data made available by the Bureau of Labor Statistics and through the local One-Stop delivery system.

E. Service Delivery and Supportive Services

Applicants should carefully describe skill training that will be provided under the grant in context of the goals that are to be achieved by participants. These goals should be expressed in terms of targeted occupations. The Statement of Work should provide a detailed discussion of the kinds of training to be provided and the mechanisms to be used to provide it. Applicants also should build linkages to the One-Stop system established under WIA to reach out, inform, and recruit individuals to participate in the H–1B financed training. It is expected that the applicant's work statement will include a discussion of the types of skills being trained for, the necessary skill levels that are targeted, how they will be measured, and how skill shortages in the local area or region will be met through this training

The central role of the local boards or PICs in the planning and policy activity surrounding these grants is critical. WIA requires the local board to prepare a strategic workforce investment plan for the area that it embraces. The local board also designates One-Stop service center operators and selects eligible training providers. In short, local boards are already engaged in much of the necessary work that could provide a solid foundation for the training activities to be undertaken in ACWIA. The PIC under JTPA is very much in a similar role except that the PIC may provide direct services; under WIA however, the presumption is that local boards only provide services under certain circumstances and for a limited time period.

ACWIA requires that grant resources be used solely for technical skills training. However, ETA anticipates that applicants may need to make available a range of supportive services to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, however—such as transportation or child care and others defined by section 4(24) of JTPA and section 101(46) of WIA—could be viewed as an important factor enhancing the technical skills training package. To the extent that these services are provided utilizing non-Federal resources, applicants may present them as part of the proposed matching requirement. Federal resources such as coenrollment in WIA or JTPA while participating in ACWIA training for supportive services clearly cannot be counted toward the matching requirement; however, such coordinated coenrollment and services are clearly desirable features of these projects. Successful applicants are encouraged to leverage such Federal resources as part of making the technical skills training more effective.

F. Reporting Requirements

The Grantee is required to provide the reports and documents listed below:

- Quarterly Financial Reports. The grantee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report (SF269) until such time as all funds have been expended or the period of availability has expired.
- Progress Reports. The grantee must submit brief narrative quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report provides a detailed account of activities undertaken during that quarter including:

a. A discussion of occupational areas for which skill training is being provided,

b. Job placements in skill shortage occupations, and

c. An indication of any current problems which may affect performance and proposed corrective action.

- Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the demonstration shall be submitted no later than the expiration date of the grant. The final report shall be submitted in 3 copies no later than 60 days after the grant expiration date.

G. Evaluation

ETA will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of ETA.

Part III—Review Process & Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

A. Statement of Need (15 points)

The underlying statute authorizing this competitive grant program—ACWIA—is a response to skill shortages around the country in specific occupations. ETA has provided the most recent H–1B application data as an attachment to this solicitation. The most important issue to be addressed under this section is identifying, to the extent possible, the particular skill shortages that manifest themselves in the region that is encompassed by the application. Applicants are encouraged to utilize all available data resources—H–1B applications, newspaper want ads, expressed employer consortium hiring desires, and One Stop system's labor market information—in responding to this criterion.

To provide a focused backdrop for the discussion of skill shortages, applicants should describe clearly the region for which services are to be provided. What are the characteristics that make this area a cohesive region? What are the particular characteristics of the local political, economic and administrative jurisdictions—PICs, local workforce investment boards, labor market areas, special district authorities—that caused them to associate for the purpose of this application?

There are several useful items of information that could be provided to enhance the description of the region. A general discussion of the region should include socioeconomic data—with a particular focus on the general education and skill level prevalent in the area. Also, it is useful to include such items as transportation patterns, demographic information (such as age and general income of residents). Judicious use of statistical information is encouraged. Other pertinent questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing, and which ones are cutting back contracting? What are the characteristics of the major employers in the region? What is the particular situation of the consortium member companies?

B. Service Delivery Strategy (30 points)

Applicants must lay out a comprehensive strategy for providing the technical skills training that is mandated as the core activity of these grant awards. Concomitantly, there needs to be a discussion of how this skill training will meet the skill needs

of the region. Several specific issues must be focused on as part of this section. Those issues include:

What is the range of potential training providers, what kinds of skill training will be offered, how will that meet the regional skill needs, and how will training be provided? How will the types of training planned for project participants be determined? Also, although there is a separate section on outcomes, it is strongly recommended that some brief mention in context of the service delivery strategy, be made of them here. Such outcomes would include job placements in skill shortage occupations, increased salary, and measurable skill gains or certificates obtained that demonstrate how the training will alleviate skill shortages.

Supportive services, per se, are not an allowable activity with grant funds. However, making such services available on an as needed basis (utilizing other available resources) is encouraged. Innovation in the context of service delivery can represent a wide variety of items. There can be innovation in the way training services are provided—e.g., distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged.

C. Target Population (10 points)

The eligibility criterion for skill training enumerated in ACWIA is extremely broad—employed and unemployed workers. This section should include an extensive focused discussion of who the targeted workers are, including their characteristics, and why they are being targeted. A discussion of what assessment procedures are to be used is integral.

In the case of employed workers, there should be some articulation of what is to be accomplished. The applicant should address some specific issues relating to the target employed worker population such as:

—How many employed workers will be targeted for services and why?
—What are the technical skills training needs of those workers to fulfill skill shortage occupations?

In the case of unemployed workers, there needs to be an extensive discussion of criteria to be used to assess and enroll individuals. It is true that the target occupations and specific jobs to be trained for within the H–1B rubric are statutorily geared to a very high skill standard. It is extremely important that the selection process for workers be carefully described to make it clear how those individuals will possess the capacity after the completion of training to take jobs that previously were filled by resorting to the H–1B visa process. In particular, the applicant should describe with precision the methods that will be used to reach out and include minorities, women, and individuals with disabilities who can meet these standards.

D. Sustainability (5 Points)

There is a 25 percent matching requirement. To what extent does any of these partners provide matching funds or services and how does this contribution assist in building the foundation for a permanent partnership, *i.e.,* sustainability?

As noted earlier, Federal resources cannot be counted against the matching requirement; however, it is important that such resources be provided as part of the project because they certainly support and strengthen the quality of the technical skills training provided in the project and contribute materially toward sustainability. ACWIA resources are limited to training individuals to fill high skill H–1B jobs, however, applicants will be given preference for enumerating other resources—Federal and non Federal—because they can contribute materially toward sustainability. For example, local boards could commit through One-Stop centers such valuable participant services as participant assessment and case management. Applicants are encouraged to enumerate these resources under this section to support their discussion of sustainability.. This section should also enumerate any specific existing contractual commitments.

Briefly stated, the sustainability issue can be addressed by providing concrete evidence that activities supported by the demonstration grant will be continued after the expiration date of the grant using other public or private resources.

E. Linkages With Key Partners (15 Points)

The applicant should enumerate who the partners are in this endeavor and how they will link together—i.e., what role each will play. In particular, this section should articulate ties to the private sector, including ties with small- and medium-sized businesses and small business federations.

The Service Delivery Strategy section of the Statement of Work described the role each of the actors would play in providing services. This section looks at the linkages from a somewhat different more structural perspective with particular emphasis on the employers in the consortium that are experiencing skill shortages. What resources does each partner bring to the table? The application will specify a management entity (together with a staffing pattern and resumes of major staff members) and will articulate with some precision the roles of various actors. Each application MUST designate an individual who will serve as project director and who will devote a substantial portion of his/her time to it. (For purposes of this requirement, a substantial portion of time is defined as at least 40 percent.) A short portion of this discussion should dwell upon the organizational capacity and track record of the primary actors in the partnership.

F. Outcomes (15 Points)

Applicants must describe the predicted outcomes resulting from this training. It is posited that the projected results will be somewhat varied given the broad range of people that will probably be served. For example, employed workers may be trained to achieve a higher skill level than most unemployed workers. Their success could manifest itself through job placements in H–1B skill shortage occupations, increased wages, or skill attainment in H–1B occupations. There are, however, unemployed workers who may well already possess a very high skill level. They could receive refresher technical skills training to update their skills. The outcomes for this group may also be projected in terms of gaining employment and skills attainment; those outcomes would simply be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset.

Ideally, the applicant's outcomes section will describe some version of a relatively cohesive mosaic that weaves together the outcomes for both employed and unemployed workers in the context described in the preceding three paragraphs. Additionally, the outcomes section should focus very specifically on the changes that occur because of the training. Thus, an applicant might state that a certain skill level is projected for a given group; but the applicant should couch that outcome in context of what the initial pre-training skill level had been for the group.

G. Cost Effectiveness (10 points)

Applicants will provide a detailed cost proposal including a discussion of the expected cost effectiveness of their proposal in terms of the expected cost

per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes and the levels of skills to be achieved (such as attaining State licensing in an occupation) relative to the amount of training that the individual had to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained and quantitatively in terms of wage gains. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to services provided and outcomes to be attained.

This section MUST contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the 25 percent match requirement will be considered nonresponsive. Applicants are advised that discussions and/or site visits may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the Grant Officer after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government in terms of technical quality and other factors.

Signed in Washington, D.C. , this 24th day of March 2000.

Laura Cesario,

Grant Officer, Division of Federal Assistance.

Appendix A: Selected H–1B Professional, Technical and Managerial Occupations, and Fashion Models: Number of Job Openings Certified by the U.S. Department of Labor, Fiscal Year 1999 (Oct. 1, 1998–May 31, 1999)

Appendix B: (SF) 424—Application Form

Appendix C: Budget Information Form

APPENDIX A—SELECTED H–1B PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS, AND FASHION MODELS: NUMBER OF JOB OPENINGS CERTIFIED BY THE U.S. DEPARTMENT OF LABOR, FISCAL YEAR 1999

[Oct. 1, 1998—May 31, 1999]

Occupational code	Occupational title	Number of openings certified
030	Occupations In Systems Analysis And Programming	360,745
076	Therapists	181,665
160	Accountants, Auditors, And Related Occupations	35,665
039	Other Computer-Related Occupations	28,529
003	Electrical/Electronic Engineering Occupations	16,859
070	Physicians And Surgeons	11,264
019	Other Occupations In Architecture, Engineering And	11,175
090	Occupations In College And University Education	9,028
199	Miscellaneous Professional, Technical, And Manager	8,964
189	Miscellaneous Managers And Officials	8,824
007	Mechanical Engineering Occupations	7,115
050	Occupations In Economics	5,608
163	Sales And Distribution Management Occupations	5,368
033	Occupations In Computer Systems Technical Support	4,573
161	Budget And Management Systems Analysis Occupations	4,263
169	Other Occupations In Administrative Occupations	4,135
031	Occupations In Data Communications And Networks	4,121
041	Occupations In Biological Sciences	3,981
079	Other Occupations In Medicine And Health	3,764
012	Industrial Engineering Occupations	2,725
186	Finance, Insurance An Real Estate Managers And Off	2,624
020	Occupations In Mathematics	2,599
001	Architectural Occupations	2,490
141	Commercial Artists: Designers & Illustrators, Graphics	2,371
297	Fashion Models	2,367
092	Occupations In Preschool, Primary, Kindergarten Ed.	2,359
187	Service Industry Managers And Officials	2,347
022	Occupations In Chemistry	2,345
005	Civil Engineering Occupations	2,186
032	Occupations In Computer System User Support	1,595
091	Occupations In Secondary School Education	1,579
110	Lawyers	1,353
029	Other Occupations In Mathematics And Physical Sciences	1,306
131	Interpreters and Translators	1,270
166	Personnel Administration Occupations	1,229
165	Public Relations Management Occupations	1,216
185	Wholesale And Retail Trade Managers And Officials	1,183
008	Chemical Engineering Occupations	1,075
168	Inspectors And Investigators, Managerial & Public	974
142	Environmental, Product And Related Designers	955
119	Other Occupations In Law And Jurisprudence	882
099	Other Occupations In Education	841
023	Occupations In Physics	836
010	Mining And Petroleum Engineering Occupations	777
164	Advertising Management Occupations	773
132	Editors: Publication, Broadcast, And Script	748
078	Occupations In Medical And Dental Technology	699
183	Manufacturing Industry Managers And Officials	681

APPENDIX A—SELECTED H–1B PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS, AND FASHION MODELS: NUMBER OF JOB OPENINGS CERTIFIED BY THE U.S. DEPARTMENT OF LABOR, FISCAL YEAR 1999—Continued

[Oct. 1, 1998—May 31, 1999]

Occupational code	Occupational title	Number of openings certified
184	Transportation, Communication, And Utilities Management	659
049	Other Occupations In Life Sciences	612
162	Purchasing Management Occupations	604
040	Occupations In Agricultural Sciences	574
074	Pharmacists	508
159	Other Occupations In Entertainment And Recreation	506

Technical Note: The Immigration and Nationality Act (Act) assigns responsibility to the Department of Labor with respect to the temporary entry of foreign professionals to work in specialty occupations in the U.S. under H–1B nonimmigrant status. Before the Immigration and Naturalization Service will approve a petition for an H–1B nonimmigrant worker, the employer must have filed and had certified by the Department a Labor Condition Application. The employer must indicate on the application the number of H–1B nonimmigrant workers sought, the rate of pay offered to the nonimmigrants, and the location where the nonimmigrants will work, among other things.

The Act limits the number of foreign workers who may be assigned H–1B status in each fiscal year, however, there is no limit on the number of job openings that may be certified by the Department. Historically, the actual number of job openings certified by the Department each year far exceeds the number of available visas. This excess in the number of certified openings is due to a number of factors: extension of status filings that are not subject to the annual cap; openings certified for anticipated employment that does not transpire; or movement from one employer to another (again, not subject to cap).

The occupational codes in the left-hand column represent the three-digit occupational groups codes for professional, technical and managerial occupations from the Dictionary of Occupational Titles (DOT).

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX B

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

17-249

TITLE: **H - 1B TECHNICAL SKILL TRAINING GRANTS**

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	©)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual (Consultants)			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 00–7747 Filed 3–28–00; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The Sunshine Act Meeting

Monday, April 10, 2000–1:00–4:00 p.m.

1110 Vermont Avenue, NW, 8th floor, Washington, DC

DISCUSSION TOPIC

''Digital Divide'' and the Role of the Commission

Tuesday, April 11, 2000—8:30 a.m.–4:30 p.m.

1110 Vermont Avenue, NW, 8th floor, Washington, DC.

MATTERS TO BE DISCUSSED

Administrative matters
Chairperson's report
Executive Director's report
Strategic planning for the Commission
NCLIS 30th anniversary celebration
NCLIS Program/committee updates
Sister Libraries, A White House Millennium Council Project
Update, The future of the National Technical Information Service

To request further information or to make special arrangements for persons with disabilities, contact Barbara Whiteleather (telephone: 202–606–9200; fax: 202–606–9203; e-mail: bwhiteleather@nclis.gov) no later than one week in advance of the meeting.

Dated: March 23, 2000.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 00–7859 Filed 3–27–00; 2:00 pm]
BILLING CODE 7527–$$–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

QUARTERLY MEETING DATES: May 22–24, 8:30 a.m. to 5:00 p.m.

LOCATION: Ritz Carlton San Juan Hotel, 6961 State Road No. 187, Isla Verde, Carolina, Puerto Rico.

FOR INFORMATION, CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 27, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–7820 Filed 3–27–00; 1:50 pm]
BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company, Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Notice of Issuance of Renewed Facility Operating Licenses Nos. DPR–53 and DPR–69 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued (1) Renewed Facility Operating License No. DPR–53 (the Unit 1 license), and (2) Renewed Facility Operating License No. DPR–69 (the Unit 2 license) to Baltimore Gas and Electric Company (the licensee). The Unit 1 license authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit 1 by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the Unit 1 license, its Technical Specifications (Appendices A and B), and the Additional Conditions in Appendix C to the license. The Unit 2 license authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit 2 by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the Unit 2 license, its Technical Specifications (Appendices A and B), and the Additional Conditions in Appendix C to the license.

Calvert Cliffs Nuclear Power Plant, Units 1 and 2, are pressurized water nuclear reactors located at the licensee's site on the west shore of the Chesapeake Bay in Calvert County, Maryland.

The application for the renewed licenses complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed operating licenses was published in the **Federal Register** on May 19, 1998 (63 FR 27601). A notice of opportunity for hearing regarding the proposed issuance of these renewed operating licenses was published in the **Federal Register** on July 8, 1998 (63 FR 36966).

For further details with respect to these actions, see (1) the Baltimore Gas and Electric Company's License Renewal Application for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, dated April 8, 1998, as supplemented by letters dated July 17 and 30, September

25, November 2, 4, 9, 12, 16, 17, 19, and 20, and December 3 and 10, 1998; February 4 and 19, March 11, April 4, July 2 and 16, September 28, October 22, November 12, and December 6 and 30, 1999; and January 12, 2000; (2) Renewed Facility Operating License Nos. DPR–53 and DPR–69, with the appendices listed above; (3) the Commission's Safety Evaluation Reports dated March 21, November 16, and December 1999 (NUREG–1705); (4) the licensee's updated final safety analysis report; and (5) the Commission's Final Environmental Impact Statement (NUREG–1437, Supplement 1), dated October 1999. These items are available at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

A copy of the Renewed Facility Operating Licenses, Nos. DPR–53 and DPR–69, may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Director, Division of Licensing Project Management. Copies of the Safety Evaluation Report (NUREG–1705) and the Final Environmental Impact Statement (NUREG–1437, Supplement 1) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (telephone number 703–487–4650, <*http://www.ntis.gov/ordernow*>), or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone number 202–512–4650, <*http://www.access.gpo.gov/sh docs*>). All orders should clearly identify the NRC publication number and the requestor's Goverment Printing Office deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the Nuclear Regulatory Commission.

David L. Solorio,

Project Manager, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs.

[FR Doc. 00–7710 Filed 3–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee), to withdraw its October 25, 1999, application, as supplemented by letter dated January 12, 2000, for a proposed amendment to Facility Operating License No. NPF–47 for the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would have revised the reactor vessel material surveillance program capsule schedule, defined in Technical Requirements Manual, Table 3.4.11–1, as required by Title 10 of the Code of Federal Regulations Part 50, Appendix H, Section III. The licensee had originally requested that the schedule to remove its first surveillance capsule be changed from 10.4 effective full power years (EFPY) to 13.4 EFPY. The January 12, 2000, letter subsequently requested that the capsule removal schedule be 11.5 EFPY.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment, which was published in the **Federal Register** on December 15, 1999 (64 FR 70083). However, by letter dated March 2, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 25, 1999, supplemental letter dated January 12, 2000, and the licensee's letter dated March 2, 2000, 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 23rd day of March 2000.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7712 Filed 3–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGISTER NOTICE

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of March 27, April 3, 10, 17, 24, and May 1, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 27

Thursday, March 30

8:55 a.m. Affirmation Session (Public Meeting)
a: Petition for Leave to Intervene in Proceeding Regarding Commonwealth Edison Request for Exemption at Zion Facility.

9:00 a.m. Briefing on EEO Program (Public Meeting), (Contact: Irene Little, 301–415–7380).

Friday, March 31

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790.

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m. Briefing on Oconee License Renewal (Public Meeting)

Wednesday, May 3

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Efforts Regarding Release of Solid Material (Public Meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 24, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–7818 Filed 3–27–00; 11:50 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Relocation of the NRC Public Document Room

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of relocation of the NRC Public Document Room.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) is planning to relocate the NRC's Public Document Room (PDR). The PDR is currently located at 2120 L Street, NW, in Washington DC. The NRC plans to relocate the PDR to the NRC's headquarters at the White Flint complex in Rockville, Maryland, by September 30, 2000. The NRC is requesting public comment from users of the PDR on how to best optimize service at this new location.

DATES: The comment period expires April 28, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments should be sent to David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–00001.

Hand deliver comments to 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is planning to relocate the NRC's Public Document Room (PDR). The PDR is currently located at 2120 L Street, NW, in Washington DC. The NRC plans to relocate the PDR to the NRC's headquarters at the White Flint complex in Rockville, Maryland, by September 30, 2000.

The NRC's headquarters offices are located at 11555 Rockville Pike, Rockville, Maryland, at the intersection of Rockville Pike and Marinelli Drive. These offices are conveniently located across Marinelli Drive from the White Flint Station on Metro's Red Line and are a short distance from the Capital Beltway (I–495) exits 34 and 35. All reference services currently provided at the Washington, DC, location will be available in the newly renovated space at NRC headquarters. Dining facilities, both inside and outside the headquarters complex, are available. Limited free perimeter parking is available at the rear of the building as well as on nearby streets. The new facility will have handicapped access and parking.

One function of the PDR is to manage the research collection of publicly available paper documents comprising those that pre-date the NRC's Agencywide Documents Access and Management System (ADAMS) (before November 1, 1999) and those ADAMS records that are provided to the PDR in paper. In a recent study of document usage, it was determined that most of the documents requested and copied by the public are less than 18 months old. At the time of the move, the PDR will have over a year's worth of documents in ADAMS, the NRC's full text-database. The NRC intends to retire the majority of the historical paper collection to an off-site storage facility with plans to provide no-cost, quick turn-around retrieval service. Paper copies of the more frequently requested documents will be kept on-site. As now, the 2.5 million documents in the ADAMS Legacy Library will be available for immediate viewing (and copying) on microfiche at the new facility.

Other On-Going PDR Services

The PDR technical reference librarians assist the public in identifying, retrieving, organizing, and evaluating NRC publicly available information and documents, as well as other resources, represented in electronic, microfiche, paper, and other formats. The PDR provides terminals for the public to access documents in the ADAMS, training, and other assistance in installing and using ADAMS. The PDR manages a contract that provides, for a fee, document duplication for the public. There will continue to be an ''800'' number for callers outside the Washington, DC, metropolitan area; however, that number will change when the move is finalized.

Although NRC's headquarters office is located in Rockville, Maryland, section 23 of the Atomic Energy Act of 1954, as amended, requires the NRC to maintain an office for the service of process and papers within the District of Columbia. The NRC has used its PDR at its current location in Washington, DC, to meet this requirement. However, in view of the fact that most NRC stakeholders currently serve papers at NRC headquarters in Rockville, Maryland, and that the NRC in the near future will permit electronic filings, the NRC has requested Congress to enact legislation that would eliminate the requirement that the NRC maintain an office in the District of Columbia. In the event that legislation is not enacted, the NRC will identify alternative means to satisfy the requirement in section 23. The NRC will make conforming changes to its regulations to reflect the new location of the agency's PDR.

FOR FURTHER INFORMATION CONTACT: Thomas E. Smith, Acting Chief of the PDR, Nuclear Regulatory Commission, telephone 202–634–3381, or toll-free 1–800–397–4209.

Dated at Rockville, Maryland, this 22nd day of March 2000.

For the Nuclear Regulatory Commission.

Francine F. Goldberg,

Director, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 00–7711 Filed 3–28–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of an information collection (OMB control number 1212–0054; expires July 31, 2000) relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The booklet provides guidance on how to submit a proper qualified domestic relations order (a ''QDRO'') to the PBGC. This notice informs the

public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by May 30, 2000.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

SUPPLEMENTARY INFORMATION: The PBGC intends to request a three-year extension of the paperwork approval relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The collection of information has been approved through July 31, 2000, by OMB under control number 1212–0054.

A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order.

When the PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. For several years the PBGC has provided the public with model QDROs (and accompanying guidance) in the booklet, *Divorce Orders & PBGC*, that attorneys and other professionals who are preparing QDROs for plans trusteed by the PBGC may submit to the PBGC after receiving court approval. The models and the guidance assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusteed by the PBGC.

Before providing the model forms and the QDRO booklet, the PBGC received many inquiries on the requirements for QDROs. Furthermore, many domestic relations orders, both in draft and final form, did not meet the applicable requirements. The PBGC worked with practitioners on a case-by-case basis to ensure that their orders were amended to meet applicable requirements. This process was time-consuming for practitioners and for the PBGC.

Since making the booklet and the model forms available, the PBGC has experienced a decrease in (1) the number of inquiries about QDRO requirements, (2) the number of orders that do not meet the applicable requirements, and (3) the amount of time practitioners and the PBGC need to spend to ensure that the orders meet the applicable requirements.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 300 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be ¼ hour of the alternate payee's time and $400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 104.25 hours and $118,800.

The PBGC is soliciting public comments to—

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Issued in Washington, DC, this 23rd day of March, 2000.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 00–7713 Filed 3–28–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–318]

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form ADV–E, *OMB Control No:* 3235–0361.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ADV–E is the cover sheet for accountant examination certificates filed pursuant to Rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. Registrants each spend approximately three minutes, annually, complying with the requirements of the form.

The estimate of burden hours set forth above is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 20, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7685 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24363; 811–2144]

Baker, Fentress & Company; Notice of Application

March 23, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for deregistration under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Baker, Fentress & Company (''Company'') requests an order declaring that it has ceased to be an investment company. *Filing Dates:* The application was filed on September 8, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant 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 23, 2000, and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 200 West Madison Street, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Mary Kay Frech, 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 from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Company is a non-diversified closed-end management investment company registered under the Act. The Company's shares trade under the symbol ''BKF'' on the New York Stock Exchange.

2. In June 1996, the Company acquired Levin Management Co., Inc. (''Levin Management'') and its subsidiaries, including John A. Levin & Co., Inc. (''Levco,'' together with Levin Management and Levco's subsidiaries, the ''Levco Companies''), a registered investment adviser, as a vehicle through which the Company believed it could develop a broader financial services business.[1] The Company owns 100% of Levin Management, which in turn owns 100% of Levco. Levco owns 100% of LEVCO GP, Inc., which is the general partner of several investment partnerships managed by Levco, and LEVCO Securities, Inc., a registered broker-dealer. Levin Management provides administrative and management services to Levco and its subsidiaries.

3. The Company's investment portfolio consisted of the following: (a) a diversified portfolio of investments in publicly-traded, predominantly large-cap companies; (b) investment in private placement securities; (c) Levco Companies; and (d) a 78.5% interest in Consolidated-Tomoka Land Company (''CTO'').

4. On June 17, 1999, the Board, including those directors who are not ''interested persons'' of the Company as defined in section 2(a)(19) of the Act, considered and unanimously approved the Plan for Distribution of Assets of the Company (the ''Plan'') and authorized the Plan's submission to the Company's shareholders. The Plan authorized the Company to: (a) stop investing in accordance with the Company's current investment objectives, restrictions and policies, liquidate the securities held in the public portfolio and continue liquidating the private portfolio; (b) invest the proceeds of the liquidation in short-term, liquid investments; (c) distribute the proceeds of the liquidation and the Company's shares of CTO to its shareholders; (d) prepare and file the documents necessary to deregister the Company as an investment company; and (e) continue in business as a holding company, the principal remaining asset of which will be the Levco Companies. On August 19, 1999, the Company's shareholders approved the Plan and the deregistration of the Company under the Act.

5. The Company states that it has completed implementing the Plan. The principal asset of the Company now are the Levco Companies.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as an issuer which ''is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting, or trading in securities.'' The Company states that it is not an investment company as defined in section 3(a)(1)(A) of the Act, but is a holding company that owns the Levco Companies.

3. Section 3(a)(1)(C) of the Act defines an investment company as any issuer which ''is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' [2] The Company states that it is

[1] The Company received an exemptive order under the Act in connection with that transaction. See Baker, Fentress & Company, Investment Company Act Release Nos. 21890 (April 15, 1996) (Notice) and 21949 (May 10, 1996) (Order).

[2] Investment securities are defined in section 3(a)(2) of the Act to include all securities except (a)

not an investment company as defined in section 3(a)(1)(C) because the Company does not own, and does not propose to acquire, ''investment securities'' having a value exceeding 40% of the value of its total assets. The Company states that its interest in Levin Management, its wholly-owned subsidiary, represents approximately 96% of the Company's total assets on an unconsolidated basis. The Company further states that Levin Management's only asset is its 100% ownership interest in Levco. The Company states that Levco is not an investment company within the meaning of section 3(a) of the Act.

4. The Company thus states that it has ceased to be an investment company, and that it is entitled to an order deregistering the Company under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7727 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24364; International Series Release No. 1218; 812–12036]

Cirsa Business Corporation, S.A.; Notice of Application

March 23, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order under section 6(c) of the Act exempting a special purpose vehicle and any special purpose vehicle that applicant establishes in the future in the same manner and for the same purpose (each, ''SPV'') from all provisions of the Act. The order would permit SPV to sell certain debt securities (''Notes'') and use the proceeds to finance the business activities of applicant and its operating subsidiaries (''Operating Subsidiaries'').

FILING DATE: The application was filed on March 17, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 17, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, Carretera Castellar, 298, 08226 Terrassa, Barcelona, Spain.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant, a limited liability corporation organized under the laws of the Kingdom of Spain, is a Spanish leisure and gaming company. Applicant conducts its business activities through the Operating Subsidiaries. The Operating Subsidiaries are limited liability companies organized under the laws of the Kingdom of Spain that manufacture, distribute and operate gaming machines and own and operate bingo halls, casinos and family entertainment centers.

2. SPV will be a public limited company formed under the laws of England and Wales. SPV will be organized specifically to raise funds for the operations of applicant and the Operating Subsidiaries by issuing the Notes and lending the proceeds to applicant and the Operating Subsidiaries for the development of their respective businesses and repayment of certain existing debts. SPV will be organized, and conduct its activities, in accordance with rule 3a–5 under the Act, with certain exceptions discussed below. Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

3. Applicant has determined to raise capital through SPV because the direct issuance of the Notes by applicant would not be feasible under Spanish corporate law. Spanish corporate law restricts the direct issuance of the Notes by applicant or a finance subsidiary of applicant. For this reason, at least 95% of equity securities of SPV will be held by an English private limited company (''HoldCo SPV''). All of HoldCo SPV's equity securities will be held by a professional trust corporation (''TrustCo'') under the terms of an English law charitable trust. Applicant anticipates that TrustCo will also hold the remaining interest in SPV (less than five percent) under the terms of the charitable trust. The declaration of trust establishing the charitable trust will give TrustCo discretion to apply any residual value held by it for such purposes as it may select, provided they constitute ''charitable purposes'' under English law. In any case, any charity selected to benefit from any residual value in HoldCo SPV's assets (including the shares it owns in SPV) will not pay any consideration in connection with such acquisition.

4. SPV intends to issue the Notes in reliance on Regulation S and Rule 144A under the Securities Act of 1933 (''1933 Act'') and shortly thereafter file as registration statement under the 1933 Act to register a separate series of high-yield debt securities with identical terms to the initial Notes to be offered in exchange for the initial Notes. These Notes will be unconditionally guaranteed by applicant and, if the terms and conditions of the Notes so require, jointly and severally by one or more of the Operating Subsidiaries on an unsecured basis.

5. Applicant and SPV, in connection with the offering of the Notes, will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint an agent to accept any process which may be served, in any suit, action, or proceedings brought against applicant or SPV based upon their obligation under the Notes as described in the application. The consent to jurisdiction and appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Notes have been paid.

Government securities, (b) securities issued by employees' securities companies, and (c) securities issued by majority owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in sections 3(c)(1) or 3(c)(7) of the Act.

6. SPV will loan at least 85% of any cash or cash equivalents raised by SPV to applicant and the Operating Subsidiaries as soon as practicable, but in no event later than six months after SPV's receipt of the cash or cash equivalents. In the event SPV borrows amounts in excess of the amounts to be loaned to applicant and the Operating Subsidiaries at any given time, SPV will invest the excess in temporary investments pending lending the money to applicant and the Operating Subsidiaries. Consistent with rule 3a–5, all investments by SPV, including all temporary investments, will be made in government securities, securities of applicant or a company controlled by applicant, or debt securities which are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

7. SPV's articles of association and its memorandum of association and any trust indenture agreement will: (i) Limit its activities to issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Subsidiaries; and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV or TrustCo.

8. HoldCo SPV's articles of association and its memorandum of association will: (i) Limit its activities to borrowing funds from applicant to purchase and hold shares of SPV; (ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo; (iii) prohibit the transfer of SPV's shares to any party other than TrustCo; and (iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indebtedness other than the loan from applicant sufficient to cover the costs of purchasing the shares of SPV and costs incidental to the maintenance of HoldCo SPV and SPV.

Applicant's Legal Analysis

1. Applicant states that SPV may be viewed as falling technically within the definition of an investment company under section 3(a)(1) of the Act. Applicant requests an exemption under section 6(c) of the Act exempting SPV from all provisions of the Act. Section 6(c) of the Act permits the SEC to grant an exemption from the provisions of the Act if, and to the extent, that such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Applicant states that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that SPV meets all of the requirements of rule 3a–5 except for one, which it cannot meet for Spanish corporate law reasons. Rule 3a–5(b)(1)(i) under the Act requires that all of SPV's common stock be owned by applicant or a company controlled by applicant. Applicant asserts that, while for Spanish corporate law reasons SPV's common stock will be held by HoldCo SPV, SPV will be organized to serve solely as a conduit for applicant's and the Operating Subsidiaries' capital raising activities. Applicant further states that SPV's functions will be limited by its constitutional documents and any trust indenture agreement to the activities of a traditional finance subsidiary.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. SPV will comply with all provisions of rule 3a–5 under the Act, except with respect to rule 3a–5(b)(1)(i), over 95% of SPV's common shares will be held by HoldCo SPV (all of whose shares will in turn be held under the terms of an English law charitable trust), with the rest held by TrustCo. For purposes of rule 3a–5 under the Act, applicant will be deemed to be SPV's ''parent company'' and each Operating Subsidiary will be deemed to be a ''company controlled by the parent company.''

2. SPV's articles of association and memorandum of association and any trust indenture agreement will: (i) Limit the SPV's activities to issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Subsidiaries (as well as other activities incidental to the issuance of the Notes, loaning the proceeds thereof, and the day-to-day operations of the SPV); and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV or TrustCo.

3. HoldCo SPV's articles of association and its memorandum of association will: (i) Limit HoldCo SPV's activities to borrowing funds from applicant to purchase and hold shares of SPV; (ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo (pursuant to the terms of the charitable trust); (iii) prohibit transfer of SPV's shares to any party other than TrustCo; and (iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indetedness, other than a loan from applicant sufficient to cover the costs of purchasing the shares of SPV and costs and incidental to the maintenance of HoldCo SPV and SPV.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7726 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42558; File No. SR–CBOE–99–21]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Relating to the Exchange's Firm Quote Rule

March 22, 2000.

I. Introduction

On May 27, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 relating to the exchange's Firm Quote Rule. The proposed rule change was published for comment in the **Federal Register** on July 6, 1999.[3] No comments were received on the proposal. On September 23, 1999, CBOE submitted Amendment No. 1 to the proposed rule change.[4] On January 11, 2000, CBOE submitted Amendment No. 2.[5] In this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41558 (June 24, 1999), 64 FR 36414.

[4] *See* Letter to Heather Traeger, Attorney, Division of Market Regulation, SEC, from Timothy Thompson, Director—Regulatory Affairs, CBOE, dated September 22, 1999 (''Amendment No. 1''). In Amendment No. 1, CBOE proposes to eliminate the discretion of the appropriate Floor Procedure Committee to determine whether or not to apply the firm quote requirement to firm or broker-dealer orders by establishing that: (1) the extension of the firm quote requirement will apply to all equity and narrow-based index options and (2) only non-broker-dealer customer orders are entitled to firm quote treatment in all other products. The amendment also clarifies the proposed rule's requirement that the trading crowd change its quotes if members of the crowd are unwilling to trade at the displayed quote with an order that is not entitled to firm quote treatment.

[5] *See* Letter to Heather Traeger, Attorney, Division of Market Regulation, SEC, from Timothy Thompson, Director—Regulatory Affairs, CBOE,

notice and order, the Commission is seeking comment from interested persons on Amendment Nos. 1 and 2 and is approving the proposed rule change and is approving Amendment Nos. 1 and 2 on an accelerated basis.

II. Description of the Proposal

The proposal would amend CBOE Rule 8.51 to specify to what extent multiple orders entered by the same beneficial owner and represented at a trading station at approximately the same time will be entitled to firm quote protection. Specifically, the proposal would amend CBOE Rule 8.51 to deny firm quote protection to those orders or portions of orders for the same class of options (whether for the same or different series) that are entered by the same beneficial owner and are represented at the trading station at approximately the same time and cumulatively exceed the firm quote requirement for that particular class of options.[6] Under the proposed new paragraph (a)(3) of CBOE Rule 8.51, only the first of these three orders would be entitled to firm quote protection. The crowd would be required to trade the other two ten lot orders at the displayed market or to change the market pursuant to the terms of the ''trade or fade'' policy set forth in paragraph (b) of the Rule.[7]

The Exchange also proposes to amend paragraph (b) of CBOE Rule 8.51 and Interpretation .06 to make them consistent with the change in the categories of orders proposed to be subject to the firm quote guarantee.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of Section (6)(b)(5) of the Act[8] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[9]

The Commission believes that providing for limits on the extension of the firm quote protection in cases where multiple orders for the same class of options are submitted at approximately the same time will prevent market makers from being subjected to undue risk arising from an inability to refresh their quotes in a timely manner. The proposal should also prevent orders from being broken up by series solely to qualify for firm quote protection. This, in turn, should ensure that all customer orders are treated consistently with respect to firm quote protection.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 1 made several changes to the portion of the proposed rule change that would have extended firm quote treatment to broker-dealer and firm orders. Amendment No. 2 then deleted that same portion of the proposed rule change, leaving only sections of the proposal which were published in the **Federal Register** for notice and comment. The Commission did not receive any comments on the proposed rule change. Accordingly, the Commission finds good cause pursuant to Section 6(b)(5) of the Act for accelerating approval of Amendment Nos. 1 and 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–21 and should be submitted by April 19, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–99–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7687 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

dated January 5, 2000 (''Amendment No. 2''). In Amendment No. 2, CBOE proposes to delete that portion of the proposed rule change that would have extended firm quote treatment to broker-dealer and firm orders.

[6] For example, assume the firm quote requirement in option ABC is ten contracts and that a broker-dealer simultaneously sends orders to a floor broker in a crowd to buy ten at-the-money call options in each of three different series for that class ABC. The floor broker will likely represent each of these three orders one after another.

[7] Under the ''trade or fade'' policy, CBOE trading crowds and specialists or crowds on other exchanges have the option to trade a broker-dealer order at the displayed quote or to change the displayed bid (offer) to reflect that the previously displayed bid (offer) is no longer available. CBOE Rule 8.51(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 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).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42566; File No. SR–CHX–99–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Pre-Opening Orders in Dual Trading System Issues

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on January 3, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange Proposes to amend Exchange Article XX, Rule 37(a)(4) governing the handling of pre-opening orders to define what constitutes a pre-opening order for purposes of that rule. The text of the proposed rule change follows, additions are italicized.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Chicago Stock Exchange Rules

Article XX

Rule 37. Guaranteed Execution System and Midwest Automated Execution System
(a) Guaranteed Executions.
4. Preopenings. Preopening orders in Dual trading System issues must be accepted and filled at the primary market opening *trade price.* In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in Nasdaq/NM securities must be accepted and filled at the Exchange opening *trade price.* In trading halt situations, orders will be executed based on the Exchange reopening price. *For purposes of this rule, a pre-opening order in a Dual trading System issue is an order received prior to a primary market trade and prior to a primary market quote in the subject security.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to explicitly define pre-opening orders in Dual Trading System Issues.[3] Specifically, the proposed rule change will define pre-opening orders in Dual Trading System Issues as orders that are received before a primary market opens a subject security based on a print [4] or based on a quote.

The reason for the rule change stems from the wording of Exchange Article XX, Rule 37(a)(4); specifically, the requirement that pre-opening orders in Dual trading System Issues be accepted and filled at the primary market *opening.* Under this rule, orders received at the CHX before the first primary market *print* in a subject security are customarily filled at that first print price. The rule has always been applied in that manner because *prints* are the most common way of effecting the opening in a security. As such, it has been the practice at the CHX to treat orders received before the first primary market print as pre-opening orders. Nevertheless, on occasion a primary market will open a security by disseminating a *quote* without a corresponding print. When a security is opened in this fashion, subsequently received orders are, in fact, not pre-opening order.

However, because Rule 37(a)(4) does not explicitly define what constitutes a pre-opening order, the customary practice of treating all orders received before the first primary market print, including those received before the first primary market print but after the primary market opening quote, as recently been the cause of some confusion and unintended execution guarantees. Therefore, while the Exchange remains committed to ensuring that pre-opening orders sent to the CHX receive the same opening price execution on the CHX that they would have received had they been sent to a primary market, it believes it necessary to make clear what constitutes a pre-opening order. In doing so, the Exchange believes that both the CHX specialist community and their customers will benefit by eliminating any confusion that may exist regarding the execution responsibilities of specialists and expectations of customers.

As such, the proposed rule change will clarify that orders received after a primary market opens a security on a quote are not pre-opening orders for purposes of Rule 37(a)(4). Specifically, the proposed rule change provides that a pre-opening order in a Dual trading System Issue is an order received prior to a primary market trade and prior to a primary market quote in a subject security. Thus, under the proposed rule, an order received at the CHX after a primary market opens a security on a quote will not be entitled to be filled based on a subsequent primary market print.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) [5] of the Act because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–31 and should be submitted by April 19, 2000.

[3] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

[4] A print is defined as an executed trade. Telephone call between Dan Liberti, Vice President, Market Regulation, CHX and Kelly Riley, Attorney, Division of Market Regulation, SEC, on February 24, 2000.

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7729 Filed 3–28–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42563; File No. SR–OCC–99–16]

Self Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Exercises by Put Holders in a ''Short Squeeze'' Situation

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 2, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article VI, Section 19 to eliminate OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying stock in a short squeeze situation and, in lieu thereof, to give OCC the same authority to protect put holders as OCC already has to protect call holders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article VI, Section 19 of OCC's by-laws to eliminate OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying stock in a short squeeze situation and, in lieu thereof, to give OCC the same authority to protect put holders as OCC already has to protect call holders.

Currently, Article VI, Section 19 treats calls and puts differently in a short-squeeze situation. Section 19(a)(3) allows OCC to suspend the exercise settlement obligations of clearing members' assigned execution notice for their call option contracts until (i) OCC determines that there is no reasonable likelihood that a sufficient supply of the underlying security will become available, in which case OCC fixes a cash settlement price[3] or (ii) OCC determines that there is a sufficient supply of the underlying security available, in which case OCC either fixes a new exercise settlement date or, if delivery would be inequitable, a cash settlement price.[4]

In contrast, Article VI, Section 19 does not currently give OCC discretion to protect the benefit of a put holder's bargain in a short squeeze situation. Instead, as it is currently written, Article VI,Section 19(a)(2) gives OCC the limited power to prohibit the exercise of put option contracts by clearing members who will be unable to deliver the underlying securities on the exercise settlement date due to the short squeeze.[5] If OCC were to maintain such a prohibition through the option's expiration, a put holder who was unable to obtain the underlying stock would lose the benefit of the option even though the option is in the money.

Rather than allowing OCC to prohibit put exercises in a short squeeze situation, the proposed language would allow OCC to treat puts in the same manner as calls by giving OCC the right to suspend settlement until it can determine whether the unavailability of the underlying stock would extend past the option expiration date and, upon making that determination, to take the appropriate action under Article VI, Section 19(b) or (c). Thus, the proposed change allows OCC to protect the benefit of the put holder's bargain and to treat puts and calls equally in a short squeeze situation.

Because the proposed rule change would affect the fundamental obligations of put writers, OCC is making it effective only on a prospective basis with respect to new series of options introduced after the latter of (i) approval of the rule change by the Commission or (ii) commencement of distribution of a new or amended Options Disclosure Documents or an Options Disclosure Document[6] supplement disclosing the substance of the rule change.

Article XXIV, Section 5, which relates to buy-write options unitary derivatives (BOUNDs)[7] is proposed to be amended so that it conforms to the proposed new language for Article VI, Section 19.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Article VI, Section 19(c) of OCC's by-laws.

[4] Article VI, Section 19(b) of OCC's by-laws.

[5] The asymmetrical treatment of puts and calls was first addressed in 1979, when OCC believed that a call holder who is fully prepared to perform his obligation (*i.e.,* pay the exercise price) should not be disadvantaged merely because his exercise happens to be randomly assigned to an uncovered writer. Securities Exchange Act Release No. 16014 (Aug. 3, 1979), 44 FR 47424, (Aug. 13, 1979). OCC now believes that it is inappropriate to render a put holder's contract valueless when circumstances beyond his control (often a bankruptcy filing or other event adversely affecting the value of the underlying stock and thus validating the put holder's market judgment) disable him from obtaining the underlying stock. Such a result would generally be perceived as unfair and the desirability of avoiding a perception of unfairness outweighs the somewhat legalistic basis for the present rule.

[6] 17 CFR 240.9b–1.

[7] Securities Exchange Act Release No. 36960 (Mar. 13, 1996), 61 FR 11458.

as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–16 and should be submitted by April 19, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7686 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42557; File No. SR–PCX–98–30]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 2 and 3 to the Proposed Rule Change Relating to Telephone Use on the Options Floor

March 21, 2000.

I. Introduction

On June 26, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the Exchange's procedures and restrictions regarding telephone use on the Options Trading Floor. On November 12, 1998, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, including Amendment No. 1 was published for comment in the **Federal Register** on February 6, 1999.[4] On August 4, 1999 and September 27, 1999, respectively, the Exchange filed Amendments 2 [5] and 3 [6] to the proposed rule change. No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The purpose of this proposal is to establish rules and procedures for telephone use on the Options Floor. Proposed Rule 6.2(h) sets guidelines for the use of telephones by market makers, Lead Market Makers (''LMMs''), floor brokers, clerks, and floor managers.

The PCX is proposing to establish a formal rule requiring that Members and Member Firms must register, prior to use, any new telephone to be used on the Options Floor. Proposed Rule 6.2(h)(1) states that each phone registered with the Exchange must be registered by category of user (market maker, LMM, floor broker, clerk, or manager). If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, Members and Member Firm representatives must sign a statement indicating that they are aware of and understand the rules governing the use of telephones on the Options Floor.

The proposed Rule further states that no Member or Member Firm may employ any alternative communication device, including but not limited to e-mail, on the Options Floor without the prior approval of the Options Floor Trading Committee.

Capacity and Functionality

Proposed Rule 6.2(h)(2) specifies the capacity and functionality permitted for the use of telephones on the Options Floor. The Rule states specifically that no wireless telephone used on the Options Floor may have an output greater than one watt and that no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. The Rule does not permit speed-dialing features for Member phones.

The proposed Rule states specific guidelines for each category of user on the Options Floor, as follows:

Market Makers and LMMs

Proposed Rule 6.2(h)(3) states that market makers and LMMs may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor). The Rule also states that market makers and LMMs may use the pit rep and LMM telephones located at the trading posts only for the purpose of marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business. No person other than a pit rep, market maker [7] or an LMM may use the pit rep or LMM phones. This is to ensure that phones

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation, SEC, dated November 10, 1998 (''Amendment No. 1''). The substance of Amendment No. 1 is incorporated into this order.

[4] Securities Exchange Act Release No. 41018 (February 3, 1999), 64 FR 7681.

[5] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to David Sieradzki, Special Counsel, Division of Market Regulation, SEC, dated August 3, 1999 (''Amendment No. 2''). In Amendment No. 2, the Exchange clarifies that subsections (d)–(g) of Rule 6.2 are reserved for future use.

[6] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to David Sieradzki, Special Counsel, Division of Market Regulation, SEC, dated September 24, 1999 (''Amendment No. 3''). In Amendment No. 3, the Exchange amends Rule 6.2(h)(6) to indicate that floor managers may not use the pit rep or LMM phones.

[7] *See* Amendment No. 1, *supra* note 3.

will be accessible for customer inquiries and marketing.

Proposed Rule 6.2(h)(3)(C) states that market makers located off the Options Floor may not place an order by calling a floor broker who is present in a trading crowd. Market makers located off the Options Floor may not otherwise place an order by calling the pit rep or LMM phone in the trading crowd. Proposed Rule 6.2(h)(3)(C) also states that any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. According to the PCX, the purpose of this restriction is to facilitate adequate surveillance of telephonic orders and ensure that there is a record of the order in the event that a problem arises in connection with the order. The PCX also noted that the prohibition is consistent with Rule 6.85, Commentary .03, which requires verbal orders from market makers to be written up outside of the trading crowd.[8]

Floor Brokers

Proposed Rule 6.2(h)(4)(A) states that floor brokers may use cellular and cordless phones, but only to communicate with persons located on the Options Floor. These phones may not include a call forwarding feature. According to the PCX, this portion of the proposed Rule codifies long-standing PCX policies regarding phone use by floor brokers, which are designed to ensure that orders are entered in a manner that allows for routine monitoring and surveillance by the Exchange. In addition, the Rule states that floor brokers are permitted to use headsets to communicate with persons located on the Options Floor, but if the Exchange determines that a floor broker is maintaining a continuous open line through the use of a headset, the floor broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.[9]

Proposed Rule 6.2(h)(4)(B) provides that floor brokers may receive orders over their phones from any persons located on the Options Floor. Floor brokers who receive telephonic orders while in the trading crowd must step outside of the crowd, wirte up an order ticket and time stamp it before representing the order in the crowd. This is consistent with Rule 6.67(a) which requires orders to be in written form when taken to the trading post for attempted execution.[10]

Proposed Rule 6.2(h)(4)(B) further provides that any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. Proposed Rule 6.2(h)(4)(C) also prohibits the floor brokers from using the Pit Rep or LMM telephones under any circumstances. This is to ensure that telephones are available for marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business relating to Market Makers and Lead Market Makers.

Clerks

Proposed Rule 6.2(h)(5) states that Floor Broker Clerks and Stock Executions Clerks are subject to the same terms and conditions on telephone use as Floor brokers and that Market Maker Clerks are subject to the same terms and conditions on telephone use as Market Makers. Proposed Rule 6.2(h)(5)(D) further states that the Options Floor Trading Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems [11] or capacity problems [12] resulting from the number of such phones then in use on the Options Floor. In such circumstances, the Committee will first consider restricting the use of such phones by Market Maker Clerks, then by Stock Execution Clerks, and then finally, by Floor Broker Clerks.

Floor Managers

Proposed Rule 6.2(h)(6) states that Member Firm Floor Managers may use any telephone except the Pit Rep or LMM phones,[13] including any cellular or cordless phones, for any business purpose relating to their management responsibilities.

General Access Phones, Telephone Records, and Exchange Liability

Proposed Rule 6.2(h)(7) states that the general access phones located outside the trading areas may be used by any Member, Clerk, or Member Firm Floor Manager to communicate with persons on the Options Floor. Proposed Rule 6.2(h)(8) states that Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. Further, the Exchange reserves the right to inspect such records pursuant to Rule 10.2. [14]

Finally, proposed Rule 6.2(h)(9) states that the Exchange assumes no liability to Members or Member Firms due to conflicts between phones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the Options Floor.

Minor Rule Plan

Currently, the PCX Minor Rule Plan (''MPR'') includes as a minor rule violation, the unauthorized use of telephones located in the trading post areas.[15] The PCX is proposing to change the language in the Rule to refer to the proposed rule on telephone use on the Options Trading Floor (Rule 6.2(h)). Specifically, the provision will now state: Floor Member or Member Firm employee violated rules on telephones on the Options Floor. In addition, the PCX is proposing to increase the fine amount for a third violation from $750.00 to $1,000.00 to better reflect the seriousness of a third violation within two years.[16]

[8] PCX Rule 6.85, Commentary .03 provides in part: ''When a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it.''

[9] The Commission notes that a member would have the right to appeal any decision to suspend a member from using a headset pursuant to Exchange Rule 11.7, *Hearings and Review of Committee Action*.

[10] *See* PCX Rule 6.67(a).

[11] The term ''electronic interference'' refers to a situation where, even though there are talk paths available, a user cannot get a good signal because of interference with monitors, static, or a bay station not working correctly. Amendment No. 1, *supra* note 3.

[12] The term ''capacity problems'' is used to describe a situation where a user cannot get a signal because no talk path is available on a bay station. Currently, there are 96 talk paths available. If all 96 talk paths are being used, the 97th user will be unable to get a signal because all talk paths are being used. Amendment No. 1, *supra* note 3.

[13] *See* Amendment No. 3, *supra* note 6.

[14] Exchange Rule 10.2(d) requires members, member organizations, and persons associated with members to cooperate with regulatory investigations; including, but not limited to, furnishing documentary materials.

[15] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Pursuant to PCX Rule 10.13, the Exchange may impose a fine on any member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PCX Rule 10.13(h)–(j) sets forth the specific Exchange rules deemed to be minor in nature.

[16] As noted in PCX Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly,

Continued

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act [17] and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to prevent fraudent ad 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 a national market system, and, in general, to protect investors and the public interest.[19]

In determining to approve the proposal, the Commission notes that the telephone registration requirement in proposed Rule 6.2(h)(1) is consistent with PCX Rule 4.22,[20] which requires Exchange approval of any electronic or telephonic communications devices on the floor of the Exchange. The Commission finds that it is resonable for the Exchange to limit the power and function of telephones used on the options floor to ensure that member telephones do not cause interference with each other or with Exchange systems. Further, to enable the Exchange to effectively monitor for abuses of its telephone usage restrictions, the Commission finds that it is reasonable for the Exchange, pursuant to proposed Rule 6.2(h)(8), to require Members to maintain cellular or cordless telephone records for a period not less than one year.

The PCX's proposed Rule contains restrictions regarding telephone use by market makers. Specifically, proposed Rule 6.2(h)(3)(A) permits market makers to use their cellular or cordless phones to call any location on or off of the trading floor. In addition, proposed Rule 6.2(h)(3)(B) states that only market makers, pit reps and LMMs may use the pit rep and LMM phones. Rule 6.2(h)(3)(B) further provides that these phones may only be used for marketing options issues, responding to customer inquiries, and otherwise conducting Exchange business. Because market makers generally do not deal directly with public customers, the Commission does not believe that allowing market makers to communicate with locations off of the trading floor raises the same regulatory concerns discussed below regarding telephone use by floor brokers.[21] As a result, the Commission finds that it is consistent with the Act for the Exchange to allow market makers to use cellular or cordless telephones to call locations off of the trading floor. The Commission also finds that it is reasonable and consistent with the maintenance of fair and orderly markets for the exchange to limit the availability of certain telephones to certain members to ensure that these telephones are available to members as needed to conduct Exchange business.

PCX proposed Rule 6.2(h)(3)(C) requires market makers placing orders from locations off of the trading floor do so at a member firm booth and not by calling a floor broker in the crowd or using the Pit Rep and LMM phones in the trading crowd. The proposed rule contains a similar restriction for floor brokers providing that all orders entered from locations off of e floor must be placed with a person in a member firm booth. This floor broker restriction is discussed in more detail below. For the reasons disscussed below, the Commission finds that it is reasonable and consistent with the Act for the Exchange to require orders being entered from locations off of the trading floor to be entered at a member firm booth.

PCX proposed Rule 6.2(h)(4)(A) prohibits floor brokers from using cellular or cordless Telephones to communicate with persons located off of the trading floor. As discussed above, PCX proposed Rule 6.2(h)(4)(B) requires telephonic orders entered from off of the trading floor to be entered at a member firm booth and not directly with a floor broker in the crowd. The Commission believes that the Exchange's prohibition on the use of telephones by floor brokers to call locations off of the floor or receive orders from off of the floor is justified by legitimate regulatory concerns. Specifically, the PCX must ensure compliance with rules requiring that members who accept orders directly from public customers, are qualified to do so. Accordingly, this proibition helps to provide adequate surveillance over this activity by requiring all orders to be taken at the member firm booth and restricting outside phone calls. In addition, preventing floor brokers from directly accessing market information that might only be available on the floor of the Exchange trading the securities underlying the options trading at the PCX helps to alleviate concerns about frontrunning and other forms of market manipulation. Finally, this prohibition also furthers the goal of preventing persons located off of the trading floor from having virtually direct access to the trading crowd and receiving certain time and place advantages over other customers.[22]

The PCX's proposed rule also contains restrictions involving floor broker's communications while in the trading crowd. Specifically, proposed Rule 6.2(h)(4)(A) prohibits a floor broker from maintaining a continuous open line with other locations on the floor through the use of a headset. In order for the Commission to approve such restrictions, it must find that they are consistent with the Act and do not impose an unnecessary burden on competition in violation of Section 6(b)(8) of the Act.[23] The Commission finds that prohibiting floor brokers from using headsets to maintain a continuous open line with other locations on the floor is reasonable and consistent with the Act. As the commission has noted in the past, there is a marked difference between allowing non-members to communicate with members near the crowd and members actually in the trading crowd. The ability of a customer to communicate directly with a floor broker in the trading crowd would provide a significant advantage to that customer unlike the smaller advantage accruing from access to member firm booths on the trading floor.[24] If the Exchange allowed floor brokers to maintain an open line with a member firm booth, it could result in allowing persons located off of trading virtually direct access to a trading crowd.

Pursuant to proposed Rule 6.2(h)(5) telephone use by market maker and floor broker clerks is subject to the same terms and conditions as market makers and floor brokers. In addition, telephone use by stock execution clerks is subject to the same terms and conditions as floor brokers. Finally, the Exchange's

any fine imposed in excess of $2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. *See* Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992) (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. (''NYSE'') Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act.)

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* Securities Exchange Act Release No. 40852 (December 29, 1998), 64 FR 1058 (January 7, 1999) (Order approving PCX Rule 4.22 in SR–PCX–98–16).

[21] Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, SEC, on March 15, 2000.

[22] Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988).

[23] 15 U.S.C. 78f(b)(8).

[24] *See supra* note 22.

Options Floor Trading Committee reserves the right to restrict the use of cellular or cordless telephones by clerks at any time that it is necessary due to capacity or interference problems. For the reasons expressed above regarding telephone usage by market makers and floor brokers, the Commission finds that the proposed restrictions on phone usage by clerks on the floor of the Exchange are reasonable and consistent with the Act.

Proposed Rule 6.2(h)(6) provides that floor managers may use any phone except a Pit Rep or LMM phone,[25] including cordless or cellular phones for any business purpose relating to their management responsibilities. The Exchange represents that, due to the nature of their job and responsibilities on the trading floor, it is important that floor managers be able to use any available phone to effectively carry out their management responsibilities.[26] Based on this representation, the Commission finds this proposed rule reasonable and consistent with the Act.

The Commission supports the Exchange's efforts to codify existing Exchange policies to give its membership adequate notice of what conduct is prohibited. In regulating the PCX options trading floor and devising its structure, the Commission recognizes the PCX's right to restrict, under certain circumstances, the use of telephonic communications devices that are installed on its floor. While supporting the Exchange's efforts to monitor the types of communications that are on its options trading floor and regulate their use, the Commission expects the PCX to ensure that the rule being approved today is not used to limit access to services offered by the Exchange or applied in a manner inconsistent with Sections 6(b)(5)[27] and 6(b)(8)[28] of the Act.[29] Specifically, the Commission expects that proposed Rule 6.2(h) will not be interpreted in a manner that permits unfair discrimination between customers, issuers, brokers, or dealers or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services.

The Commission believes that the Exchange's proposed changes to its minor rule plan are reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources in light of the minor nature of the violation. The Commission notes that violations of the Exchange's telephone policy are objective and easily verifiable, and thus, lend themselves to the use of expedited proceedings. Specifically, the issue of whether a member has improperly used a telephone on the options floor may be determined objectively and adjudicated quickly without complicated evidentiary and interpretive inquiries. The Commission believes that the proposed change to the existing fine schedule is appropriate and should serve to discourage violations of the Exchange's telephone policy on its options trading floor.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 2 and 3 make technical, non-substantive changes to the proposal. As a result, the Commission does not believe that Amendment Nos. 2 and 3 raise any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period and the Commission received no comments regarding the proposal. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)[30] of the Act, to approve Amendment Nos. 2 and 3 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments 2 and 3, including whether the Amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned exchange. All submissions should refer to File No. SR–PCX–98–30 and should be submitted by April 19, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–PCX–98–30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7728 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

[25] *See* Amendment No. 3, *supra* note 6.

[26] Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, SEC, on March 15, 2000.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(8).

[29] *See e.g., William J. Higgins,* 48 S.E.C. 713 (1987).

[30] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42564; File No. SR–Phlx–99–46]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to registration of Trading Floor Personnel

March 22, 2000.

I. Introduction

On November 19, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1]and Rule 19b–4 thereunder,[2] a proposed rule change to require that all trading floor personnel be registered with the Exchange, trading floor personnel successfully complete specified examinations, and all member/participant organizations notify the Exchange of any change in the status of such personnel.

The proposed rule change was published for comment in the **Federal Register** on February 7, 2000.[3] No comments were received on the proposal. This order approves the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42365 (January 28, 2000), 65 FR 5922.

II. Description of the Proposal

The Phlx's proposed new Phlx Rule 620, Trading Floor Registration, requires that all trading floor personnel be registered with the Exchange, trading floor personnel successfully complete specified examinations, and all member/participant organizations notify the Exchange of any change in the status of such personnel. The Exchange also proposed amendments to Regulation 7(b), Required Filing for Floor Member Firm Employee Status Notices with the Exchange, to include members, non-members and clerks, to be consistent with the text of new Phlx Rule 620.[4] The Phlx believes that this will enable the Exchange to monitor more efficiently individuals on the Exchange's trading floors, as well as their current status.

Currently, Regulation 7(b) governs the termination of, or the initiation of change in the trading status of, an employee of a member/participant firm who has been issued an Exchange access card and trading floor badge. New Phlx Rule 620 codifies Regulation 7(b) into a more comprehensive Exchange Rule. Phlx Rule 620(a) sets forth a comprehensive rule that addresses registration, examinations, termination and change in status of trading floor members, which includes floor brokers, specialists, and market makers, including Registered Options Traders on any Exchange trading floor. Phlx Rule 620(b) addresses non-member/clerk registration of all trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons of member/participant organizations who are not required to be registered pursuant to Phlx Rule 620(a).[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5)[7] and 6(c)(3)(B)[8] of the Act.

The Commission finds that the proposal to require all floor personnel to be registered with the Exchange and to require all member/participant organizations to notify the Exchange of any change in the status of such personnel is consistent with Section 6(b)(5).[9] The Commission believes that by ensuring that trading floor personnel are properly registered and monitored on an ongoing basis through the notification mechanism, new Phlx Rule 620 promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest in accordance with Section 6(b)(5).[10]

Moreover, the Commission further finds that the proposal is consistent with Section 6(c)(3)(B),[11] which empowers a national securities exchange to examine and verify the quantifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and to require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established. The Phlx's decision to expand its registration/notification requirements to all trading floor personnel, including non-member personnel such as clerks, is fully supported by the right of an Exchange to regulate associated persons pursuant to Section 6(c)(3)(B).[12]

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–99–46) be and hereby is approved.[14]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7730 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

[4] Regulation 7 was enacted pursuant to Phlx Rule 60, Assessments for Breach of Regulations. *See* Securities Exchange Act Release No. 27629 (January 16, 1990), 55 FR 2469 (January 24, 1990) (SR–Phlx–90–01).

[5] The Exchange presently requires the completion of forms and procedures for registering new floor members pursuant to various Phlx Rules, including Rule 202, Registrant (Specialist); Rule 214, Violations of Rules (Specialist); Rule 604, Registration and Termination of Registered Person; Rule 623, Fingerprinting; Rule 1020, Registration and Functions of Options Specialists; Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; and Rule 1061, Registration of Floor Brokers.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(c)(3)(B).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2).

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3268]

Culturally Significant Objects Imported for Exhibition Determinations: ''Spirits of the Water: Art From Alaska and British Columbia''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition ''Spirits of the Water: Art from Alaska and British Columbia,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Menil Collection, Houston, Texas, from on or about May 5, 2000 to on or about August 13, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: March 22, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–7751 Filed 3–28–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7096]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its

subcommittees on boat occupant protection, navigation lights, personal flotation device-life saving index, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, May 1, 2000, from 8:30 a.m. to 5 p.m. and Tuesday, May 2 from 8:30 a.m. to noon. The Personal Flotation Device-Life Saving Index Subcommittee will meet on Saturday, April 29, 2000, from 1:30 p.m. to 4 p.m. The Prevention Through People Subcommittee will meet on Sunday, April 30, 2000, from 8:30 a.m. to 10:30 a.m.; the Boat Occupant Protection Subcommittee will meet from 10:30 a.m. to 12:30 p.m.; and the Navigation Light Subcommittee will meet from 1:30 p.m. to 4:00 p.m. These meetings 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 14, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 7, 2000.

ADDRESSES: NBSAC will meet at the Wyndham Garden Hotel, 173 Jennifer Road, Annapolis, Maryland. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/.

FOR FURTHER INFORMATION CONTACT: Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

The agenda includes the following:
(1) Executive Director's report.
(2) Chairman's session.
(3) Personal Flotation Device-Life Saving Index Subcommittee report.
(4) Prevention Through People Subcommittee report.
(5) Boat Occupant Protection Subcommittee report.
(6) Navigation Light Subcommittee report.
(7) Recreational Boating Safety Program report.
(8) Report on boat safety standards development and compliance.
(9) Report on the federal regulations process.
(10) Update on fire extinguisher carton labeling and ratings.
(11) Report on 1999 boating statistics.
(12) Report on the national recreational boating survey.
(13) Council discussion on federal requirements for wearing personal flotation devices.
(14) Presentation on risk management and human errors in recreational boating applications grant study.
(15) Council discussion on recreational boating accident reporting criteria.
(16) Report on marine industry boating safety initiatives.
(17) Report on national nonprofit public service organization grants.
(18) Report on life raft safety issues.

Personal Flotation Device-Life Saving Index Subcommittee

The agenda includes the following:
(1) Discuss the final report on the risk-informed compliance approval process study.
(2) Discuss inflatable personal flotation device (PFD) approval status.
(3) Discuss implications of differences between inflatable and inherently buoyant PFDs.
(4) Discuss current regulatory projects, grants and contracts dealing with PFDs.

Prevention Through People Subcommittee

The agenda includes the following:
(1) Discuss the process for continuing subcommittee guidance and advice concerning public safety awareness campaigns and materials dealing with various boating safety issues.
(2) Review and provide feedback on the new prototype ''Federal Requirements and Safety Tips for Recreational Boats'' brochure.
(3) Evaluate the results of test marketing of the Boating Under the Influence campaign.

Boat Occupant Protection Subcommittee

The agenda includes the following:
(1) Review subcommittee charges and develop a status update.
(2) Discuss ongoing risk management and human factors initiatives.
(3) Discuss current regulatory projects, grants and contracts impacting boat occupant protection.
(4) Discuss Personal Watercraft Standards Technical Panel activities.
(5) Discuss life raft safety issues.

Navigation Light Subcommittee

The agenda includes the following:
(1) Review subcommittee charges and develop a status update.
(2) Discuss issues coordinated with the Navigation Safety Advisory Council.
(3) Discuss status of navigation light certification rulemaking.
(4) Discuss navigation light grant projects.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 14, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than April 14, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than April 7, 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 22, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 00–7647 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7123]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Eye of the Needle.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 28, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7123. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name: *Eye of the Needle,* owner: Eye of the Needle, LLC.

(2) Size, capacity and tonnage of vessel: L.O.A.:56′, L.W.L.44′6″, Beam 15′6″, Draft 6′7″, Capacity 12, Tonnage: Gross 35, Net 33, Ballast 19,650 lbs. Internal.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Intended use: Sailing charters to/from Sackets Harbor NY to/from Lake Ontario and the St. Lawrence Seaway. Charters are designed as day charters but may have an occasional overnight application for special occasions. Passengers will not exceed 12 persons.''

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1987. Place of original construction: Built in Taiwan by Ta Chaio Bros. Yacht Bldg. Co., LTD.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This waiver will not have an impact on other commercial passenger vessel operators. All present operators are power boats specializing in fishing charters. There are no other commercial passenger vessels operating out of Sackets Harbor, NY for sailing charters.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The impact this waiver will have on U.S. shipyards is none. We have no intention of purchasing a U.S. built vessel for sailing charters in the event this waiver is not granted.''

By Order of the Maritime Administrator.

Dated: March 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7757 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. MC–F–20963 and MC–F–20965][1]

Stagecoach Holdings plc and Coach USA, Inc., et al.—Control—Century Airline Services, Inc. and All West Coachlines, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transactions.

SUMMARY: Stagecoach Holdings plc (Stagecoach), and its subsidiary, Coach USA, Inc. (Coach), both noncarriers that control motor passenger carriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 for Stagecoach, related applicants, and its subsidiaries, Coach and Coach Canada, Inc. (Canada), to acquire control of Century Airline Services, Inc. (Century), and for Stagecoach, related applicants, and its subsidiaries, Coach and Coach USA West, Inc. (West), to acquire control of All West Coachlines, Inc. d/b/a All West Tours (All West) and Goodall's Charter Bus Service, Inc. (Goodall's). Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 15, 2000. Applicants may file a reply by May 30, 2000. If no comments are filed by May 15, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20963, *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland, and Coach is a Delaware corporation. Stagecoach and its

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

subsidiaries [2] currently control Coach and its noncarrier regional management subsidiaries (including Canada and West), as well as the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[3] Coach acquired the companies that are the subject of these proceedings by purchasing all of the outstanding stock of Century [4] and Goodall's [5] in separate 1999 transactions and simultaneously placing the stock of each into independent voting trusts. In January 2000, Coach purchased the stock of All West [6] and again simultaneously placed the stock into an independent voting trust. Applicants submit that the federal and state operating authorities held by Century, All West and Goodall's will not be transferred from one entity to another as a result of the control transactions.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transactions are consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transactions will have a postive effect on the adequacy of transportation to the public and will result in no increase in fixed charges, and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information, including a copy of the application, may be obtained from the applicants' representative.

On the basis of the application, we find that the proposed transactions are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 15, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: March 23, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7773 Filed 3–28–00; 8:45 am]

BILLING CODE 4915–00–P

[2] The four noncarrier subsidiaries of Stagecoach that are intermediate in the corporate chain connecting Stagecoach with Coach are: SUS 1 Limited, SUS 2 Limited, Stagecoach Nevada (a Nevada general partnership formerly known as Stagecoach General Partnership), and SCH US Holdings Corp. (collectively, the Intermediate Subsidiaries).

[3] Control over Coach and its subsidiaries was approved in *Stagecoach Holdings plc—Control—Coach USA, Inc., et al.,* STB Docket No. MC–F–20948 (STB served July 22, 1999).

[4] Century is an Ontario corporation. It holds federally issued operating authority in Docket No. MC–293450, which authorizes it to provide charter and special services between points in the United States.

[5] Goodall's is a California corporation. It holds federally issued operating authority in Docket No. MC–148870, which authorizes it to provide charter and special services passenger transportation between points in the United States.

[6] All West is a California corporation. It holds federally issued operating authority in Docket No. MC–212056, which authorizes it to engage in charter and special operations between points in the United States (except Alaska and Hawaii) and to operate as a motor contract carrier under continuing contracts with persons requiring passenger service.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0052.
Form Number: ATF F 5130.9.
Type of Review: Extension.
Title: Brewer's Report of Operations.
Description: ATF F 5130.9 is a periodic report filed by brewers to account for taxable commodities. For this reason, ATF F 5130.9 is a method to protest tax revenue. The data collected on the form is also summarized by ATF in a statistical release.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 879.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 4,236 hours.

OMB Number: 1512–0524.
Form Number: ATF F 3310.11.
Type of Review: Extension.
Title: Federal Firearms License Theft/Loss Report.
Description: Theft and losses of firearms from the inventory or collection of a Federal firearms licensee must be reported to the Secretary of Treasury and the appropriate local authorities within 48 hours of discovery. This form contains the minimum information necessary for ATF to initiate criminal investigations.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 24 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,600 hours.

OMB Number: 1512–0553.
Form Number: None.
Type of Review: Extension.
Title: Strategic Planning Environmental Assessment Outreach
Description: The outreach to ATF stakeholders is part of the Bureau's

triennial environmental assessment. The Strategic Planning Office at ATF will use the information to determine the agency's internal strengths and weaknesses and external opportunities and risks.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Other (triennial).

Estimated Total Reporting Burden: 450 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200 ,650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7752 Filed 3–28–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 20, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 96–60.

Type of Review: Extension.

Title: Procedure for Filing Forms W–2 in Certain Acquisitions.

Description: Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 553,500.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 110,700 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. 00–7753 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2000

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78 Final.

Type of Review: Extension.

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension Plans.

Description: Internal Revenue Code (IRC) section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. IRS needs the information to comply with requests for public inspection of the above-named documents.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institution, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 42,370.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,538 hours.

OMB Number: 1545–1507.

Regulation Project Number: INTL–656–87 Final.

Type of Review: Extension.

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

Description: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and to verify income inclusions, excess distributions and deferred tax amounts.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 131,250.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 100,000 hours.

OMB Number: 1545–1528.

Revenue Procedure Number: Revenue Procedure 97–15.

Type of Review: Extension.

Title: Remedial Payment Closing Agreement Program.

Description: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code (IRC) of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds and to establish the closing agreement amount.

Respondents: Not-for-profit institution, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 50.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 75 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. 00–7754 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1308.

Regulation Project Number: IA–17–90 Final.

Type of Review: Extension.

Title: Reporting Requirements for Recipients of Point Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 37,644.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 hours, 41 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 283,056 hours.

OMB Number: 1545–1669.

Notice Number: Notice 2000–3.

Type of Review: Extension.

Title: Guidance on Cash or Deferred Arrangements.

Description: This notice provides guidance to employers maintaining, or who are contemplating establishing, cash or deferred arrangements (CODAs) for their employees. It permits some degree of flexibility in using the safe harbor methods, described in sections 40(k)(12) and 401(m)(11) of the Code, to satisfy the nondiscrimination tests normally applicable to CODAs. As indicated in section III, Q&As 1 and 2, of the notice, to take advantage of this flexibility, employers must amend their CODAs accordingly and provide employees written notices of the benefits available to them under the CODA.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 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. 00–7755 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 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 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1668.

Form Number: IRS Form 8865 and Schedules.

Type of Review: Extension.

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

Description: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes: (1) Expanded section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded section 6038 to require certain U.S. partners of controlled foreign partnerships to report information about the partnerships; and (3) modified the reporting required under section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 will be used by U.S. persons to fulfill their reporting obligations under sections 6038B, 6038, and 6046A.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 5,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law of the form	Preparing and sending the form to the IRS
8865	15 hr., 32 min	3 hr., 59 min	4 hr., 25 min.
Schedule O (Form 8865)	12 hr., 55 min	2 hr., 23 min	2 hr., 42 min.
Schedule P (Form 8865)	5 hr., 16 min	24 min	30 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 154,015 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. 00–7756 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
March, 29, 2000

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 880, et al.
Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 880, 881, 884, 886, 891, 960, 966, 984 and 985

[Docket No. FR–4485–F–03]

RIN 2501–AC59

Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements changes to the admission and occupancy requirements for the public housing and Section 8 assisted housing programs made by the Quality Housing and Work Responsibility Act of 1998. These changes concern choice of rent, community service and self-sufficiency in public housing, and admission preferences and determination of income and rent in public housing and Section 8 housing assistance programs. This final rule follows a proposed rule published on April 30, 1999, and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* The provisions of this rule are effective on April 28, 2000, except for the provisions of § 5.661, which will become effective when the information collections it contains receive approval from the Office of Management and Budget. The announcement of approval and the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For the public housing and Section 8 tenant-based housing assistance programs—Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington, DC, 20410; telephone (202) 708–0744, or the Public and Indian Housing Resource Center at 1–800–955–2232.

For the Section 8 project-based programs—Willie Spearmon, Director, Office of Multifamily Business Products, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6138, Washington, DC, 20410; telephone (202) 708–3000.

(With the exception of the telephone number for the PIH Resource Center, these are not toll-free telephone numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. You also may contact the individuals listed above by e-mail: Patricia__S.__Arnaudo@hud.gov and Willie__Spearmon@hud.gov.

SUPPLEMENTARY INFORMATION:

Organization of this Preamble

I. Background

On April 30, 1999 (64 FR 23460), HUD published a proposed rule that addressed several changes related to admission and occupancy requirements in HUD's public housing and Section 8 assisted housing programs. These were made by the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD appropriations Act, Public Law 105–276, 112 Stat. 2518, approved October 21, 1998) (referred to in this rule as ''the 1998 Act'') which amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*, ''the

1937 Act''). The 1998 Act made comprehensive changes to HUD's public housing, Section 8 tenant-based and project-based programs. Some of the reforms made by the 1998 Act affect public housing only, and others affect Section 8 tenant-based and project-based programs in addition to public housing.

The preamble to the April 30, 1999 proposed rule provided a detailed overview of the changes made to admission and occupancy requirements for the public housing and Section 8 housing assistance programs by the 1998 Act. The preamble to the proposed rule also addressed admission and occupancy provisions of the 1998 Act that are already in effect, and those admission and occupancy provisions proposed to be implemented through the April 30, 1999 rule. The preamble to the April 30, 1999 proposed rule also listed which sections of the 1998 Act were addressed by the proposed rule, and which HUD programs were affected by the changes. This information was described in the preamble to the April 30, 1999 proposed rule, and also presented in chart form (see 64 FR 23462). The preamble to this final rule does not repeat that information.

In addition to the rulemaking, HUD published a notice in the **Federal Register** on August 6, 1999 (64 FR 42956), which provided guidance pending publication of this final rule. That notice instructed PHAs to implement certain rent provisions effective October 1, 1999, based on the proposed rule. The notice stated that PHAs following the guidance would not be penalized for any changes made by HUD to the proposed rule provisions at the final rule stage and would be provided adequate time to adjust their policies.

The public comment period on the proposed rule closed on June 29, 1999. At the close of the public comment period, HUD had received 113 public comments. The commenters included housing authorities, national organizations representing housing authorities or residents, property managers, organizations representing victims of domestic violence, legal services organizations, policy organizations, and city and county organizations that provide housing or human services. All the comments were carefully considered and significant issues raised by the comments are addressed in Section III of this preamble. Section II of this preamble, which immediately follows, highlights the changes made at this final rule stage.

II. Changes Made at the Final Rule Stage

A. Reorganization of Program Regulations

At this final rule stage, HUD has reorganized the program regulations in a number of ways to make it easier to find and view specific requirements that apply to a particular program. Therefore, the provisions on preferences for admission and income targeting for the public housing and Section 8 tenant-based assistance programs, as well as public housing choice of rents, were moved from Part 5 to the applicable program regulations (24 CFR part 960 for public housing, and 24 CFR part 982 for the Section 8 tenant-based assistance programs). Provisions that only apply to Section 8 tenant-based assistance programs were covered in the Housing Choice Voucher Program final rule (amendments to 24 CFR part 982), published October 21, 1999 (64 FR 56894–56915). Most of the tenant-based program public comments were addressed in that rule.

B. Common occupancy requirements

Part 5 is reorganized by grouping common requirements for determination of ''family income'' and ''family payments'' that apply to both Section 8 and public housing.

The rule adds a heading for provisions on ''family income'' (§ 5.609 to § 5.632). The provisions under this heading cover determination of annual income (§ 5.609), adjusted income (§ 5.611), cooperation with welfare agency (§ 5.613), and effect of welfare benefits reduction on family income (§ 5.615).

The rule also adds a heading for provisions on ''family payment'' (§ 5.628 to § 5.632). The provisions under this heading cover determination of total tenant payment (§ 5.628), minimum rent (§ 5.630), and utility reimbursements (for the public housing and Section 8 programs, except for the Section 8 voucher program) (§ 5.632).

C. Section 8 Project-Based Programs

Before this rule, there was no place to group regulatory ''occupancy requirements'' that only apply to the Section 8 project-based assistance programs. This rule therefore adds a new heading in 24 CFR part 5 to consolidate occupancy requirements for the various Section 8 project-based assistance programs (§§ 5.653 to 5.661). The provisions for Section 8 project-based assistance under this heading cover determination of income eligibility and income targeting (§ 5.653), owner selection preferences (§ 5.655), family information and verification (§ 5.659), and approval for security personnel to live in a project (§ 5.661).

D. Public Housing Program

For a clearer presentation, the final rule reorganizes and consolidates public housing admission and occupancy requirements in the existing part 960.

Subpart A of part 960 specifies that part 960 applies to public housing and lists defined terms. Subpart A also states the requirement to administer public housing in accordance with applicable civil rights laws and regulations, the PHA duty to affirmatively further fair housing, and the requirement for the PHA to submit applicable equal opportunity certifications.

Subpart B of part 960 reorganizes, revises, and consolidates public housing admission requirements. This subpart covers:

—requirements for eligibility and for targeting assistance to extremely low income families (§ 960.202);
—policies and criteria for selecting families (§§ 960.204 and 960.205);
—waiting list and local preferences in admission (§ 960.206).

Subpart C of part 960 reorganizes and consolidates public housing requirements concerning reexamination of income and determination of rent for public housing residents. This subpart covers:

—the new choice of rent requirements under the 1998 Public Housing Reform Act, that allow the family to choose annually whether to pay a flat market-based rent or an income-based rent (§ 960.253);
—the requirement for the PHA to disregard increases in income as a result of employment in calculating income-based rent (§ 960.255);
—policies on regular and interim reexamination of family income and composition (§ 960.257);
—requirements for obtaining and verifying family information (§ 960.259); and
—restrictions on eviction when family income increases (§ 960.261).

A new subpart E of part 960 contains provisions describing the circumstances in which a PHA may permit occupancy of public housing units by persons who are not eligible for assistance in the public housing program:

—A PHA with a small public housing program (fewer than 250 units) may lease a public housing unit to ''over-income'' families—who are not income eligible for admission to the public housing program (§ 960.503).
—A PHA may allow professional police officers to reside in public housing to

increase security for public housing residents (§ 960.505).

Subpart F of part 960 states the requirements for PHA administration of the new community service and economic self-sufficiency requirements for public housing residents under the 1998 Public Housing Reform Act. The rule also incorporates related changes in the public housing lease and grievance requirements at 24 CFR part 966. These include amendments concerning the term and renewal of a public housing lease in accordance with the 1998 law (§ 966.4).

One change made to § 966.4(l) is to clarify the relationship between a revision to the lease and the right of a PHA to terminate tenancy. Section 966.3 provides that the PHA can modify the lease at any time during the lease term, so long as it follows the requirements of notice to tenants and resident organizations and consideration of their comments before adopting any new lease form. That remains unchanged. This rule does modify the provisions for a written rider executed by both parties (§ 966.4(o) and (p)) and moves it to a new location, § 966.4(a)(3). The revised § 966.4(a)(3) provides that the lease may be modified at any time by written agreement of the tenant and the PHA. The rule also adds a provision concerning termination of tenancy to § 966.4(l), to permit a PHA to terminate a tenancy if the tenant refuses to accept a revision to the lease after being given *at least* 60 days notice of its proposed effect and being allowed a reasonable time to respond to the offer.

E. Removal of Outdated References to Federal Preferences

A number of the regulations for Section 8 project-based programs continued to include a paragraph concerning the federal preferences, which have been eliminated by statute, and outdated references to parts 812 and 813, which no longer exist. Therefore, these superfluous references to Federal preferences are removed and the outdated references to parts 812 and 813 are corrected in this rule. (See the revisions to parts 880, 884, 886, and 891.) HUD will make any necessary conforming changes to parts 882 and 982, to reflect changes in income targeting, owner selection, and family information and verification in a separate rule.

F. Summary of Regulatory Changes

HUD also made the following changes to the April 30, 1999 proposed rule.

1. Family disclosure of HUD notice concerning family income—§ 5.240 (proposed rule § 5.211).

The final rule provides that a family must promptly furnish to the responsible entity (the PHA or owner responsible for determining family income) any letter from HUD concerning the amount or verification of family income. This requirement applies to a family that resides in a dwelling unit with assistance in the public housing program or the Section 8 tenant-based assistance program, or for which project-based assistance is provided under Section 8, Section 202, or Section 811. (The rule implements section 3(f) of the 1937 Act (42 U.S.C. 1437a(f)), as amended by the 1998 Public Housing Reform Act, and as further amended by the HUD FY 2000 appropriation act (Public Law 106–74, section 214(a), approved October 20, 1999. The FY 2000 appropriation extends applicability of this provision from just public housing and Section 8 tenant-based assistance, as provided under the 1998 act, to project-based assistance under Section 8, Section 202, and Section 811.)

The PHA or other responsible entity must verify the information received from the family and make appropriate adjustments in the amount of income, rent, or housing assistance payment. With respect to families no longer in occupancy, the PHA or other responsible entity should pursue abuses regarding excess rental assistance, such as reporting the deficiency of payments to credit bureaus, if it is practical to do so, and recovery of such amounts, if they have the resources to do so.

2. Selection Preferences—§§ 5.655 and 960.206 (proposed rule § 5.410).

Residency Preference

HUD has clarified at § 5.655 (for Section 8 projects) and § 960.206(b)(1)(i) (for public housing) that residency requirements are still prohibited, and that any residency preferences must be implemented in accordance with applicable nondiscrimination and equal opportunity requirements listed at § 5.105(a). The final rule provides that use of a residency preference may not have the ''purpose or effect'' of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability or age of any member of an applicant family.

''Residency preference'' is defined as a preference for admission of persons who reside in a specified geographic area. For public housing, the rule provides that the PHA may adopt a preference for admission of a resident of a county or municipality. However, the PHA may not adopt a residency preference for an area smaller than a county or municipality.

A PHA that administers a public housing program or a Section 8 tenant-based program must include any PHA residency preference in its statement of PHA policies that govern eligibility, selection and admission to the program. (For public housing, see § 960.206(b)(1).) Such policies are included in the PHA Plan submitted to HUD, in accordance with 24 CFR part 903. HUD may disapprove the plan if any part of the plan is not consistent with applicable laws and regulations—including the applicable civil rights authorities and regulations. In the case of the Section 8 project-based assistance programs, the owner of a project must adopt a written tenant selection plan in accordance with HUD requirements, including civil rights authorities and regulations (see § 5.655(b)(2)).

If an owner adopts a residency preference, it must use one approved by HUD. There are several ways that a residency preference could be approved by HUD: (1) Prior approval in the owner's affirmative fair housing marketing plan; (2) prior approval in the jurisdiction's PHA Plan; or (3) modification of the owner's affirmative fair housing marketing plan. In applying any residency preference, the rule requires the owner to treat an applicant who is working or has been hired in the residency preference area as a resident of the residency preference area. The project owner may treat as residents applicants who are graduates of, or active participants in, education and training programs in the residency preference area if the education or training program is designed to prepare individuals for the job market.

Preference for Working Families

HUD also has clarified, in § 960.206(b)(2) (public housing) and in § 5.655 (Section 8 projects), that a PHA or Section 8 project owner may adopt a preference for working families (families where the head, spouse, or sole member, is employed). If the responsible entity chooses to adopt a working family preference, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities, as defined for eligibility purposes (see § 5.403(a)). A working family preference cannot be based on the amount of earned income. (See § 5.655(c)(2)(ii).) By statute and this rule, the owner is prohibited from preferring higher income families over families of lower income to occupy a project or unit (§ 5.655(b)(3); 42 U.S.C. 1437n(c)(4)).

Preference for Person With Disabilities

A Section 8 owner or PHA administering public housing may adopt a preference for admission of families that include a person with disabilities, but not for persons with a specific disability (§§ 5.655(c)(3) and 960.206(b)(3)).

Preference for Victims of Domestic Violence

The PHA or owner should consider whether to adopt a preference for victims of domestic violence, as provided in §§ 5.655(c)(4) and 960.206(b)(4).

Preference for Single Persons

The law no longer mandates a federally directed priority for elderly or disabled over other single persons. The final rule specifies that the responsible entity may adopt a preference for admission of single persons who are elderly, displaced, homeless, or persons with disabilities over other single persons (§§ 5.655(c)(5) and 960.206(b)(5)).

3. Definition of economic self-sufficiency program—§ 5.603(b).

HUD has added a new definition of the term ''economic self-sufficiency program''. It is defined as any program designed to encourage, assist, train, or facilitate the economic independence of assisted families or to provide work for such families. Economic self-sufficiency programs can include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any other program necessary to ready a participant to work (such as substance abuse or mental health treatment). As defined in this rule, ''economic self-sufficiency program'' includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). (See the definition of work activities at § 5.603(c).)

The new definition of the term ''economic self-sufficiency program'' is used in the following regulatory provisions, pursuant to the Public Housing Reform Act:

- Provision that family income (for the public housing and Section 8 tenant-based assistance programs) includes welfare benefits reduced because of family failure to comply with welfare agency requirements to participate in an economic self-sufficiency program (§ 5.615); and
- The requirement for public housing residents to participate in an economic self-sufficiency program or other eligible activities (24 CFR part 960, subpart F).

4. Income eligibility and income targeting for admission—(For most Section 8 project-based programs, § 5.653; for public housing, § 960.202) (proposed rule § 5.607).

In the final rule, provisions concerning Section 8 project-based admission and income targeting are found in § 5.653, and for public housing in § 960.202.

Eligibility

The rule provides that no family other than a low income family is eligible for admission to the public housing program or the Section 8 project-based assistance program (other than the project-based voucher program) (§ 5.653(b); § 960.202(a)). The final rule adds a definition of the term ''low income family'' (in §§ 5.603), replacing a previous statutory reference. Generally, ''low income'' designates a family whose income does not exceed 80 percent of area median income, with certain adjustments.

Targeting

The Public Housing Reform Act targets available Section 8 and public housing units to families with incomes below thirty percent of the area median income (Section 513 of the Act). In the rule, such families are called ''extremely low income families''.

The law sets the minimum percent of Section 8 or public housing units that must be rented to extremely low income families each year. In the Section 8 tenant-based program, the PHA must generally target at least 75 percent of annual admissions to such families. In public housing, the PHA must generally target at least 40 percent of annual admissions to such families (with credit if the PHA exceeds the target number of admissions in its Section 8 tenant-based program). In the Section 8 project-based programs, the owner must target 40 percent of annual project admissions to units assisted under the program to extremely low income families.

As originally enacted, the Public Housing Reform Act provided that HUD was authorized to adjust the extremely low income (30 percent of median income) limit only ''for smaller and larger families'' (42 U.S.C. 1437n). However, the law was subsequently amended to also permit adjustments necessary ''because of unusually high or low family incomes'' (at section 205 of the fiscal year 2000 HUD appropriation act, Public Law 106–74, 10/20/99). In the final rule, the definition of the term ''extremely low income family'' is revised to incorporate this statutory change (§ 5.603). This definition applies to the three categories of 1937 Act housing subject to income targeting.

The final rule restates the provisions that specify public housing targeting requirements, including the calculation of public housing targeting credits for admission to the PHA's tenant-based voucher program (§ 960.202(b)).

The final rule provides that the responsible entity (PHA or owner) must comply with HUD prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements (§ 5.653(f); § 960.202(d)).

5. Annual Income—§ 5.609.

a. Income of minors—§ 5.609(c)(1)). The proposed rule would have removed the existing provision that specifies that annual income does not include earned income of minors and made it a deduction instead. That proposal is not adopted in this final rule.

b. Resident stipend for member of PHA governing board (§ 5.609(c)(iv)). The Public Housing Reform Act provides that the governing board of a PHA must generally contain at least one member who is directly assisted by the PHA (42 U.S.C. 1437(b)). To support and facilitate implementation of this new statutory requirement, HUD is clarifying that the resident service stipend exclusion covers amounts received by residents who serve on the PHA governing board. HUD is concerned that without this clarification, residents may be discouraged from participating. This provision was not included in the April 30, 1999 proposed rule. However, the added language does not reflect any change in HUD's position, but instead clarifies what is permissible under current regulations.

6. Adjusted Income—§ 5.611.

The rule is revised (at § 5.611(a)(3)(ii)) to clarify that the allowance for unreimbursed reasonable attendant care and auxiliary apparatus expenses may not exceed the employment income received by family members (including the person with disabilities) who are 18 years of age or older and who are able to work as a result of the assistance to the person with disabilities.

7. Public housing self-sufficiency incentives—§ 960.255 (proposed rule § 5.612).

The final rule comprehensively restates and revises the provisions for disallowance of increases in income as a result of employment in calculation of annual income of a public housing family after a family member is first employed (§ 960.255). The new provisions include:

—Definitions of disallowance, previously unemployed, and qualified family (§ 960.255(a)).
—A revised technical description of the calculation of the disallowance during the initial twelve months, the second twelve month exclusion and phase in, and the maximum four year period of disallowance for increases in income as a result of employment of individual family members (§ 960.255(b)).
—Specification that the disallowance of increases in income as a result of employment only applies for calculation of rent after admission to the program, but does not apply in determination of income eligibility or income targeting for admission (§ 960.255(c)).
—Specification that the disallowance of increases in income as a result of employment applies to persons who are or were assisted, within 6 months, under any State program of temporary assistance for needy families funded under part A of title IV of the Social Security Act only if the amount of TANF-funded assistance, benefits or services is at least five hundred dollars.

During the first 12 months after commencement of employment of a family member, the PHA disallows the incremental increase in a family member's income as a result of employment. In the second 12-month period, the PHA disallows 50 percent of the incremental increase. The final rule clarifies that the amount of the incremental increase in income is calculated by comparing the amount of the family member's income before the beginning of qualifying employment to the amount of such income after beginning the employment. It is this amount that is subject to being disregarded.

The rule is revised to specify the maximum disallowance for income as a result of employment of an individual family member (§ 960.255(b)(3)). The family may receive the disallowance only as follows:

—Disallowance is limited to one forty-eight month period from the beginning of the first month after commencement of qualifying employment of an individual family member; and
—During this forty-eight month period, for a maximum of twelve months, the incremental increase is disregarded, and for a maximum of twelve months, 50 percent of the incremental increase is disregarded. (If the period of increased income does not last for 12 consecutive months, the disallowance period may be resumed at any time within the 48 month period. However, each qualifying family member is only entitled to a total of 12 months of each disallowance.)

The final rule also specifies that the disallowance of an incremental increase of income as a result of employment is only applied to determine the annual income of families residing in public housing units, not to determine annual income of applicants for purposes of income eligibility or targeting (§ 960.255(c)).

8. Choice of Rent in Public Housing—§ 960.253 (proposed rule § 5.614).

Once a year, the PHA must give a public housing tenant the opportunity to choose between paying a ''flat rent,'' based on the unit's rental value, or an ''income-based rent,'' based on family income. The final rule substantially revises and clarifies the regulatory requirements for choice of rent that are provided in the 1998 Public Housing Reform Act.

Flat rent (§ 960.253(b))

The final rule provides that the flat rent is based on the market rent. The market rent is the rent charged for comparable units in the private, unassisted rental market at which the PHA could lease the public housing unit after preparation for occupancy. In determining the flat rent, a PHA must consider:

—The location, quality, and the size, type and age of the unit; and
—Any amenities, housing services, maintenance, and utilities provided by the PHA.

The PHA must use a reasonable method to determine flat rent and must keep records that document this method. The PHA records must show how the PHA determines flat rents in accordance with its method and document flat rents offered to families.

For families who pay an income-based rent, the PHA reimburses the family if the allowance for tenant paid utilities is greater than the family's total tenant payment. This is called a ''utility reimbursement.'' The final rule provides that the PHA will not pay a utility reimbursement for a family that has chosen to pay a flat rent for its home.

Income-based rent (§ 960.253(c))

If a family chooses to pay an ''income-based rent,'' the tenant rent paid to the PHA is based on family income and the PHA rental policies. The PHA will use a percentage of family income or some other reasonable system to set income-based rents.

The PHA has broad flexibility in deciding how to set income-based rent for its tenants. However, the income-based tenant rent plus the PHA's allowance for tenant paid utilities may not exceed the ''total tenant payment'' as determined by a statutory formula.

The rule provides that if the utility allowance for tenant paid utilities exceeds the total tenant payment, the PHA must pay the excess as a ''utility reimbursement'' on behalf of the family. The rule provides that the PHA may choose to pay the utility reimbursement either to the family, or directly to the utility supplier for the utility bills on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier (§ 960.253(c)(3).

9. Minimum Rent—§ 5.630(b) (proposed rule § 5.616).

Section 8 and public housing families are required to pay a minimum rent (42 U.S.C. 1437a(a)(3); § 5.630(a)). However, the family is exempt from minimum rent if the family shows that it is unable to pay the minimum rent because of a ''financial hardship'' situation (§ 5.630(b)).

In the public housing program, the Section 8 certificate and voucher programs (including both tenant-based and project-based assistance under these programs), and the Section 8 moderate rehabilitation program, the PHA may establish a monthly minimum rent from $0 to $50 for a family (§ 5.630(a)). In the public housing and the Section 8 tenant-based assistance programs, the PHA policies for determining the amount of minimum rent up to this maximum are described in submissions with the PHA's annual plan, and in the PHA's Section 8 administrative plan (§ 903.7). In the other Section 8 programs, the owner is required to charge a fixed minimum rent of $25 set by HUD.

The final rule modifies the provision that allows a hardship exemption for a family that has lost eligibility or is awaiting an eligibility determination for a Federal, State, or local assistance program. The rule provides that the exemption applies to a family with a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996 (§ 5.630(b)(1)).

The final rule provides that hardship includes a situation where the family would be evicted ''because it is unable to pay the minimum rent'' (§ 5.630(b)(1)(ii)). The rule also provides that the financial hardship exemption only applies to payment of minimum rent—not to rent based on the other

branches of the formula for determining the total tenant payment (§ 5.630(b)(2)(iii)(C)).

10. Public housing and Section 8 tenant-based assistance programs: How welfare benefit reduction affects family income—§§ 5.603 and 5.615 (proposed rule § 5.618).

A welfare agency may reduce welfare benefit payments to sanction a family for noncompliance with welfare self-sufficiency or work activities requirements. The 1998 Public Housing Reform Act provides that the rental contribution of a family assisted in the public housing or tenant-based assistance programs ''may not be decreased'' if welfare benefits are reduced for this reason (Public Law 105–276, section 512(d); 42 U.S.C. 1437j(d)). This requirement is triggered when a family's rental contribution is calculated on the basis of family income. The law requires that family income include the amount of the welfare benefits that would have been paid if not for the welfare agency sanction. Therefore, the family rental contribution is not decreased because of the welfare sanction. The final rule substantially revises the proposed regulation to implement the statutory requirement.

For this purpose, the final rule (§ 5.615(b)) adds three defined terms to designate and describe key statutory and regulatory concepts.

Covered Families

The statutory term ''covered families'' designates the universe of families who are required to participate in a welfare agency economic self-sufficiency program and may, therefore, be the subject of a welfare benefit sanction for noncompliance with this obligation. As defined in the rule, ''covered families'' means families who receive welfare assistance or other public assistance benefits from a State or other public agency under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

Specified Welfare Benefit Reduction

The term ''specified welfare benefit reduction'' designates those reductions of welfare agency benefits (for a covered family) that may not result in a reduction of the family rental contribution. As defined in the rule, ''specified welfare benefit reduction'' means a reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Imputed Welfare Income

The term ''imputed welfare income'' is defined in this rule, ''imputed welfare income'' means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income. This amount is included in family annual income and, therefore, reflected in the family rental contribution based on this income. The final rule provides that a family's annual income includes the amount of imputed welfare income plus the total amount of other annual income (§ 5.615(c)(1)). However, the rule provides that the amount of imputed annual income is offset by income from other sources received by the family that starts after the sanction is imposed.

The rule is revised to clarify the relationship between the welfare agency, which is responsible for determining the amount of any specified reduction in welfare benefits, and the PHA, which is responsible for determining family income (including any imputed welfare income because of the welfare agency's reduction of welfare benefits.

The 1998 Public Housing Reform Act provides that the PHA must count imputed welfare income of a covered family only after the PHA has received notice of the welfare reduction from the welfare agency (42 U.S.C. 1437j(d)(4)). Accordingly, the rule provides that the PHA bases its imputed welfare income on information provided to it by the welfare agency (§ 5.615(c)(1)). The rule provides that, at the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member and the reason for such reduction (§ 5.615(c)(2)). The welfare agency will also inform the PHA of any subsequent change in the term or amount of a specified benefit reduction.

The implementation of the statutory imputed rent requirement (i.e., the prohibition of a decrease in rent paid by the family because of the welfare sanction), as well as other efforts to promote economic independence of assisted families, requires close cooperation between the PHA and local welfare agencies. The final rule, therefore provides that PHAs must make their best efforts to enter into cooperation agreements with welfare agencies (§ 5.613). These cooperation agreements will be designed:

—To target public assistance, benefits and services for families assisted in the PHA's Section 8 and public housing programs to achieve self-sufficiency; and

—To verify information on welfare benefits for applicants and participants in these programs.

Function of PHA

The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income—which is used to determine maximum income-based rent for a public housing family—and the amount of the housing assistance payment for a voucher family (§ 5.615(c) and (e)(1)). During the term of the welfare agency's welfare benefit reduction, the PHA includes imputed welfare benefits in family income, as determined by the PHA at an interim or regular reexamination (§ 5.615(c)(3)). For this purpose, as provided in the law, the PHA uses the information provided to the PHA by the welfare agency. The welfare agency informs the PHA of the fact, amount, and reason for a welfare benefit reduction (§ 5.615).

Under the rule, the PHA is required to ask welfare agencies to inform the PHA of any welfare benefit reduction that may result in imputed welfare income, the term of the reduction, and the amount of a specified welfare benefit reduction. In computing a family's annual income, the PHA must include the imputed welfare income because of the welfare agency determination to reduce the family's welfare benefit. However, the final rule specifies that the PHA is not responsible for determining that a reduction of welfare benefits was correctly determined by the welfare agency in accordance with welfare agency requirements and procedures (§ 5.615(e)(2). The rule states that:

> Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefit reduction. (§ 5.615(e)(3)

Review of PHA decision

In the public housing program and the Section 8 tenant-based assistance programs, the family may seek an administrative hearing for review of the PHA determination of family income, or the calculation of the family rent or housing assistance payment, in

accordance with HUD requirements. The final rule specifies that the family may invoke the PHA's regular program hearing processes for review of a PHA determination of the amount of imputed welfare income in accordance with HUD requirements (§ 5.615(d)).

The final rule provides that if a family (public housing tenant or Section 8 participant) claims that the PHA has not correctly calculated the amount of imputed welfare income, and if the PHA denies the family's request to modify such amount, the PHA must give the family written notice of such denial, with a brief explanation of the basis for the PHA determination. The PHA notice must state that if the family does not agree with the PHA determination, the family may request a hearing in accordance with the applicable program hearing procedures (the public housing grievance procedures under part 966 or the Section 8 hearing procedures under § 982.555). In the case of public housing, the rule specifies that the tenant is not required to deposit the disputed amount in escrow in order to obtain a grievance hearing. (There is no parallel escrow requirement for Section 8. The participant may obtain a hearing without deposit of an escrow.)

11. Occupancy by police officers in public housing and Section 8 project-based housing—§§ 5.661 and 960.503–505.

Section 8 Projects

The final rule provides (§ 5.661) that a Section 8 project owner may ask the contract administrator (PHA or HUD) for approval to lease a Section 8 assisted unit to a police officer or other security personnel, for the purpose of increasing security for Section 8 families residing in the development. The rule defines the terms ''security'', ''security personnel'' and ''police officer.'' Security includes the protection of project residents, including resident project management, from criminal or other activity that is a threat to person or property, or that arouses fear of such threat. Security personnel means a police officer or other qualified security officer. A police officer is a full-time duly licensed police officer. Other security personnel must have adequate training and experience to provide security for project residents.

The owner's application must include:

—A description of criminal activity in the project and community;
—The effect of criminal activity on resident security;
—Qualifications of proposed security personnel who will live in the housing;
—How the owner proposes to check their backgrounds and qualifications;
—Disclosure of a family relationship between the owner and any security personnel;
—How residence by security personnel will increase security of Section 8 residents;
—Rent to be paid and terms of occupancy by resident security personnel.

The contract administrator has discretion whether to approve or disapprove occupancy by security personnel in a Section 8 project, and such approval may be withdrawn at the discretion of the contract administrator. The amount of contract rent for a unit does not change when the unit is occupied by security personnel. However, the monthly housing assistance payment to owner equals the contract rent (as determined in accordance with the Housing Assistance Payments Contract and HUD requirements) minus the amount of monthly rent payable by security personnel residing in the housing.

Public housing

For public housing, before a PHA permits occupancy by police officers, the PHA must include in the PHA Plan or supporting documents a description of the terms and conditions for them to occupy units and a statement that this action was taken to increase security for public housing residents.

12. How PHA administers service requirement—§ 960.605. HUD has revised the rule to clarify that the PHA's notice to the resident on the community service and economic self-sufficiency requirements must also describe the process to change exemption status of family members.

13. Assuring Resident Compliance—§ 960.607. HUD has revised § 960.607(c) to clarify how a PHA should respond to a report that an individual covered by community service has moved from the household.

14. Definitions—§ 984.103. HUD has revised the definition of ''welfare assistance'' for the FSS program to refer only to cash maintenance payments for ongoing basic needs, funded under Federal or State welfare programs such as the TANF program. The definition borrows from the Department of Health and Human Services' TANF definition of ''assistance'' and excludes nonrecurring short term benefits designed to address individual crisis situations. For FSS purposes, the following do not constitute welfare assistance: food stamps; emergency rental and utilities assistance; and SSI, SSDI, and Social Security.

15. Administrative fees—§ 984.302. HUD has revised § 984.302(a) to delete the reference to the minimum program size of the public housing FSS programs. The performance funding system provides for the inclusion of reasonable eligible administrative costs for both mandatory and voluntary public housing FSS programs.

16. Utility Reimbursements—§ 5.632. HUD has revised the provision previously found at § 5.615, which required PHAs to get the consent of a public housing family before sending a utility reimbursement directly to the utility supplier. Section 5.632 now allows PHAs to send the utility reimbursement directly to the utility supplier without the consent of the public housing family that is paying an income-based rent. This change was first mentioned in the preamble to the proposed rule, Streamlining the Public Housing Admission and Occupancy Requirements, published in the **Federal Register** on May 9, 1997 (62 FR 25731). A similar provision has been in effect since July 3, 1995, for the tenant-based Section 8 program. In response to a comment received on that rule, § 5.632 also requires that the PHA notify the public housing family of the amount paid to the utility supplier.

17. Family Income and Verification—§ 960.259.

HUD has made a conforming change, at § 960.259, to mirror the Section 8 requirement for third party verification of information. If third party documentation is not available, the reason must be documented in the file.

In addition to these substantive changes, HUD has made editorial changes in some of the regulations, such as adding subheadings to certain paragraphs to make the subject matter of the paragraph easily identifiable, and dividing a lengthy paragraph into subparagraphs. As HUD proceeds with the rulemaking required under the 1998 Act to make the changes required to various components of the public housing and Section 8 program regulations, HUD may, at a later date reorganize Chapter IX of the HUD regulations, as well as certain subparts of part 5, to better reflect where requirements applicable to public housing and the Section 8 programs are identical and where they differ, and to better highlight the new additions to the regulations such as the PHA Plans, the Capital Fund and the Operating Fund.

III. Discussion of the Public Comments

A. General

This section presents HUD responses to the significant issues raised by the

individuals and entities who submitted comments on the April 30, 1999 proposed rule. The organization of the discussion of public comments generally follows the organization of changes made to admission and occupancy requirements as set out in Section II of the preamble of the April 30, 1999 proposed rule. The heading ''Comment'' states the comment made by a commenter or commenters and the heading ''Response'' presents HUD's response to the issue or issues raised by the commenter or commenters.

There were certain concerns raised by the commenters that were directed to more than one change in admission and occupancy requirements. The majority of the commenters expressed concern about the administrative burden imposed by the changes, particularly the community service requirements. Some commenters also were concerned that the income targeting requirements will substantially reduce affordable housing for some persons, such as elderly families in need whose income may be above the targeting requirements. As the commenters recognized, these are statutory requirements and the flexibility that HUD has to implement these statutory requirements is very limited.

Other commenters recognized that there are limits to the amount of information that HUD can provide in regulatory text, and requested that HUD provide additional guidance and information on many of the new admission and occupancy requirements. HUD recognizes that the changes made by the 1998 Act to public housing and Section 8 programs are significant and there is much information to absorb. As HUD stated in its guidance published on February 18, 1999 (64 FR 8192), HUD staff, and especially staff of HUD's Office of Public and Indian Housing at Headquarters and in the Field Offices are ready to assist PHAs and owners in understanding the provisions of the 1998 Act, and with carrying out their responsibilities under the new statute. As noted in the February 18, 1999 guidance, HUD's Office of Public and Indian Housing has established a website that is devoted to providing additional information about the various provisions of the statute, as well as additional information and guidance on 1998 Act rules issued by HUD. (See http://www.hud.gov/pih/legistitlev.html; Public Housing Reform link; the Multifamily Tenant Characteristics System (MTCS) website can be found at http://www.hud.gov/pih/systems/mtcs/pihmtcs.html.) HUD intends to provide additional training and guidance during the coming year.

The following provides a discussion of specific issues raised by the commenters.

B. Using Computer Matching Results—Family Disclosure of Income (Proposed Rule § 5.211; Final Rule § 5.240)

Comment. The final rule should (1) provide for HUD to notify the PHA that the income discrepancy letter was sent to the family, and (2) specify the time limit for the family to contact the PHA. The rule should provide that PHAs be notified by HUD of the date that the family was sent an income discrepancy letter or mailed a copy of the letter, and that a time limit of less than 10 working days be established for the family to contact the PHA.

Response. PHAs or owners, as the responsible entity, have the primary responsibility for income verification, reexamination, and debt collection. The responsible entity can enforce § 5.240(b) and implement § 5.240(c) through their contractual relationships with assisted families. HUD's authority to use Federal tax return data from the Internal Revenue Service (IRS) is limited by statute to disclosure to tenants. HUD will provide responsible entities with a list of tenants to whom it has sent income discrepancy letters. The rule does require tenants who receive such letters, containing information about Federal tax return data, to disclose the letter to the responsible entity promptly. Usually, the responsible entity should interpret this prompt submission requirement to mean that the family must disclose the letter within 30 days of receipt.

Comment. The final rule should require PHAs to take appropriate action (for example, to recover excessive housing assistance received by tenants) only with respect to current residents and tenant-based participants and not former residents and participants.

Response. The final rule has been modified to reflect the language of section 508(d) of the 1998 Act by limiting application of the income matching provisions to families that (1) reside in a public housing dwelling unit; (2) receive Section 8 assistance; or reside in a project assisted under the Section 202 or Section 811 program. Responsible entities who have the resources to pursue abuses regarding recovery of excess rental assistance of former tenants may do so.

C. Repeal of Preference for Elderly, Disabled, and Displaced Over Other Single Persons (Proposed and Final Rule § 5.405) (Section 506 of the 1998 Act Amending Section 3(b) of the 1937 Act)

Comment. The repeal of the preference for elderly, persons with disabilities, and displaced persons over other single persons will cause a shortage of affordable housing for these persons. Without the preference, these groups will face a more difficult time in finding affordable housing.

Response. The 1998 Act eliminated the statutory preference for single persons who are elderly, have disabilities, or are displaced over other single persons. However, the repeal of federal preferences does not prevent a PHA from choosing to establish a local preference for single persons who are elderly, have disabilities, are displaced, or are homeless over other single persons.

Comment. While it was appropriate for HUD to implement the statutory elimination of Federal preferences, the result is the elimination of the rule in § 5.415(b) that PHAs must give households of elderly persons and persons with disabilities the benefits of any employment preference and not discriminate among applicants based on the amount of employment income.

Response. HUD revised § 960.206(b)(2) to include some of the language from former § 5.415, which states that if a working family preference is adopted as a local preference, the preference must be extended to households whose head and spouse, or sole member, is age 62 or older or meets the definition of a person with disabilities.

Comment. The final rule should: (1) Expand the implicit meaning of ''disabled'' in the old rule, as well as in the new § 5.410(c), to give the benefit of employment preferences to those who can provide evidence of a disability, but who may not be receiving benefit payments based on the inability to work; (2) broaden the employment preference exception to include individuals who satisfy the definition of ''disabled'' under section 3(b)(3)(E) of the U.S. Housing Act of 1937 or otherwise cannot comply with the terms of the preference due to a disability; and (3) exempt those individuals with serious disabilities lasting less than twelve months. These changes are needed to prevent discrimination based on disability status.

Response. As noted in the preceding response, HUD has retained some of the language previously found at § 5.415(b) and expanded the benefit to apply to

persons who meet the definition of ''persons with a disability'', regardless of whether they are receiving disability income. Sections 5.655 and 960.206 remind PHAs and owners that their admission preferences must comply with certain governing statutes, regulations and executive orders pertaining to nondiscrimination, including HUD's affirmative fair housing objectives. In addition, the PHA system of local preferences is included in the PHA Plan, which requires civil rights certifications. (Although § 5.410, which described nondiscrimination provisions has been removed in this final rule, § 5.105(a) lists the applicable requirements.)

D. Repeal of Federal Preferences (Proposed Rule Removed §§ 5.415, 5.420, 5.425 and 5.430 and Revised § 5.410; Final Rule Removes in Addition to Above §§ 5.405 and 5.410, Adds a new § 5.655, and Revises §§ 960.204–960.206)

Comment. With permanent repeal of Federal preferences, can owners still apply them voluntarily? When federal preferences were suspended, owners were advised that they could still use them if they so chose, and asked whether the permanent repeal of these preferences precludes owners from continuing to exercise this option.

Response. By law, the selection of tenants from among eligible applicants is left to the discretion of the owner. Now the owner may choose to use any or all of the federal preferences and may determine the hierarchy of any preferences it adopts.

Comment. Many PHAs will continue to use the formerly required federal admission preferences as part of their local preferences, and therefore the final rule should eliminate the duplicate tenant notification requirements when PHAs alter their federal admission preferences. It should be sufficient for PHAs to notify the public and tenants through resident advisory board consultation and the public inspection and hearing requirements associated with the PHA Plan.

Response. The public comment process for the PHA Plan provides the method of public consultation concerning the establishment of local preferences. The rule does eliminate a separate process just for approval of preferences, now that the statutory foundation for that provision has been eliminated.

Comment. The proposed rule was right to encourage consideration of preferences for individuals who are victims of domestic violence. The final rule should give battered women priority consideration for housing.

Response. The final rule keeps the language of the proposed rule concerning consideration of preferences for individuals who are victims of domestic violence. The final rule, consistent with the statute, eliminates Federal preferences and permits PHAs to establish local preferences, including preferences for victims of domestic violence.

Comment. The final rule should require that all preferences be based solely on the need for housing.

Response. Consistent with the statute, the rule requires that any local preferences be based on housing needs and priorities, not solely housing need.

Comment. The discretion of Section 8 owners to develop their own preferences must be limited to ensure that they do not exclude extremely low-income tenants, minority applicants, or victims of domestic violence.

Response. The statute urges PHAs to consider granting a preference for victims of domestic violence in public housing and Section 8 tenant-based programs. Section 8 owners may choose to adopt a preference for victims of domestic violence. Of course, under the new § 5.655, owner preferences are still subject to anti-skipping, residency preference, and fair housing requirements.

Comment. The final rule should require resident input on selection preferences for private owners.

Response. The law does not require the owner to solicit resident input regarding an owner's selection preferences. The law gives the owner the discretion to develop its own selection preferences. The owner, however, may provide opportunity for resident comment.

Comment. Section 5.410(b) needs to clarify that PHAs are not required to add preferences based on public comment regardless of merit.

Response. The language in § 960.206(a)(1), ''as determined by the PHA,'' is clear that a PHA has the discretion to determine whether public comments should be adopted.

Comment. The admission preference information required to be provided to applicants by § 5.410(h) of the proposed rule should be required to include brief descriptions of the preferences.

Response. PHAs generally are aware that the preference information provided to applicants should clearly convey through description who is eligible for the preference. Section 5.410 has been removed in the final rule. The requirement for informing applicants has been moved to §§ 5.655 and 960.206.

Comment. The final rule should include the requirement that PHAs' local preferences must be consistent with the needs identified in the applicable Consolidated Plan(s) and the requirements of civil rights statutes and the obligation to affirmatively further fair housing. It is not sufficient, as the proposed rule states, that a PHA must consider public comments on the Consolidated Plan and the PHA Plan in setting local preferences. The preferences must be consistent with the needs identified in the applicable Consolidated Plans.

Response. The system of local preferences is included in the PHA Plan, which requires civil rights certifications. The PHA Plan is the vehicle in which PHAs describe any local preferences and the PHA Plan must be consistent with the Consolidated Plan for the jurisdiction in which the PHA is located.

Comment. The final rule should ensure that any local preferences do not result in discrimination against persons protected by civil rights laws by requiring: (1) The PHA or owner to consider the applicable Analysis of Impediments to Fair Housing Choice; (2) the PHA or owner to analyze the potential discriminatory effects of any proposed preference on the protected classes; and (3) the PHA or owner to refrain from setting a preference that will have a discriminatory effect, undermine the ability of the PHA or local jurisdiction to affirmatively further fair housing or remove impediments to fair housing choice, or impede implementation of an affirmative marketing plan.

Response. As noted earlier in this preamble, the final rule does require preferences to comply with nondiscrimination requirements. In addition, the final rule reinstates the language of former § 5.415(b) requiring that elderly families and persons with disabilities be given the same preference as working families (§§ 5.655(e)(2) and 960.206(b)(2)). ''Working family'' means a family whose head, spouse, or sole member is employed. If a Section 8 owner chooses to adopt a working family preference, the preference may not be based on the amount of earned income. This restriction does not apply to selection by a PHA for admission to public housing.

Comment. The final rule should provide for HUD approval of residency preferences for compliance with civil rights laws. Although the rule retains the prohibition against residency requirements, the rule fails to include

the former requirement for the Section 8 tenant-based programs that HUD approve residency preferences after review for compliance with civil rights laws, and this omission may be inconsistent with section 511 of the 1998 Act.

Response. For both the public housing and Section 8 tenant-based programs, a PHA's residency preferences are part of the PHA's Annual Plan (see new § 903.7(c)). There is no separate HUD approval of a PHA's residency preferences, and the entire plan is subject to input by the Resident Advisory Board (§ 903.13), a public hearing, and public comments (§ 903.17). PHA plan approval requires certification by the PHA of its compliance with civil rights requirements (§ 903.7(o)). Part 960 states that public housing admission policies must contain a statement that any residency preferences will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family. The final rule provides that if an owner adopts a residency preference, it must comport with its Affirmative Fair Housing Marketing plan or be identical to the one in the PHA Plan for the jurisdiction. (See discussion above.)

E. Income Targeting (Proposed Rule § 5.607; Final Rule § 5.653 and 960.202) (Section 513 of the 1998 Act Amending Section 16 of the 1937 Act)

Comment. The targeting requirement will reduce affordable housing for elderly persons who are not extremely low-income. A significant number of elderly persons are not at or below 30% of median income, and they will lose access to affordable housing as a result of the targeting requirements. Voluntary income targeting should be adopted, not mandatory targeting.

Response. The targeting requirement is a statutory requirement, directed to providing housing to those most in need of housing. There are many elderly persons who will be assisted by the targeting requirements. In addition, other HUD programs, for example, HUD's Section 202 Program for Elderly Persons, and programs administered by other public and private entities, will work to maintain affordable housing for those elderly persons who are not at or below 30% of median income.

Comment. The Welfare Reform Act employment requirements will make it difficult to meet the public housing admission requirement for 40% extremely low income families, since many families are required to seek and maintain employment. Additionally, the 40% targeting requirement will cause major lease problems for PHAs who have high rent jurisdictions.

Response. The Welfare Reform Act has moved millions of families from welfare to work, but there are many families—including those remaining on welfare and those who have moved into entry level jobs—who remain in need of housing assistance. HUD believes that the reality for most jurisdictions is that it will not be difficult for a jurisdiction to meet the 40% targeting requirement.

Comment. The 40% targeting requirement will greatly reduce the number of public housing families who pay a reasonable portion of total tenant payment (TTP).

Response. The purpose of targeting is to ensure that some of the neediest families will continue to have access to housing assistance. The number of families served by funding for these programs is an issue not addressed in this rule.

Comment. The proposed rule provided, in § 5.607(b)(i), for a limitation of 30 percent of the area median income with ''adjustments'' for smaller and larger families. The final rule should clarify the type of adjustment that will be used. Additionally, the final rule omits any standard to govern HUD's discretion to determine a higher or lower percent of area median income as may be necessary because of unusually high or low family incomes.

Response. The adjustments for smaller and larger families are incorporated into the income limits for the public housing and Section 8 programs, which are issued by HUD each fiscal year.

Comment. The targeting requirement simply steers PHAs to focus on percentages rather than families. This will result in families on the waiting list being ''skipped'' in order to admit another family based solely on income.

Response. PHA admission policies to achieve both the goals of reducing poverty and income mixing in public housing may generally include skipping over certain applicants on the waiting list based on incomes. Skipping may be necessary to serve the required percentage of the neediest families (extremely low income). Such skipping is not new, however, with respect to assisted housing admissions; both federal and local preferences always have involved skipping of families on the waiting list in the public housing program, provided it is uniformly applied.

Comment. The final rule should exempt small PHAs and PHAs with high vacancy rates from income targeting requirements. The final rule must specify a standard for good cause requests made by PHAs to establish different targeting requirements, and what documentation the PHA must provide to HUD.

Response. HUD understands that some PHAs may have challenges regarding income targeting; however, these requirements are statutory. For most jurisdictions, it will not be difficult to meet the 40% targeting requirement for public housing.

Comment. The final rule should clarify whether the income targeting requirement is applicable to ''move-in'' actions only or also includes situations where an initial certification is done to move someone from a section 236 project to a section 8 project.

Response. The rule has been revised to clarify that the income targeting requirement applies upon initial admission to the Section 8 project-based assistance program.

Comment. The final rule should define the term ''relatively low incomes,'' which is used in § 5.607(a)(3). Another comment suggests that the final rule needs to clearly express the prohibition against concentration in public housing.

Response. The rule, at § 960.202, is revised to refer to the deconcentration requirements (more detail is in the PHA Plan rule), as well as the targeting requirements. The term ''relatively low incomes'' is no longer referenced.

Comment. The final rule should clarify that income targeting standards are to be applied on a PHA-wide basis and not on a project-by-project basis.

Response. The rule, at § 960.202(b)(1)(i), requires that at least 40% of the admissions to the public housing program in each fiscal year must be extremely low income families. This language clearly reflects that the requirement is applied on a PHA-wide basis. The rule at § 960.202(b)(ii) also reflects that this requirement is applicable to PHAs on a PHA-wide basis.

Comment. HUD must be cognizant that PHAs will be in a quandry when attempting to simultaneously implement the skipping provision, associated with the deconcentration policy, and the targeting requirement for annual admissions to public housing. HUD should consider the income mix and deconcentration policies that agencies submit as part of their PHA Plan, and the HUD respect the ''good faith efforts'' that PHAs undertake to create mixed-income communities based on the PHA management discretion and local conditions.

Response. The deconcentration of poverty and income mixing requirements are discussed in the final rule on the PHA Plan.

Comment. In some jurisdictions, there are apparent discrepancies between SSI grant levels, minimum wage earnings, and the extremely low income level in some counties, but these discrepancies can be administratively addressed by HUD.

Response. HUD makes adjustments every year for areas with unusually high or low housing costs relative to means. HUD also has made further adjustments for unusually high or low incomes for income eligibility to take into account State Supplemental Security Income (SSI) benefit levels. HUD issued Notice PDR 99–04 on July 21, 1999, to make changes that relate to the ''30 percent of area median income'' limits. These income limits have been increased wherever necessary to ensure that the one-person 30 percent income limit is at least as high as the State Supplemental Security Income (SSI) benefit level. The SSI program provides a minimum entitlement income standard for elderly and disabled households.

HUD will not make further adjustments to fiscal year income limits to accommodate minimum wage households, because this would drastically alter the 30 percent standard and would be inconsistent with Congressional intent.

F. Annual Income, Adjusted Income (Proposed and Final Rule § § 5.603, 5.609, and 5.611) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)

1. Exclusions vs. Deductions

Comment. The mandatory deduction from income for the earned income of minors will have the consequences of reducing the number of households eligible to move in. HUD has the statutory authority discretion to exclude (not deduct) income from minors.

Response. HUD agrees with this comment. The final rule maintains the language § 5.609(c)(1) that excludes the income of minors from the definition of annual income. HUD provided advance notice of this provision to PHAs in its notice on ''Public Housing Rent Policies; Guidance Pending Publication of Final Rule on Admission and Occupancy Requirements'' published on August 6, 1999 (64 FR 42956). The change from the proposed rule applies to all Section 8 programs as well as to public housing.

Comment. HUD should revise the mandatory deduction language pertaining to the $480 for each dependent. Section 5.611(a)(1) should be modified to read as follows: ''$480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.''

Response. The suggested revision is not necessary. The $480 deduction applies for each dependent. The term ''dependent'' is defined in § 5.603(d) and includes the recommended categories of dependent.

Comment. Section 5.611(a)(3)(ii) of the current rule places a limit on the amount of the deduction for unreimbursed reasonable attendant care and auxiliary apparatus expenses. It states that ''this allowance may not exceed the employment income received by family members who are age 18 years of age or older.'' The proposed provision does not contain any limit on the amount of the deduction. The limitation language in the existing rule should be retained.

Response. HUD agrees with this comment and has revised § 5.611(a)(3)(ii) to clarify that the allowance may not exceed the employment income received by family members who are 18 years of age or older and who are able to work as a result of the assistance to the person with disabilities.

Comment. Section 508 of the 1998 Act does not support HUD's interpretation that certain exclusions from income be treated as deductions. Congress refers to the items listed in section 508 as mandatory exclusions from income not deductions. HUD's interpretation, as reflected in § 5.611, applies the permissive exclusions to adjusted income but not to annual income. Since PHAs do have the authority under the current regulation to exclude earned income from annual income, and this rule removes that authority, this rule renders certain families ineligible for assistance. The statutory grant of authority to PHAs—to adopt ''permissive exclusions'' (42 U.S.C. 1437a(b)(5)(B)—does not deprice HUD of the authority pursuant to which it granted PHAs the discretion to adopt non-mandatory exclusions for the purpose of ascertaining public housing income eligibility under § 5.609(d), which HUD now proposes to repeal.

Response. The language on ''permissive exclusions'' (found in section 508 of the 1998 Act, which amends section 3(b) of the 1937 Act) makes a change in the determination of ''adjusted income'' (which is used to determine rent), not in ''annual income'' (which is used to determine eligibility). HUD has distinguished between subtractions from these terms by calling the subtractions from annual income ''exclusions'' and the subtractions from adjusted income ''deductions.'' Therefore, the statutory change directs that there be permissive deductions from adjusted income. Of course, adjusted income is an amount that is based on ''annual income,'' so an exclusion from annual income also impacts ''adjusted income.''

Since the new statutory language mandates permitting a deduction from ''adjusted income'' and an exclusion from ''annual income'' on the same basis could result in a double benefit with respect to the same type of income, HUD has eliminated the permissive exclusion from annual income for earned income. However, HUD notes that the new permissive deduction is much broader than the language in the regulations regarding optional exclusions for earned income. Although the new rule provides flexibility with respect to the subsidy amount paid to the family as a result of the rent calculation rather than flexibility on what families are admitted (based on an eligibility determination), it permits a PHA to grant a permissive deduction for categories other than working families. Therefore, the proposed language in § 5.611 is not revised in this final rule.

Comment. The term ''adult co-tenant'' used in § 5.611(a)(5) should be added to the definition of ''family head or spouse.'' The final rule should also clarify whether an adult co-tenant has the same status as a spouse for eligibility determination and other purposes.

Response. The rule does not currently define ''family head or spouse,'' and HUD does not believe a definition of ''adult co-tenant'' is necessary. A PHA has the discretion to define ''family'' and a PHA can include in its definition of family the term ''adult co-tenant.''

2. Permissive Deductions—Applicable to Public Housing Only

Comment. Permissive deductions should be extended to the Section 8 tenant-based programs. Permissive deductions should not be limited to public housing.

Response. Section 508(a)(5)(B) of the 1998 Act explicitly provides that permissive deductions are applicable only to the income of families residing in public housing units. HUD therefore is precluded by statute from extending permissive deductions to the Section 8 tenant-based programs.

Comment. The statute provides several examples of permissive deductions for public housing such as excessive travel expenses up to $25 per week and earned income in certain situations, and these examples should be included in the rule.

Response. While HUD recognizes that examples are helpful, HUD believes that regulatory text generally is not the appropriate place to include examples, guidance and similar information. There are better formats other than codified regulations (which are updated only once a year) to provide this sort of information. HUD will provide examples in future guidance.

Comment. Section 5.611(b) of the rule provides that the PHA must describe its permissive deductions in its written policies. The final rule should provide that private entities administering public housing units are allowed to diverge from the PHA's plan, and these entities can implement permissive income exclusions without being included in the PHA's plan.

Response. The PHA and any private entity administering public housing units on behalf of a PHA must follow the PHA's written policies, which are required to be available to the public locally in connection with the PHA's Plan.

G. Minimum Rents (Proposed Rule § 5.616; Final Rule § 5.630) (Section 507 of the 1998 Act Amending Section 3(a) of the 1937 Act)

Comment. For project-based Section 8, there are a set of exemptions to minimum rent. It is unclear in this rulemaking whether these exemptions are eliminated and replaced by the financial hardship exemption, or is financial hardship being added to the list?

Response. The financial hardship exemption constitutes the only statutory exemption to minimum rent. The statute then establishes subcategories of financial hardship exemptions.

Comment. While HUD has taken the minimum rent requirements directly from the statute, these requirements, as written in the proposed rule, make the imposition and collection of minimum rent meaningless. Since the law (and proposed rule) would prohibit the eviction of any family who fails to pay the minimum rent. PHAs have no way to enforce collection. The impact of the no eviction policy on public housing will result in an increase in operating subsidy needs to offset uncollected rents. By prohibiting PHAs from evicting those who do not pay, PHAs will likely experience an increase in tenant accounts receivable. Additionally, the hardship exemption eliminates any need for minimum rent. The exemption from payment of minimum rent due to financial hardship will have the effect of causing PHAs to establish a minimum rent of $0, and a minimum rent of $0 should be allowed only for exceptional situations.

Response. The exemption that prohibits public housing and Section 8 evictions resulting from the minimum rent is statutorily required. PHAs still have the option to determine the level of minimum rent. For public housing and the Section 8 certificate, voucher and moderate rehabilitation programs, the minimum rent maybe set any where from $0 to $50. For other project-based Section 8, the minimum rent is $25.

Comment. The initial rent freeze for hardship determinations should be reduced from 90 days to 30 days. This will benefit the family should the PHA find that a hardship does not exist, resulting in the family having to pay retroactive rent for a period that the rent was frozen. If a hardship does exist, PHAs could extend the rent freeze in 30 day increments (with documentation from the family). A maximum limit for hardships should be established at the discretion of the PHA.

Response. The statute dictates the 90-day waiting period. This would not preclude a family from paying back amounts owed prior to that period.

Comment. Although the choice of minimum rents is discretionary on the part of the PHA, the final rule should be explicit that this discretionary decisionmaking is subject to all the due process protections of any lease change, especially given the fact that electing to institute a minimum rent affects residents' property rights.

Response. Protections regarding any lease changes are already provided under 24 CFR part 966.

Comment. The final rule should direct PHAs to make sure that they have procedures in place to prevent any eviction against a family in minimum rent status. The final rule should make clear that the tenants in minimum rent status my not be evicted for non-payment of the minimum rent in excess of the tenant rent otherwise payable; that is (1) eviction restriction is not limited to a 90-day period and (2) it does not apply to section 8 families.

Response. The rule already provides that PHAs must have written policies governing hardship. Those policies must include an exemption of payment of the minimum rent when the family would be evicted as a result of the imposition of the minimum rent requirement. (See § 5.630.)

Comment. The final rule should clarify that inability to pay minimum rent cannot be grounds to reject an applicant for housing if the applicant qualifies for a hardship exemption.

Response. Eligibility for housing is a separate determination from calculation of rent. If a family is income-eligible and meets the PHA of owner's screening criteria, then the family's applicant for housing would not be rejected. Once the family signs a lease, it has the same protections as all families with respect to hardship exemptions.

Comment. Notwithstanding the authority to set a minimum rent in project-based settings of not more than $50 per month, HUD has chosen to continue its previous decision to set a minimum rent amount of $25 for all project-based settings. In light of the burden and complexity of the decisionmaking process concerning hardship requests which HUD delegated to project-based owners, HUD should set the minimum rent at a maximum of $25 for project-based owners and let the private owner at its operation choose to impose a $0 minimum rent.

Response. The final rule maintains the language of the proposed rule. The statute directed HUD to establish the minimum rent for the project-based Section 8 assistance programs of not more that $50 month. HUD selected a mid-point figure of $25 as a reasonable minimum for these programs.

Comment. The statutory language is clearer than HUD's rule on the hardship exemption, and the rule should more closely mirror the statutory language. Another comment suggests that the final rule should make clear that § 5.616(b)(1) includes situations where a tenant has requested government assistance, been denied, and is appealing the denial, either through the administrative or a judicial process. Another comment states the proposed rule omitted language from the 1998 Act regarding families with a member who is an alien lawfully admitted for permanent resident, and suggests that § 5.616(b)(1) be revised accordingly.

Response. HUD has revised § 5.60(b)(1)(i) in this final rule to read as follows: ''When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996.'' HUD believes that this revision will address the first and third

comments. HUD disagrees that additional language is necessary on the second matter regarding appeals. The language in the regulation mirrors the statutory language.

Comment. It is not clear why HUD established different standards in § 5.616 for public housing tenants and Section 8 tenants. For public housing this section provides that one a family requests an exemption, the PHA must immediately suspend the minimum rent until a hardship determination is made. With respect to Section 8 tenants, the rule provides that the PHA must suspend the minimum rent beginning the month following the request, not immediately. There seems no reason to provide less protection to section 8 tenants.

Response. HUD interprets ''Immediately'' to mean the month following the family's hardship request until the responsible entity determines whether there is a qualifying financial hardship, and whether or not it is temporary or long term. The rule now contains identical language regarding suspension of the minimum rent requirement beginning the month following the hardship request for both the public housing and Section 8 tenant-based programs (§ 5.630(b)(2)).

Comment. The final rule should clarify that temporary hardship is 90 days or less, and a long term hardship is one that is of more than 90 days duration. Once the hardship lasts 90 days, the rule should require the PHA to treat the hardship as long term, grant the exemption and make it retroactive to the beginning. The final rule should further provide that in situations where it is immediately clear that an income loss will last longer than 90 days or that income loss has already lasted more than 90 days, HUD should require the PHA to grant the exemption.

*Response.*The statute does not provide 90 days as an absolute in defining temporary hardship versus long term hardship. The 90 days relates to a prohibition on eviction commencing on the date of the family's request for exemption from the minimum rent in excess of the tenant rent otherwise payable.

Comment. The final rule should provide a specific time frame for notifying residents of their right to request a minimum rent hardship exemption.

Response. HUD declines to provide a specific time frame for notification to residents. The statute, and consequently the rule also, leave this decision to the PHA.

Comment. The minimum rent exception policy does not address (and should address) the family's inability to repay a retroactive rent without creating another hardship. The temporary hardship period should be debt free. Additionally, the rule needs to address more fully the repayment agreement process.

Response. HUD declines to adopt this suggestion, which is not supported by the statute. The language in the regulation that requires the PHA or owner to offer the family a reasonable repayment agreement addresses this concern in a manner consistent with the statute.

Comment. Allowing housing authorities to set a minimum rent based on local conditions is a good idea. However, the exemption from payment of the minimum rent due to financial hardship will result in housing authorities electing not to establish a minimum rent. A minimum rent of $0 should only be allowed for exceptional situations.

Response. The exemption for hardship cases is statutorily required.

H. Self-Sufficiency Incentives—Public Housing Only (Proposed Rule § 5.612; Final Rule § 960.255) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)

1. Disallowance of Increases in Income as a Result of Employment

Comment. The April 30, 1999 proposed rule did not place a limit on the number of times a family or individual can benefit from disallowance of increases in income as a result of employment, but HUD specifically sought comment on that issue. The majority of commenters who commented on this issue favored a limit. Some commenters favored a limit but did not make suggestions on what the limit should be. One commenter simply opposed the disallowance. Specific suggestions on the limits that should be placed on claiming an income disregard were as follows: (1) Limit to fixed number of months, as opposed to some fixed number of times an individual could qualify to begin the period of earning disallowances; (2) limit one time per household; limit one time per household but allow family to retain welfare benefits longer; (3) limit two times per household; (4) limit two times in a five-year period; (5) limit 3 times and each time the 12 month period is decreased; and (6) allow PHAs to set limit.

Response. HUD appreciates and carefully considered all proposals. HUD has revised the rule to limit each member of a family to receipt of the benefit of the 12 month cumulative income disregard (and the subsequent 12 month phase in) for no more than twelve months of each benefit (the full disregard and the phase-in) over a four year period commencing the first time the individual is eligible for the benefit. After that 48-month period, there would be no further eligibility of the family member for this disregard. Additionally, the rule also limits eligibility for persons who are or were assisted, within 6 months, under any State program of temporary assistance under part A of title IV of the Social Security Act only when the amount of TANF-funded assistance, benefits or services during the 6 month period totals at least $500. The $500 floor was chosen because that amount demonstrated that the person was not receiving only minimal assistance. These limitations both recognize the potential administrative burden for PHAs, and support the self-sufficiency efforts by individuals who need to use this provision more than one time for valid reasons (newly working families often have changes in jobs and experience periods of unemployment, especially during the first few years of starting employment). A Congressional floor colloquy [144 Cong. Rec. S11840 (daily ed. October 8, 1998) (statement of Sen. Mack)] before enactment of the statute, suggested that the rules implementing the disallowance of increased income as a result of employment should provide flexibility but at the same time not encourage households to change their employment patterns to take advantage of the disregard.

Comment. HUD should not impose a limit on the income disregard. The statute imposes no limit on the availability of the income disregard, and neither should the rule.

Response. HUD has the authority to implement the disallowance of increases in income as a result of employment in a flexible manner that creates incentives for work, but does not allow for abuse of this benefit. The floor colloquy cited earlier directed HUD to do this.

Comment. PHAs should not have to wait to increase a family's rent and also be limited in the amount of increase.

Response. The new statute clearly requires PHAs to delay increase in the rent of a newly employed family for one year, and then limits the amount of increase for another year.

Comment. In § 5.612(a)(1), HUD should replace the phrase ''established minimum wage'' with the ''highest applicable minimum wage.'' This change, if implemented, will account for variations in minimum wage among jurisdictions and where the state

minimum wage is higher, assure that the higher wage is used in the calculation.

Response. HUD recognizes that the minimum wage may be higher in some states, and that the higher minimum wage of the state is the prevailing wage for HUD purposes. The language of the rule is clear on this point and no elaboration is needed.

Comment. The final rule should clarify the continued application of existing § 5.609(c)(13) for transition purposes. The preamble to the proposed rule repeats the statute's continued application of § 5.609(c) for residents qualified prior to October 1, 1999. This continued coverage should be stated in the final rule, to minimize difficulty with implementation of the income disregard.

Response. The continued application of § 5.609(c)(13) is clear and no elaboration of this point is needed in the rule.

Comment. HUD needs to develop a fool proof data tracking system for monitoring the periods used for this disregard. This tracking system could be incorporated into the HUD 50058 form and the Multifamily Tenant Characteristics System (MTCS).

Response. HUD is in the process of updating MTCS to capture all of the changes necessary as a result of the changes made by the 1998 Act.

Comment. The final rule should clarify that the burden is on the family to notify the PHA of eligibility for an income disallowance. Section 5.612 should contain language that requires a family to notify the PHA of its eligibility for a disallowance for increases in income as a result of employment, and to provide the requisite information in support of any requested disallowance.

Response. It is at the PHA's discretion to establish policies prescribing when and under what conditions a family must report changes in income, if other than at the annual re-examination, and to establish reasonable income verification. Additionally, under revised § 960.257(b), a family may request an interim reexamination of income at any time.

Comment. The final rule should provide a broad interpretation of participation in a self-sufficiency or job training program to include not only the phase of the program spent in job training or job preparation but also to include the work experience phase of self-sufficiency training in which participants are working full-time but still receive monitoring or counseling from the self-sufficiency program.

Response. There is nothing in the proposed rule or this final rule that limits the interpretation suggested by the comment. No additional clarification is needed.

Comment. The final rule should clarify that eligibility for the disallowance for increases in income as a result of employment begins at the time the income is earned.

Response. The rule is clear that eligibility for this disallowance begins on the date the employment starts or the date income from employment increases (see revised § 960.255(b)(1)).

Comment. To serve as a self-sufficiency incentive, the rule needs to accord favorable treatment to increased earnings that occur shortly after completion of a training program, rather than during participation in one. Section 5.612(a)(2) of the proposed rule leads one to the conclusion that increased earnings that occur after completion of a training program would not qualify for special treatment under the rule because the increase did not occur ''during participation.''

Response. The statute is clear regarding this provision. Eligible amounts to be excluded under § 960.255(a)(ii) are any income increases received by a family member during participation in any family self-sufficiency or other job training program and not increases that occur after participation in a self-sufficiency or other job training program. For example, a family member could be eligible for this exclusion if a component of the training program provides training, monitoring, or assistance after the person becomes employed. However, a family member whose income does not increase during participation in a family self-sufficiency or other job training program may still be eligible for a disallowance of increases in income under paragraph § 960.255(a)(i) or (a)(iii).

Comment. The rule should state clearly that families may qualify for the limit on rent increases when they begin employment or increase their earnings. The rule should clarify that for the purposes of determining eligibility for disregard of earned income, a family has been assisted within 6 months ''under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act.'' The final rule should clarify that there are two programs under Part A of Title IV of the Social Security Act that qualify a family for the earned income disregard, and that there are several benefits and services funded from federal or state TANF funds.

Response. The two programs under Part A of Title IV of the Social Security Act include the TANF program administered by the State or local welfare agency and the Welfare-to-Work (WTW) program administered by the State or local WTW agency. Under the TANF program, the State or local welfare agency can use funds to pay for benefits or services, such as wage subsidies, child care, and transportation, as well as a one-time payment of assistance or diversion assistance funded from Federal or State TANF funds. Families assisted under any program under Part A of Title IV of the Social Security Act and who meet the other criteria under § 5.612 are eligible for the disallowance for increases in income as a result of employment. The PHA needs to coordinate and verify with its local welfare and WTW agencies to help the PHA determine who is eligible under § 5.612 for this disallowance.

Comment. The final rule should clarify that training includes technical schools and community colleges. The final rule also should clarify in § 5.612 that family self-sufficiency includes training programs for people with disabilities that provide stipends or very low wages in a sheltered workshop type of job prior to transitioning to competitive employment.

Response. There is nothing in the rule that would preclude technical schools, community colleges and training programs for persons with disabilities from being considered as family self-sufficiency or job training. The rule cannot list all eligible programs that may qualify as training, but this could be addressed further in future guidance issued by the Department.

2. Individual Savings Account

Comment. The final rule should clarify that individual savings accounts are permissive on the part of PHAs and not mandatory.

Response. The statute and regulation, at § 960.255(d), clearly state that a public housing agency *may* establish an individual savings account. The PHA has the option of offering individual savings accounts. The rule reflects the statutory language. Therefore, a family cannot require the PHA to establish an individual savings account.

Comment. Section 5.612(c) gives the PHA the choice of offering individual savings accounts to eligible families and the choice transfers to the residents. This is not what the statute provides. The statute places the choice first with the eligible family, not the PHA. The rule should be revised to conform to the statutory language.

Response. HUD disagrees with this comment. As noted in the preceding response, the statute clearly gives the PHA the option to offer individual

savings accounts. A family cannot compel the PHA to offer these accounts.

Comment. The final rule should clarify conditions of authorized withdrawals from the individual savings account, and specifically should provide guidance on the term ''moving out.''

Response. Sections 960.255(d)(3) and (6) of the rule address the conditions under which a family receives its account when moving out.

Comment. Section 5.612(c) states: ''The PHA must provide that any balance in such an account when the family moves out is the property of the family unless the family is not in compliance with the lease.'' The rule language is not clear whether the family loses its savings account if the family is evicted for any reason.

Response. A family does not automatically lose its savings account if the family is not in compliance with the lease and is evicted. If a family is evicted for non-compliance with the lease, the family would receive its savings account, less any amounts the family owes the PHA.

Comment. HUD's individual savings accounts should be modeled on accounts developed by other Federal agencies or organizations.

Response. Both the statute and the regulation provide a PHA with flexibility in establishing individual savings accounts. Given this flexibility, HUD declines to require a PHA to establish an individual savings account in accordance with a specific model. However, the final rule does clarify that a PHA may not charge a fee for maintaining an account for a family, but it may pass along to the family any fee that a financial institution imposes on it for maintaining the account.

I. Income Changes Resulting From Noncompliance With Welfare Program Requirements (Proposed Rule § 5.618; Final Rule §§ 5.603, 5.613, and 5.615) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)

Comment. Section 5.618(a) lists those households whose rental payments may not reflect welfare reductions. It includes failure to satisfy economic self-sufficiency requirements imposed by the welfare agency. This list should be expanded to include categories such as failure to comply with child support requirements.

Response. The statute is specific regarding compliance with welfare program requirements, including fraud eradication and support for economic self-sufficiency and work activity requirements. When determining tenant rent for families participating in the public housing and tenant-based Section 8 programs, PHAs are required not to consider reductions in income attributable to the welfare agency's sanctioning and enforcement of other welfare program requirements that are not related to economic self-sufficiency and work activity requirements. The statute contains a definition of economic self-sufficiency programs, which the regulation incorporates (§ 5.615).

Comment. The list of households exempt from the limitation on rent reduction should also include a household that may have lost welfare income due to economic self-sufficiency sanction, but has subsequently obtained income from new sources.

Response. The definition of ''covered family'' in the statute means a family that (1) receives benefits for welfare assistance or public assistance from a State, or other public agency under a program for which the Federal State, or local law relating to the program requires, as a condition of eligibility for assistance under the program, participation of a member of the family in an economic self-sufficiency program, and (2) resides in a public housing dwelling unit or is provided tenant-based assistance under Section 8. The comment suggests adding as an exemption, persons who were sanctioned but have since obtained employment or have gained other sources (of income).

This exception to the usual rent rules provided by the statute is for loss or reduction of welfare assistance or public assistance benefits due to sanctioning. The amount of income not actually received by the family as a result of sanctioning is included in the annual income as ''imputed welfare income''. If the member of the family is no longer receiving any such benefits (because the family member is now working) the exception is not applicable. If, however, the member of the family is still receiving some portion of welfare/public assistance benefits (due to a reduction and not a total loss of benefits as a result of sanctioning), the exception remains applicable, even if the member of the family has income from other sources. A PHA should continue to include the imputed welfare income until either the sanction term ends or the family's income from other resources is at least equal to the imputed welfare income.

Comment. It is not clear in § 5.618(a) that the only households subject to the rent reduction limitation at issue are those who meet the definition of ''covered family'' in the statute at 42 U.S.C. 1436j(d)(1). The final rule should clarify this point.

Response. HUD revised the rule, at § 5.615(b), to include a definition of ''covered family'' that tracks the statutory language.

Comment. The final rule should provide clarification of the term ''fraud.'' PHA staff is not always knowledgeable about welfare law and the subtleties involved in welfare fraud issues, and therefore it may not be clear to a PHA employee that the allegation of fraud that results in restitution and participation in civil rehabilitation programs results in no welfare fraud allegation or conviction.

Response. As noted earlier, each State or local welfare agency determines for its program when a family has failed to comply with particular requirements or has committed fraud. The PHA must work with the State or local welfare agency to understand what constitutes fraud or noncompliance that results in a reduction of welfare assistance or public assistance benefits of a covered family.

Comment. Section 5.618(b) needs to clarify that a PHA cannot deny a rent reduction pursuant to the statutory requirements before the PHA obtains notice described in the statute that justifies application of 42 U.S.C. 1437j(d)(2) and (3) and justifies its denial of rent reduction.

Response. The final rule, at § 5.615(c)(2), is clear regarding the obligation of the PHA to obtain written verification from the welfare agency of the basis for the reduction of welfare assistance or public assistance benefits and the term of the reduction of benefits.

Comment. Section 5.618(b) should state with specificity that the PHA is bound by federal confidentiality laws as well as state and local data privacy and confidentiality laws in its sharing of information with the welfare agency.

Response. The verification of income or welfare benefits is covered under HUD existing regulations that provide for confidentially and use of information obtained from third parties.

Comment. HUD must provide clear guidance to PHAs on what information is appropriately required from the welfare agency. The PHA will probably need a release from the family to obtain the verification the statute and regulation require. HUD must provide guidance in clearly limiting the scope of the release to protect the resident and the housing authority staff from overreaching inquiries and unnecessary release of protected information that may leave the housing authority open to liability if information is carelessly

handled. HUD should provide PHAs with a model release form.

Response. HUD is in the process of developing a model cooperation agreement, which can be used to specify the verification process to determine welfare assistance or public assistance benefits, as well as obtaining verification of any loss of benefits due to noncompliance or fraud. PHAs, however, may not delay the implementation of this provision based on the Department's timetable for design or issuance of a model cooperation agreement. The PHA is required to make its best efforts to enter into such cooperation agreements, with State, local or other agencies providing assistance to covered families under welfare assistance or public assistance programs, as may be necessary.

Comment. Section 5.618(c) references the hearing procedures in § 982.555, which are applicable to tenant-based Section 8 tenants. This section should also refer to the hearing procedures for public housing residents in § 966.55(e)(2).

Response. The rule was revised, at § 5.615(d)(1), to reference the public housing hearing procedures in part 966.

Comment. A PHA's notice to a family of the PHA's decision to deny the rent reduction after obtaining verification of income reduction for noncompliance with economic self-sufficiency requirements should be in writing, timely provided, specifically state the decision of the PHA and the basis for the decision in law and fact, and advise the family of the procedure for seeking review.

Response. The final rule, at § 5.615(d), provides that a PHA must notify the family in writing that they have a right to ask for an explanation stating the specific grounds of a PHA determination, and that the family may request a hearing under the grievance procedure if they disagree with the determination.

Comment. The rule should be revised to require final action on the part of the welfare agency before rent reduction can be refused. Section 5.618(b), as proposed, permits responsible entities to delay rent adjustments until verification is obtained from the welfare program. The proposed rule conflicts with the statutory basis for the rule, 42 U.S.C. 1437j(d), which states at subsection (d)(4) that the PHA may not refuse to take action to reduce rent until written notification is obtained from the welfare program.

Response. The final rule provides, at § 5.615(c)(2), that the PHA must rely on the written determination of the welfare agency to base its decision concerning rent reduction, which tracks the statutory requirement.

Comment. Rent reduction limitation also should apply to families for which other benefits are decreased due to fraud, for example, Social Security benefits which have decreased due to defrauding the Social Security Administration.

Response. The treatment of income changes resulting from welfare program requirements which prohibit the reduction of rent due to noncompliance or fraud is statutory and is applicable to welfare assistance and public assistance benefits specifically. HUD does not have the authority to expand this provision to other federal assistance programs.

Comment. The rent reduction process results in additional administrative burden, specifically, increased reporting requirements and tracking of eligible families.

Response. HUD is aware that the rent reduction process will require PHAs to obtain written verification of sanctioning from welfare agencies. HUD believes that the administrative responsibility imposed by the verification process can be simplified and minimized through cooperative relationships with the welfare agencies.

Comment. HUD must provide additional guidance for § 5.618 because of the complex nature of the various welfare programs and PHA unfamiliarity with their operation.

Response. The best guidance concerning the nature and operation of the various welfare programs comes from the welfare agencies who administer these programs. HUD anticipates that these welfare agencies will be cooperative in assisting PHAs in understanding their programs. HUD strongly encourages PHAs to coordinate with their State or local welfare agencies to improve the reporting of income and detection of fraud and to streamline the process where possible. Additionally, HUD encourages PHAs to use the cooperation agreements, as described in section 12(d)(7) of the 1937 Act, as amended by section 512 of the 1998 Act, to improve the service delivery between the two agencies to promote self-sufficiency and otherwise address the needs of low-income families.

J. Rents in Public Housing (Proposed Rule §§ 5.603 and 5.614; Final Rule §§ 5.603 and 960.253) (Section 523 of the 1998 Act Amending Section 3(a) of the 1937 Act)

1. Income-Based Rents

Comment. The preamble language in the proposed rule that stated HUD cannot provide assurance of its ability to subsidize ceiling rents is inappropriate. Whenever Congress has conditioned a commitment on the availability of future appropriations, it has explicitly said so. There is no such language conditioning the statutory commitment to provide a fair and equitable level of operating assistance for tenancies that pay flat rents or ceiling rents established in accordance with section 523 of the 1998 Act.

Response. While the 1998 Act does not explicitly condition this provision on the availability of future appropriations, the subsidy of either flat rents or ceiling rents is an issue being considered during the operating fund negotiated rulemaking because of the cost implications. The subsidy to pay for any particular level or type of rent cannot be assured.

2. Flat Rents

Comment. The language in § 5.614(a)(1) concerning the use of comparability studies to justify a flat rent system seems contrary to the Federal Government's policy disfavoring statements in the Code of Federal Regulations that give advice about what a regulated entity should do, rather than stating what it must do. With respect to the specific suggestion that a PHA should use a comparability study to justify a flat rent system, section 523 of the 1998 Act, which establishes the requirement for alternative rent systems, does not employ the term ''comparability.'' To the extent that comparability studies may constitute one manner for developing flat rents, section 523 of the 1998 Act, makes it one method among equals.

Response. It is important that there be a uniform standard for setting flat rents, to ensure that the rents established meet the statutory requirements and are established in a comparable manner across all PHAs. The cost implications of flat rents further make a uniform policy necessary. HUD has revised § 960.253(b)(2) to more clearly articulate the statutory link between flat rents and the rental market. The rule has been further revised to clarify the requirement for documenting the method for setting the flat rents equal to comparable market rents. In addition, we note that to have adequate information about the income levels of families served by the 1937 Act programs, HUD may seek income information on a sampling basis from families paying flat rents, whose incomes are not regularly required to be examined more often than every three years.

Comment. If a comparability study is used, the rule needs to make sure that such study includes certain additional factors, such as crime level in the project and in the vicinity; drug activities in the project and in the vicinity; and gang activities in the project and in the vicinity, to name a few.

Response. Section 960.253(b)(3) broadly identifies the factors a PHA must consider when determining flat rents. HUD has clarified that the flat rent must be the estimated rent at which the PHA actually could rent the unit once it is prepared for occupancy.

3. Family Choice

Comment. The family's ability to choose between an income-based rent and a flat rent will be an administrative burden for the PHA.

Response. Choice of rent is required by section 523 of the 1998 Act. Section 523 increases a PHA's flexibility regarding rent policies, while also requiring that a family be given a choice of flat or income-based rent.

Comment. Section 523 of the 1998 Act requires that tenants who pay a ceiling or flat rent receive income reexaminations not less than once every three years. HUD should adopt the statutory three-year standard. While the statute allows the family to ''elect annually'' without showing hardship to change its rent-payment method, that is the family's choice, and in the absence of that election, a PHA should not be required to go through the costly, unnecessary task of conducting an annual income-based rent determination for a family who does not want one and does not need one.

Response. As stated in the comment, section 523 of the 1998 Act requires PHAs to provide families residing in public housing the choice to elect annually, which rent option they prefer, even if they are paying a ceiling rent or flat rent, but permits income to be reviewed every three years if the family chooses the flat rent. HUD emphasizes that a family must be offered a choice of rent options annually, and must be provided sufficient information to make an informed choice. To illustrate, if a family elected an income-based rent (because according to their calculations, the income based rent is less than the flat rent), but upon re-examination by the PHA discovered that the income-based rent is actually higher than the flat rent, the family should be allowed to opt for the flat rent at that time (because the information regarding choice of rents seems insufficient for the family to have made a reasonable choice). In response to the comment, however, the final rule provides that where a family previously has elected a flat rent (prior to the three year required reexamination), the PHA must provide the calculation of the income-based rent only at the family's request.

Comment. The PHA is responsible for providing the rent option to the family every year along with sufficient information for the family to make an informed choice. The rule should clarify the meaning of ''sufficient information.'' Additionally, the preamble to the proposed rule provides that the PHA should provide each affected family a worksheet so that it may compute its own income-based alternative rent. The preamble language appears to contradict proposed § 5.614(c), which requires the PHA to conduct an annual rent determination for the family—as though the family had elected to pay rent based on income—and provide the family a copy of its policy on switching between rent systems.

Response. The preamble to the proposed rule provided a discussion of the minimum amount of information a PHA should, and the types of information a PHA could provide to a family regarding choice of rents. The regulation clearly states what minimum amount of ''sufficient'' information is necessary. The preamble suggested a worksheet as a possible alternative, in a manner similar to PHAs who provide residents worksheets at annual re-examination.

Comment. All residents should be notified by the PHA about the flat rent and income-based rent prior to implementation.

Response. HUD believes that a PHA's obligations concerning rent options and notification to families of their options is appropriately addressed in the rule. The rule requires the PHA to (1) establish written policies concerning rent policies, and (2) inform families of their rent options.

4. Switching Rent Methods to Lower Rent Because of Financial Hardship

Comment. Switching rents due to financial hardship creates a significant administrative burden.

Response. As noted earlier in this preamble, choice of rent is explicitly required by section 523 of the 1998 Act, as is the ability to switch rents because of financial hardship. Choice of rents is intended to provide increased amount of flexibility regarding rent policies for PHAs and residents, as families transition from welfare to work. Congress believed it necessary, however, to have hardship provisions for families who may need additional assistance at certain points in the transition.

Comment. Granting a rent waiver to one family penalizes other families who are meeting their obligations; additional rent collections will decrease. A sizable percentage of all households living in public housing experience financial hardship frequently, yet the PHA expects them to pay their rent in full, on time. In special circumstances, a family may sign a payment agreement to make up rent which is in arrears. However, granting a rent ''waiver'' to one family penalizes others who are meeting their rent obligation. Ultimately rent collection rates will go down.

Response. Section 960.257(b) now provides that families may request an interim reexamination of family income or composition because of any changes since the last determination. Families who experience an unanticipated reduction in income are able to request an interim reexamination, and have their rent adjusted accordingly. Therefore, these families are not penalized, as suggested by the comment.

Comment. The final rule should make clear that a family must specifically notify the PHA of its wish to switch rent methods due to financial hardship, and the rule should provide that the rent be lowered no later than the first of the month following the month the family reports the hardship is unreasonable and should be revised.

Response. As stated in the proposed rule, the PHA must switch the family's rental payment immediately if there is a hardship. However, HUD realizes that the PHA may not be able to immediately adjust its systems to switch a family's rental payment. When establishing its policies, a PHA should indicate the timeframe in which a family must notify the PHA of a financial hardship, and the need to switch rent systems, and the PHA should be able to act within 30 days, which includes verifying the financial hardship, before switching the family from one rent system to another. Such policies should attempt to maintain administrative simplicity while being responsive to unforeseen changes in family circumstances.

Comment. There should be a limit on the number of times within a specified period of time that a family or individual can claim the hardship exemption.

Response. The rule provides such a limitation. The rule provides that once a family switches to income based rent due to financial hardship, the family must wait until its next annual option to select the type of rent.

Comment. The final rule should clarify that circumstances for

exemptions for death apply only to family members on the lease or principal wage earners, to prevent multiple requests for hardships due to death for other circumstances not envisioned by the Congress or HUD.

Response. The statute indicates that financial hardship policies must include situations where the family has experienced a decrease in income because of a death in the family. HUD does not believe that this was intended to be limited to the death of family members who are wage earners, but rather any family members on the lease for the unit, whose death created a loss of income in the household.

Comment. The statute requires a PHA to ''immediately'' provide for the family to switch to an income-based rent upon a determination that a family is unable to pay the previously chosen flat rent because of financial hardship. The rule seems to imply that the PHA can make its own policy on switching from a flat rent to income-based; however, it appears that the statute gives the PHA no choice in certain specific instances. HUD needs to clarify this matter.

Response. As stated in the proposed rule, the PHA must switch the family's rental payment immediately if there is a hardship. Though the PHA does not have discretion in determining whether or not to switch a family's rent because of hardship, the PHA does have discretion in establishing its hardship policies, including the time frame in which a family must notify the PHA of a financial hardship, and the need to switch, the type of verification required, etc. When establishing such policies, the PHA should attempt to maintain administrative simplicity while being responsive to unforeseen changes in the family circumstances.

5. Retaining Ceiling Rents

Comment. HUD should provide the option to use ceiling rents beyond three years. HUD's interpretation that the statute limits the retention of ceiling rents is wrong. The 1998 Act explicitly permits PHAs with ceiling rents to retain them, instead of developing flat rents based on neighborhood market rental levels for comparable housing.

Response. HUD is not revising the ceiling rent provision from that provided in the proposed rule. As stated in the proposed rule, PHAs that have already established ceiling rents may continue to use those ceiling rents in lieu of establishing a flat rent for those units for three years. After the three year period, ceiling rents will continue to be allowed as a cap on an income based rent, but not as an alternative to flat rents.

At the time the 1998 Act was enacted, a proposed rule was pending which would have resulted in a requirement that ceiling rents reflect the market in a manner similar to that required by the statute and this regulation for flat rents. That rule would have been finalized accordingly. HUD thus believes that a maximum 3-year time period on retention of ceiling rents as an alternative to flat rents is both reasonable and fully consistent with Congressional intent. Of course, the flat rents will have a similar effect to ceiling rents set at market. In addition, tenants for whom the flat rents are higher than the current ceiling rents always can choose to pay the income-based rent, which will not exceed thirty percent of their adjusted incomes.

K. New Community Service and Self-Sufficiency Requirements for Public Housing (Proposed Rule §§ 960.603–960.611; Final Rule §§ 960.601–960.609) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)

1. General

Comment. There is a significant administrative burden associated with the new community service and self-sufficiency requirements. The community service requirement is punitive to public housing residents. The requirement to establish a community service program exceeds the PHA's charter. These requirements clearly constitute an unfunded mandate. HUD must take steps to minimize the burden to the fullest extent without compromising statutory intent.

Response. The new community service and self-sufficiency requirements are statutory. HUD has strived to provide as much flexibility as possible to PHAs to allow them to administer this provision without creating significant burden.

HUD urges implementation of this provision in a manner consistent with its intent, as discussed in the Senate Committee Report (S. Rep. No. 63, 105th Cong., 1st Sess. 1997). The Report states that the provision is not intended to be perceived as punitive, but rather considered as rewarding activity that will assist residents in improving their own and their neighbors' economic and social well-being and give residents a greater stake in their communities.

Comment. The final rule should eliminate the requirement for a PHA to identify and notify each individual of the community service status. The PHA should only be obligated to notify all families of the general requirements and exemptions and place the burden upon the family to notify the housing authority of the required participation of some of its family members, under the pain of lease violation and subsequent eviction actions. Additionally, the final rule should permit the resident to self-certify concerning his or her ability to comply with the community service requirement.

Response. HUD has revised §§ 960.605 and 960.607 to provide PHAs as much flexibility as possible, while still meeting the statutory requirement. The revision to § 960.605(c) requires PHAs to verify compliance annually, at least 30 days before the expiration of the lease term. Self-certification by residents is not acceptable; third party certification must be provided by the entity with whom the resident is working.

There are various community service models that PHAs may want to consider in developing their process for administration of the community service requirement. One of the models is based on a high school requirement for graduation used by high schools, that each student is required to perform a certain number of hours of community service in order to graduate. Similarly, PHAs could provide guidance lists of acceptable activities to residents, along with ways to contact various groups or PHA-sponsored activities that meet the requirement and intent of the community service provision. Residents could, perhaps two months prior to the end of the lease, have a signed certificate from the community service or self-sufficiency activity contact, that in fact they have provided the requisite amount of service.

Additionally, PHAs may, but are not required to, provide advance approval of a community service activity. Advance approval by the PHA may avoid the possibility of refusing to recognize the activity as eligible after it was performed by the resident. Advance approval also may help to ensure that the activity is not performed under conditions that would be considered hazardous, or that the work is not labor that would be performed by the PHA's employees responsible for essential maintenance and property services, or that the work is otherwise unacceptable.

Comment. Residents who are not exempt from community service should be provided a statement of rights and obligations.

Response. The rule provides, at § 960.605(c), for written notification of the provisions of the community service requirement to all residents, including a description of the service requirement, who is exempt, and how the exemption will be verified.

Comment. A community service contribution of 8 hours a month is too low. The requirement should be at least 16 hours a month. Another comment suggests that the rule should clarify whether required hours may be accrued.

Response. The statute is clear that the expectation is that each adult member of the family unless otherwise exempt is required to contribute eight hours per month of community service. HUD, however, believes that there should be some flexibility for PHAs to allow individuals, based on circumstances that may prevent the individual from performing the eight hours of community service/economic self-sufficiency each month, to remedy this requirement by performing the activity prior to the renewal of the lease or within a reasonable period determined by the PHA.

Comment. The final rule should go further and require residents to provide verification that they applied for employment in 3 different locations each week.

Response. This suggestion exceeds the requirement imposed by the statute. The rule reflects the statutory requirement to engage in community service.

Comment. The final rule should provide for duly-elected resident councils to administer community service requirements and have community service activities include activities to develop and strengthen the capacity of resident councils. Additionally, the final rule needs to address issue of acceptable community service providers.

Response. As noted earlier in this preamble, HUD's position is to allow PHAs as much flexibility as possible in administering the community service and self-sufficiency requirements. PHAs have the discretion to involve duly-elected resident councils in the administration of community service requirements. Additionally, PHAs are in the best position to determine acceptable community service activities within the broad parameters established. HUD encourages PHAs to involve qualified resident councils where they can facilitate effective implementation of the community service requirement.

Comment. HUD should provide funding from resident initiatives funds for third party administration of the community service requirement.

Response. This comment is outside the scope of this rulemaking. The purpose of this rulemaking is limited to implementing the changes in admission and occupancy requirements made by the 1998 Act.

Comment. With respect to § 960.607(d) that provides, in relevant part, ''if the noncompliant adult moves from the unit, the lease may be renewed,'' the rule should explain how a PHA should respond to a report that a covered individual has moved from the household.

Response. HUD believes the following revision to § 960.607(c)(2) will address this issue. Section 960.607, which addresses ''Assuring Resident Compliance,'' is revised at the final rule stage to add the following language: ''All members of the family who are subject to the service requirement are complying with the service requirement or are no longer residing in the unit.''

Comment. There is concern about liability that may be attributable to PHAs for requiring or explicitly approving community service activities. HUD and the Congress must fully consider the implications of this requirement and implement this provision so as to ensure maximum protection for PHAs against possible litigation in this regard.

Response. Again, PHAs are given considerable discretion to implement the community service and self-sufficiency requirements as they determine appropriate, taking into consideration their resident population and local circumstances (e.g., using local community service providers). PHAs can and should implement community service programs in a prudent manner that will minimize liability.

Comment. The final rule should provide no adverse action against a resident if a community service provider is not responsive. Since PHAs will rely on other agencies for verification of resident community service activity, it is essential that no adverse action be taken against a resident if the third party agency fails to respond to housing authority and resident requests for verification. Another comment suggests that the rule should provide owners and PHAs with the right to require tenants to provide reasonable documentation for activities that meet community service requirements. Another comment suggests that the rule also should require PHAs to provide notice to residents of programs in which the residents may participate to meet the community service requirement. Another comment suggests that the rule should provide that the 8 hour per month requirement can be a combination of the community service and economic self-sufficiency requirements. Another comment suggests that HUD should advise whether it will issue a form of certification to be executed by entities for which residents perform community service activities; if the certification appears valid on its face, may the PHA rely on the certification, or must it take any further action to confirm that the certification is accurate.

Response. The rule strikes the appropriate balance of setting out the basic requirements for community service (and the exemptions) and self-sufficiency, as required by the statute, and providing PHAs with the flexibility to establish the manner in which they will administer these requirements. HUD therefore declines to adopt all of these specific suggestions. The regulation has been revised to clarify that the eight hours can be a combination of the community service and economic self-sufficiency activities to meet the requirement.

Comment. The final rule needs to address the relationship between a person performing community service and the PHA or community service provider. The rule should clearly specify that: the resident performing community service is neither an employee of the PHA nor the community service provider; the resident is not entitled to a stipend, unemployment or worker's compensation or disability benefits.

Response. The statute and this regulation clearly do not create or contemplate an employer/employee relationship between the public housing resident performing community service and the PHA or other community service provider.

2. Exemptions

Comment. Persons with disabilities should not be exempt from community service requirements, because generally all persons with disabilities can perform some type of community service—for example, collating material for a nonprofit agency. In contrast to this first comment were the following comments. Persons with disabilities should be exempt on basis of any existing documentation already in place of their status, and not require new certification. There should not be a dual test to exempt persons with disabilities, i.e., disability and inability to work. The final rule must provide clear standards on how to determine that a person with disabilities is unable to work. The final rule should exempt persons with disabilities who are not yet officially labeled as such. Persons receiving disability assistance under a state disability program should be automatically exempt.

Exempt all persons with disabilities absent clear evidence to the contrary.

Response. The exemption from the community service requirement for persons with disabilities who are also not able to perform community service is statutory. In terms of documentation of a disability, standards already exist, as provided in the language of § 960.601. Existing documentation will be accepted as evidence of a disability, and disabled individuals will be permitted to self-certify that they can or cannot perform community service or self-sufficiency activities. The rule cannot exempt persons with disabilities who are not yet officially classified as such, because documentation is required, as provided in § 960.601 and in the statute. Persons receiving disability assistance under a State disability program may be exempt, if they meet the disability definition in section 12 of the 1937 Act and in § 960.601.

Comment. Any PHA verification of disability is not consistent with Fair Housing Act regulations.

Response. Verification of disability is not inconsistent with the Fair Housing Act regulations. The new law establishes a community service requirement and provides a definition of person with disabilities that is separate from the definition provided under the Fair Housing Act.

Comment. Documentation that a family is receiving assistance under the TANF Program should be sufficient verification of a family member's exemption from community service requirement. If PHAs verify that the resident family is receiving assistance under the TANF program without sanction for non-compliance with a work activity requirement, there should be no additional verification.

Response. To determine whether a family member is exempt from the community service requirement, the PHA must verify with the welfare agency that the person is complying with a work activities requirement. ''Work activities'' is broadly defined in Section 407(d) of the Social Security Act (42 U.S.C. 607(d)), and it is expected that individuals participating in these work activities will be exempt from community service requirements under this part. (HUD will make the definition of work activities available through its website and through additional guidance.) Additionally, the PHA has the discretion to adopt the verification process suggested by the commenter.

Comment. Exemption for welfare status will be difficult to determine and enforce because status can change frequently.

Response. To minimize burden to the PHA, HUD suggests that PHAs include the determination of welfare status in the cooperation agreement they enter into with the local welfare agency.

Comment. The final rule should provide that PHAs are to rely on documentary evidence from other agencies bearing responsibility for determining an exemption category. PHAs are not responsible for making an independent determination of status.

Response. Nowhere in the rule is a burden placed on PHAs to determine an exemption category of a family member that is related to welfare programs. That determination is clearly left to welfare agencies, and PHAs are to look to these agencies for the determination of exemption of a family member.

Comment. The process for qualification for an exemption needs to be addressed by the rule. The proposed rule did not adequately address how a PHA would determine whether an adult, non-elderly household member would establish qualification for an exemption from the community service requirement.

Response. As stated in an earlier response, the rule strikes the appropriate balance of setting out the basic requirements for community service (and the exemptions) and self-sufficiency as required by the statute, and providing PHAs with the flexibility to establish the manner in which they will administer these requirements. HUD declines to establish by rule a process for qualification for an exemption.

Comment. The final rule should exempt primary caregivers; retirees below the age of 62; homemakers; and pregnant women.

Response. The categories of individuals exempt from the community service and self-sufficiency requirements are statutory. HUD does not have the authority to add additional categories.

Comment. The final rule should codify in the regulatory text the preamble language that states that PHAs must establish policies that permit residents to change exemption status during the year if their situation changes. This language should be added to paragraph (2) of § 960.605(c).

Response. HUD has included language at § 960.605(c) that requires PHAs to establish and describe policies addressing categories of individuals exempt from the service requirement. The PHA policy should include how the PHA will deal with any changes in exemption status.

3. Noncompliance

Comment. The rule should clarify whether a person who has been declared to be required to participate in community service has the right to a grievance hearing to challenge the decision of the PHA.

Response. Section 512 of the 1998 Act contains the requirement of due process for residents when the PHA is reviewing and determining resident compliance with the community service and self-sufficiency requirements.

Comment. Notice of noncompliance and a copy of any agreement for cure should be given to both the noncompliant resident and the leaseholder. It is critical that the leaseholder be included because it is the leaseholder's obligation to ensure compliance.

Response. HUD agrees. The rule (at § 960.607(b)) already specifies that the noncompliant adult and the head of household must sign any noncompliance and cure agreement.

L. Reexamination and Verification of Family Income and Composition (Proposed Rule §§ 5.617 and 960.209; Final Rule §§ 5.657, 960.257, and 960.259)

Comment. For a family paying income-based rent, it is of paramount importance that the rent is income-based and that an interim reexamination be processed immediately, not ''within a reasonable time after the family request.'' The responsible entity should be required to make the reexamination immediately, or within 5 working days of the family's request to prevent hardship to the family. Another comment suggests that § 5.617 should require that any reduction must be effective either in the month in which the family loses income or the following month and that reductions can be retroactive. Another comment suggests the final rule specify how long an interim reexamination must take, as the current regulations do, otherwise delays in decreases in rent can cause tenants to be able to afford rents and be evicted.

Response. HUD does not prescribe the time period between the reexamination and implementation of the new rent. Whatever action the responsible entity intends to take in this regard and the time periods involved should be reasonable, consistent with and according to State law. When establishing its lease policies, the responsible entity should attempt to maintain administrative simplicity, while being responsive to unforeseen changes in family's circumstances. Additionally, current regulations do not

specify how long an interim reexamination must take.

Comment. The rule requires strict annualization of interim income changes in every case, and annualization can cause substantial increases in rent for assisted tenants even where significant income reductions are quite foreseeable in the future. The rule should permit responsible entities to be able to ''look back'' at a family's historical income patterns in appropriate cases if available information is not reliable for predicting income for the reasonably foreseeable future.

Response. Annual income is defined in § 5.609(a)(2) as ''all amounts monetary or not, which . . . are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date . . .'' This definition always has allowed PHAs to base anticipated income for the next year on historical patterns rather than current or immediate past income, and PHAs will have an additional incentive to do this in situations where the family's income then will assist the PHA in meeting income targeting goals. To provide additional flexibility in this area, section 5.609 (e) of the existing rule, which permits PHAs to anticipate income for a shorter period when 12 months is not feasible, has been further revised in the new § 5.609(d). It now references seasonal or cyclic income and permits—but does not require—annualization when the PHA believes that past income is the best available indicator of expected future income. PHAs should consider the effect of their policy on the treatment of seasonal or cyclic income on their ability to satisfy the requirement for targeting admission to very low income families.

Comment. Section 5.617 requires at least annual income and family composition determinations for public housing residents paying income-based rent, but notes that the rule does not require this determination for public housing residents who have chosen flat rents. Annual reexaminations of income and family composition are necessary for families paying flat rents because PHAs must allow families to choose their rent structure annually.

Response. The statute specifically states that for families electing to pay a flat rent, the PHA need only reexamine their income every three years. As reflected in responses to other comments, during the three-year period, PHAs are required to provide families paying a flat rent with the calculation of the income-based rent only if the family requests that information.

Comment. Section 5.617(b)(2) should be revised to assure that any interim reporting process include oral and written explanation to the resident of the factors considered in the rent recalculation, particularly disregard of increases in income from employment, choice of rent, and child care and medical care deductions.

Response. A PHA must establish policies and procedures regarding interim reexaminations, and such policies are reported in connection with the PHA Annual Plan. It is at the PHA's discretion to establish policies on how it will conduct an interim reexamination, beyond what is specified in § 960.257(b) for the public housing program.

M. Occupancy by Police Officers and Over-Income Families (Proposed and Final Rule §§ 5.619 and 960.503–960.505) (Sections 524 and 548 of the 1998 Act Amending Sections 3 and 8 of the 1937 Act)

Comment. In light of the public nature of the PHA planning process, the portion of the plan that addresses police officer placement in public housing should not contain the level of detail demanded by the current rule with respect to the number and location of officers to be placed in particular projects.

Response. The regulation clarifies that the PHA Plan or supporting documents include the number and location of the public housing units to be occupied by police officers and the terms and conditions of their tenancies and a statement that the action is taken to increase security for public housing residents. The new law provided substantial relief to PHAs in this area compared to previous requirements found in 24 CFR part 960. Reporting of this limited information in connection with the PHA Plan is not unreasonable.

Comment. The rule requires owners of Section 8 project-based buildings to submit a written plan to the local HUD Field Office for authorization to lease a unit to over income police officers. Such plans should be submitted to the PHA for approval or disapproval in those instances where the housing authority is the contract administrator.

Response. HUD agrees with this comment and has revised the rule to adopt this suggestion.

N. Changes to Existing Self-Sufficiency Programs—Public Housing and Section 8 Certificate/Voucher Programs (Proposed and Final Rule Part 984) (Section 509 of the 1998 Act Amending Section 23 of the 1937 Act)

Comment. The change to the definition of ''welfare assistance'' for purposes of the Family Self-Sufficiency Program in § 984.103 (i.e., removing Medicaid and SSI from the definition) will assist low-income families by allowing working participants to complete the program successfully without sacrificing their family's health associated benefits.

Response. HUD agrees that the new definition of ''welfare assistance'' for purposes of the Family Self Sufficiency (FSS) program supports welfare reform. This definition remains basically unchanged in the final rule, except that we have borrowed language from the definition of assistance used in the TANF program. Additional clarifications are addressed in the following comments and responses.

Comment. The final rule should clarify whether the new definition of welfare assistance covers emergency assistance and food stamps.

Response. HUD has revised the language in § 984.103 to confirm that Food Stamps and emergency rental and utilities assistance are not included in welfare assistance for purposes of the FSS program.

Comment. The definition of welfare assistance in § 984.103 should be revised to read as follows: ''Welfare assistance does not include the income assistance received by non-head-of-house family members for their disabilities (SSI, SSDI, etc.) or for Social Security.'' Without this change an FSS participant is penalized for having a disabled or elderly family member.

Response. HUD has revised the language at § 984.103 to confirm that SSDI, SSI, and Social Security benefits are not welfare assistance.

Comment. The final rule should clarify participants to which the new definition of ''welfare assistance'' is applicable.

Response. Guidance on this issue is more appropriate for implementing instructions and guidance documents than for this rule.

Comment. The definition of ''welfare assistance'' appears contradictory, because it states that the term ''welfare assistance'' does not include programs that provide ''health care, child care, or other services to working families'', but the TANF program provides these very services and the TANF program is included in the definition of welfare assistance.

Response. HUD has revised the definition of ''welfare assistance'' for purposes of the FSS program to clarify what is and is not included.

Comment. The rule should clarify that for voluntary or mandatory FSS programs, HUD reimburses PHAs for the cost of the FSS escrow.

Response. This comment is not within the scope of this rulemaking. The issue of reimbursement is a matter to be addressed by the negotiated rulemaking committees for the Section 8 Renewal Fund and the Public Housing Operating Fund.

Comment. The rule should include authorization for Section 8 FSS families to use their escrow accounts funds for homeownership through HUD programs, as well as other governmental programs.

Response. The rule does not provide any restriction to use escrow account funds for homeownership through HUD programs or other governmental programs. Therefore no explicit authorization is needed.

Comment. The rule should address PHA approval of portability moves during the initial year of the FSS contract. Additionally, the rule should clarify whether a tenant has a right to a hearing if a PHA denies the tenant's request to move outside of a PHA's jurisdiction during the first 12 months after the effective date of the contract.

Response. The rule is not the appropriate place to address the various situations in which a PHA should or should not approve requests for moves during the first year of the FSS contract. Specifying the circumstances in which a PHA must approve a move would unnecessarily limit the PHA's discretion in administering its programs. Although a PHA should not arbitrarily restrict moves where there is good cause for the tenant to move, the decision to approve or disapprove the move rests with the PHA. A hearing is not required if a PHA denies the tenant's request to move outside of a PHA's jurisdiction. Families, however, always have the option of bringing their complaints to HUD if they believe that the PHA has acted without justification. Also, see § 982.353 for portability restrictions during the first 12 months after admission.

Comment. The rule should contain a specific requirement that in determining whether to grant a FSS participant's request to move within the initial 12 month period of tenancy, the PHA must consider its duty to affirmatively further fair housing.

Response. The Department will not adopt this suggestion. A PHA's duty to affirmatively further fair housing is a consideration at the basis of many PHA decisions with respect to tenants. This is only one factor, however, considered by a PHA with respect to a tenant's request to move. Others include the availability of appropriate services, training, and employment opportunities.

O. Lease Requirements (Proposed and Final Rule § 966.4) (Section 512 of the 1998 Act Adding Section 6(l)(1) to the 1937 Act)

Comment. The requirement for a 12-month lease will adversely affect PHAs both financially and with respect to unit occupancy. The 12-month lease will have an adverse impact on Tenant Accounts Receivable. The 12-month lease term should be optional. Allow PHAs to establish lease terms based on local practices and conditions. The rule should provide exceptions to the 12-month lease term.

Response. The requirement for a 12-month lease is statutory, as well as the requirement that the PHA lease be renewable for all purposes except noncompliance with community service requirements. Regardless of the term of the lease, PHAs may allow for a 30-day (or less) notice period for tenants to notify the PHA that they wish to terminate the lease. This will eliminate any adverse impact on tenants or Tenant Accounts Receivable. In establishing the initial term, a PHA may extend the period a few days beyond 12 months to make the lease term extend to the end of a month.

P. Escrow Deposits (Proposed and Final Rule § 966.55)

Comment. Escrow deposits, as provided in § 966.55, should be required only when the PHA asserts that rent is due because of the family's act or failure to act.

Response. The regulatory language is clear that an escrow deposit is required only in instances where a hearing is scheduled in any grievance involving the amount of rent. The rule goes on to say that the escrow deposit is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act, or failure to act, took place. No additional clarification is necessary.

Comment. Escrow requirements should be waived whenever recent hardship or welfare benefit rent reductions are involved.

Response. The regulatory language is clear that the PHA must waive the requirement for an escrow deposit in cases where either (1) a family is appealing a financial hardship determination related to minimum rent requirements, or (2) the family is appealing a PHA's decision not to reduce the annual income of a family as a result of a reduction in welfare benefits attributable to fraud or a failure to participate in an economic self-sufficiency program or to comply with a work activities requirement. No additional clarification is necessary.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule are unchanged from the proposed rule. The final rule, however, reorganized certain regulatory sections of the proposed rule. The sections containing the information collections affected by the proposed and final rules are stated in the chart below. These information collections were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0230. In accordance with the Paperwork Reduction Act, no agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Section of 24 CFR in Proposed Rule	Section of 24 CFR in final rule
5.410 Residency Preferences	5.655(c) 960.206(b)
5.611 New Deductions	5.611
5.612(c) Individual Savings Accounts	960.255(d)
5.614(c) Written Rent Options	960.253(e)
5.618(b) Welfare Rent Verification	5.615(c)
5.618(c) Welfare Rent Notice	5.615(d)

Section of 24 CFR in Proposed Rule	Section of 24 CFR in final rule
960.605(c) Community Service	960.605(c)
960.505 Over Income Families in Small PHAs	960.505

Regulatory Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements changes to admission and occupancy requirements in public housing made by the Quality Housing and Work Responsibility Act of 1998. These are statutory changes, and these admission and occupancy requirements apply to all families residing in public housing or receiving Section 8 assistance or applying for public housing or Section 8 assistance. The Congress did not provide exceptions for admission and occupancy requirements to families because the PHAs or responsible entities that administer the covered HUD programs are small entities. Admission and occupancy policies are the type of policies that should be uniform throughout HUD's programs, except to the extent that the type of program (i.e., public housing or Section 8 assistance) because of its statutory basis creates differences in this requirements. Because these are statutory requirements, HUD has no discretion to alter these requirements on the basis of the size of the entity administering the program, but has made every effort in this rule to minimize administrative burden for all entities whenever possible.

Environmental Finding

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding remains applicable to this final rule, and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Federalism Impact

This final rule does not have federalism implications. It does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year.

Catalog

The Catalog of Federal Domestic Assistance numbers for these programs are 14.850, 14.855, and 14.857.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

24 CFR Part 984

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD amends parts 5, 880, 881, 884, 886, 891, 960, 966, 984, and 985 of title 24 of the Code of Federal Regulations as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In part 5, revise all references to the term ''HA'' to read ''PHA''.

Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers

3. Amend § 5.100 as follows:

a. Revise the introductory text to read as set forth below;

b. Remove the definition of ''housing agency (HA)'';

c. Add, in alphabetical order, definitions of the terms ''public housing'', and ''responsible entity''.

§ 5.100 Definitions.

The following definitions apply to this part and also in other regulations, as noted:

* * * * *

Public housing means housing assisted under the 1937 Act, other than under Section 8. ''Public housing'' includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

* * * * *

Responsible entity means:

(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD;

(2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

* * * * *

§ 5.105 [Amended]

4. Amend paragraph (a) of § 5.105 by adding, after the phrase ''section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at'', the phrase ''part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*;''.

Subpart B—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

§ 5.210 [Amended]

5. Amend paragraph (b)(2) of § 5.210 by removing the phrase '', as provided in parts 813 and 913 of this title''.

6. Amend § 5.214 as follows:

a. In the definition of ''assistance applicant'', revise paragraph (2) to read as set forth below;

b. In the definition of ''participant'', revise paragraph (2) to read as set forth below;

c. Revise the definition of the term ''Processing entity'' to read as set forth below:

§ 5.214 Definitions.

* * * * *

Assistance applicant. * * *

(2) For the public housing program: A family or individual that seeks admission to the program.

* * * * *

Participant. * * *

(2) For the public housing program: A family or individual that is assisted under the program;

* * * * *

Processing entity means the person or entity that, under any of the programs covered under this subpart B, is responsible for making eligibility and related determinations and an income reexamination. (In the Section 8 and public housing programs, the ''processing entity'' is the ''responsible entity'' as defined in § 5.100.)

* * * * *

7. In § 5.236, revise paragraphs (b)(1) and (b)(3)(i)(B) and (C) to read as follows:

§ 5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency.

* * * * *

(b) * * *

(1) *Procedures for independent verification.* (1) Any determination or redetermination of family income verified in accordance with this paragraph must be carried out in accordance with the requirements and procedures applicable to the individual covered program. Independent verification of information obtained from a SWICA or a Federal agency may be:

(i) By HUD;

(ii) In the case of the public housing program, by a PHA; or

(iii) In the case of any Section 8 program, by a PHA acting as contract administrator under an ACC.

* * * * *

(3) * * *

(i) * * *

(B) The responsible entity (as defined in § 5.100) in the case of the public housing program or any Section 8 program.

(C) The owner or mortgagee, as applicable, with respect to the rent supplement, Section 221(d)(3) BMIR, Section 235 homeownership assistance, or Section 236 programs.

* * * * *

8. Add new § 5.240 to read as follows:

§ 5.240 Family disclosure of income information to the responsible entity and verification.

(a) This section applies to families that reside in dwelling units with assistance under the public housing program, the Section 8 tenant-based assistance programs, or for which project-based assistance is provided under the Section 8, Section 202, or Section 811 program.

(b) The family must promptly furnish to the responsible entity any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income.

(c) The responsible entity must verify the accuracy of the income information received from the family, and change the amount of the total tenant payment, tenant rent or Section 8 housing assistance payment, or terminate assistance, as appropriate, based on such information.

Subpart C—Pet Ownership for the Elderly or Persons with Disabilities

9. In § 5.300 revise paragraph (a)(3) to read as follows:

§ 5.300 Purpose.

(a) * * *

(3) The public housing program.

* * * * *

§ 5.306 [Amended]

10. Amend § 5.306 by removing the definition of ''public housing programs''.

11. Revise the heading of Subpart D to read as follows:

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

§ 5.400 [Amended]

12. Amend § 5.400 by removing the parenthetical phrase.

§ 5.403 [Amended]

13. Amend § 5.403 as follows:

a. Remove paragraph (a), the introductory text of paragraph (b), and the paragraph designation of paragraph (b);

b. Revise the definitions of ''disabled family'' and ''elderly family'' to read as set forth below; and

c. Add, in alphabetical order, the definition of ''person with disabilities'' to read as set forth below:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head, spouse, or sole member is a

person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head, spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

* * * * *

Person with disabilities:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. 6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

(3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

(4) Means ''individual with handicaps'', as defined in § 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

§§ 5.405, 5.410, 5.415, 5.420, 5.425, and 5.430 [Removed]

14. Remove §§ 5.405, 5.410, 5.415, 5.420, 5.425, and 5.430.

15. In part 5, revise the heading of subpart F to read as follows:

Subpart F—Section 8 and Public Housing: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

16. Revise § 5.601 to read as follows:

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on these subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences;

(3) Owner reexamination of family income and composition.

17. Amend § 5.603 as follows:

a. Remove paragraphs (b) and (c) and redesignate paragraph (d) as paragraph (b);

b. Revise paragraph (a) to read as set forth below;

c. Amend the definition of ''owner'' in newly designated paragraph (b) by removing the phrase ''24 CFR part 885.'' and adding in its place ''part 891 of this title.''; and

d. Amend newly designated paragraph (b) by revising the definitions of ''full-time student'', ''tenant rent'', and ''utility reimbursement''; and by adding, in alphabetical order, definitions of ''economic self-sufficiency program'', ''extremely low income family'', ''imputed welfare income'', ''low income family'', ''very low income family'', and ''work activities'' to read as set forth below:

§ 5.603 Definitions.

* * * * *

(a) *Terms found elsewhere in part 5—*(1) *Subpart A.* The terms *1937 Act, elderly person, public housing, public housing agency* (PHA), and *Section 8* are defined in § 5.100.

(2) *Subpart D.* The terms ''disabled family'', ''elderly family'', ''family'', ''live-in aide'', and ''person with disabilities'' are defined in § 5.403.

(b) * * *

Economic self-sufficiency program. Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low income family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Full-time student. A person who is attending school or vocational training on a full-time basis.

Imputed welfare income. See § 5.615.

Low income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

* * * * *

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

* * * * *

Utility reimbursement. The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family. A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Work activities. See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

§§ 5.605 and 5.607 [Removed]

18. Remove §§ 5.605 and 5.607.

19. Before § 5.609, add an undesignated center heading to read as follows:

Family Income

20. Amend § 5.609 as follows:

a. Remove and reserve paragraph (c)(13);

b. Revise paragraph (c)(8)(iv) to read as set forth below;

c. Revise paragraph (d) to read as set forth below; and

d. Remove paragraph (e).

§ 5.609 Annual income.

* * * * *

(c) * * *

(8) * * *

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

* * * * *

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (*e.g.,* seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

21. Revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed, but this allowance may not exceed the earned income received by family members who are 18 years of age or older who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Permissive deductions—for public housing only.* For public housing only, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

22. Revise §§ 5.613 and 5.615 to read as follows:

§ 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

§ 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) *Definitions.* The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits (''welfare benefits'') from a State or other public agency (''welfare agency'') under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at § 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) ''Specified welfare benefit reduction'' does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with § 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) *Review of PHA decision.* (1) *Public housing.* If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD

requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to § 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) *Section 8 participant.* A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with § 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.* (1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

§ 5.617 [Removed]

23. Remove § 5.617.

24. After § 5.615, add an undesignated center heading and new §§ 5.628, 5.630, 5.632, and 5.634 to read as follows:

Family Payment

§ 5.628 Total tenant payment.

(a) *Determining total tenant payment (TTP).* Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of the family's monthly adjusted income;

(2) 10 percent of the family's monthly income;

(3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or

(4) The minimum rent, as determined in accordance with § 5.630.

(b) *Determining TTP if family's welfare assistance is ratably reduced.* If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

§ 5.630 Minimum rent.

(a) *Minimum rent.* (1) The PHA must charge a family no less than a minimum monthly rent established by the responsible entity, except as described in paragraph (b) of this section.

(2) For the public housing program and the section 8 moderate rehabilitation, and certificate or voucher programs, the PHA may establish a minimum rent of up to $50.

(3) For other section 8 programs, the minimum rent is $25.

(b) *Financial hardship exemption from minimum rent.* (1) *When is family exempt from minimum rent?* The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

(i) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;

(ii) When the family would be evicted because it is unable to pay the minimum rent;

(iii) When the income of the family has decreased because of changed circumstances, including loss of employment;

(iv) When a death has occurred in the family; and

(v) Other circumstances determined by the responsible entity or HUD.

(2) *What happens if family requests a hardship exemption?* (i) *Public housing.* (A) If a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the PHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(B) The PHA must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) The PHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

(D) If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the suspension of the minimum rent. The PHA must offer the family a reasonable repayment agreement, on terms and conditions established by the PHA, for the amount of back minimum rent owed by the family.

(ii) *All section 8 programs.* (A) If a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity

determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

(B) The responsible entity must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) If the responsible entity determines that a qualifying financial hardship is temporary, the PHA must not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption. At the end of the 90-day suspension period, the responsible entity must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by the responsible entity, for the amount of back rent owed by the family.

(iii) *All programs.* (A) If the responsible entity determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.

(B) If the responsible entity determines a qualifying financial hardship is long term, the responsible entity must exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(C) The financial hardship exemption only applies to payment of the minimum rent (as determined pursuant to § 5.628(a)(4) and § 5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to § 5.628(a)(1), (a)(2) and (a)(3)).

(3) *Public housing: Grievance hearing concerning PHA denial of request for hardship exemption.* If a public housing family requests a hearing under the PHA grievance procedure, to review the PHA's determination denying or limiting the family's claim to a financial hardship exemption, the family is not required to pay any escrow deposit in order to obtain a grievance hearing on such issues.

§ 5.632 Utility reimbursements.

(a) *Applicability.* This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program (for distribution of a voucher housing assistance payment that exceeds rent to owner, see § 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see § 960.253 of this title). (Utility reimbursement is not paid for a public housing family that is paying a flat rent.)

(b) *Payment of utility reimbursement.* (1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment.

(2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.

(3) In the other Section 8 programs, the owner must pay the utility reimbursement either:

(i) To the family, or

(ii) With consent of the family, to the utility supplier to pay the utility bill on behalf of the family.

§ 5.634 Tenant rent.

(a) *Section 8 programs.* For Section 8 programs other than the Section 8 voucher program, tenant rent is total tenant payment minus any utility allowance.

(b) *Public housing.* See § 960.253 of this title for the determination of tenant rent.

25. Add an undesignated center heading, followed by §§ 5.653, 5.655, 5.657, 5.659, and 5.661 to read as follows:

Section 8 Project-Based Assistance: Occupancy Requirements

§ 5.653 Section 8 project-based assistance programs: Admission—Income-eligibility and income-targeting.

(a) *Applicability.* This section describes requirements concerning income-eligibility and income-targeting that apply to the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Who is eligible?*

(1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to the Section 8 project-based assistance programs. (This paragraph (b) does not apply to the Section 8 project-based voucher program under part 983 of this title.)

(c) *Targeting to extremely low income families.* For each project assisted under a contract for project-based assistance, of the dwelling units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families that are extremely low income families at the time of admission.

(d) *Limitation on admission of non-very low income families.*

(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the Section 8 project-based dwelling units that were available for occupancy under Section 8 Housing Assistance Payments Contracts effective before October 1, 1981 and that are leased on or after that date shall be available for leasing by low income families other than very low income families. HUD reserves the right to limit the admission of low income families other than very low income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the Section 8 project-based dwelling units that initially become available for occupancy under Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low income families other than families that are very low income families at the time of admission to the Section 8 program. Except with the prior approval of HUD under paragraphs (d)(3) and (d)(4) of this section, the owner may only lease such units to very low income families.

(3) *Request for exception.* A request by an owner for approval of admission of low income families other than very low income families to section 8 project-based units must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(i) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low income families;

(ii) Commitment of an owner to attaining occupancy by families with a broad range of incomes;

(iii) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes supported by evidence that the Agency is pursuing this goal throughout its assisted projects

in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103); and

(iv) Low-income families that otherwise would be displaced from a Section 8 project.

(4) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income-eligibility and for income-targeting under this section.

(f) *Reporting.* The Section 8 owner must comply with HUD-prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements.

§ 5.655 Section 8 project-based assistance programs: Owner preferences in selection for a project or unit.

(a) *Applicability.* This section applies to the section 8 project-based assistance programs. The section describes requirements concerning the Section 8 owner's selection of residents to occupy a project or unit, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Selection.* (1) *Selection for owner's project or unit.* Selection for occupancy of a project or unit is the function of the Section 8 owner. However, selection is subject to the income-eligibility and income-targeting requirements in § 5.653.

(2) *Tenant selection plan.* The owner must adopt a written tenant selection plan in accordance with HUD requirements.

(3) *Amount of income.* The owner may not select a family for occupancy of a project or unit in an order different from the order on the owner's waiting list for the purpose of selecting a relatively higher income family. However, an owner may select a family for occupancy of a project or unit based on its income in order to satisfy the targeting requirements of § 5.653(c).

(4) *Selection for particular unit.* In selecting a family to occupy a particular unit, the owner may match family characteristics with the type of unit available, for example, number of bedrooms. If a unit has special accessibility features for persons with disabilities, the owner must first offer the unit to families which include persons with disabilities who require such features (see §§ 8.27 and 100.202 of this title).

(5) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(c) *Particular owner preferences.* The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although the owner is not prohibited from adopting a residency preference, the owner may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a).

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area (''residency preference area'').

(iii) An owner's residency preference must be approved by HUD in one of the following methods:

(A) Prior approval of the housing market area in the Affirmative Fair Housing Marketing plan (in accordance with § 108.25 of this title) as a residency preference area;

(B) Prior approval of the residency preference area in the PHA plan of the jurisdiction in which the project is located;

(C) Modification of the Affirmative Fair Housing Marketing Plan, in accordance with § 108.25 of this title,

(iv) Use of a residency preference may not have the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(v) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(vi) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* (i) The owner may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities.

(ii) If the owner adopts a preference for admission of working families, the owner must not give a preference based on the amount of earned income.

(3) *Preference for person with disabilities.* The owner may adopt a preference for admission of families that include a person with disabilities. However, the owner may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence.* The owner should consider whether to adopt a preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.* The owner may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Regular reexamination.* The owner must conduct a reexamination and redetermination of family income and composition at least annually.

(c) *Interim reexaminations.* A family may request an interim reexamination of family income because of any changes since the last examination. The owner must make the interim reexamination within a reasonable time after the family request. The owner may adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

§ 5.659 Family information and verification.

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation program and the project-based certificate or voucher programs.

(b) *Family obligation to supply information.* (1) The family must supply any information that HUD or the owner determines is necessary in administration of the Section 8 program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). ''Information'' includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the owner or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(c) *Family release and consent.* (1) As a condition of admission to or continued occupancy of a unit with Section 8 assistance, the owner must require the family head, and such other family members as the owner designates, to execute a HUD-approved release and consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the owner or HUD such information as the owner or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the Section 8 program.

(d) *Owner responsibility for verification.* The owner must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(1) Reported family annual income;

(2) The value of assets;

(3) Expenses related to deductions from annual income; and

(4) Other factors that affect the determination of adjusted income.

§ 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.

(a) *Applicability.* This section describes when a Section 8 owner may lease a Section 8 unit to police or other security personnel with continued Section 8 assistance for the unit. This section applies to the Section 8 project-based assistance programs.

(b) *Terms.* (1) *Security personnel* means:

(i) A police officer, or

(ii) A qualified security professional, with adequate training and experience to provide security services for project residents.

(2) *Police officer* means a person employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments.

(3) *Security* includes the protection of project residents, including resident project management from criminal or other activity that is a threat to person or property, or that arouses fears of such threat.

(c) *Owner application.* (1) The owner may submit a written application to the contract administrator (PHA or HUD) for approval to lease an available unit in a Section 8 project to security personnel who would not otherwise be eligible for Section 8 assistance, for the purpose of increasing security for Section 8 families residing in the project. (2) The owner's application must include the following information:

(i) A description of criminal activities in the project and the surrounding community, and the effect of criminal activity on the security of project residents.

(ii) Qualifications of security personnel who will reside in the project, and the period of residence by such personnel. How owner proposes to check backgrounds and qualifications of any security personnel who will reside in the project.

(iii) Full disclosure of any family relationship between the owner and any security personnel. For this purpose, ''owner'' includes a principal or other interested party.

(iv) How residence by security personnel in a project unit will increase security for Section 8 assisted families residing in the project.

(v) The amount payable monthly as rent to the unit owner by security personnel residing in the project (including a description of how this amount is determined), and the amount of any other compensation by the owner to such resident security personnel.

(vi) The terms of occupancy by such security personnel. The lease by owner to the approved security personnel may provide that occupancy of the unit is authorized only while the security personnel is satisfactorily performing any agreed responsibilities and functions for project security.

(vii) Other information as requested by the contract administrator.

(d) *Action by contract administrator.* (1) The contract administrator shall have discretion to approve or disapprove owner's application, and to impose conditions for approval of occupancy by security personnel in a section 8 project unit.

(2) Notice of approval by the contract administrator shall specify the term of such approved occupancy. Such approval may be withdrawn at the discretion of the contract administrator, for example, if the contract administrator determines that such occupancy is not providing adequate security benefits as proposed in the owner's application; or that security benefits from such occupancy are not a sufficient return for program costs.

(e) *Housing assistance payment and rent.* (1) During approved occupancy by security personnel as provided in this section, the amount of the monthly housing assistance payment to the owner shall be equal to the contract rent (as determined in accordance with the HAP contract and HUD requirements) minus the amount (as approved by the contract administrator) of rent payable monthly as rent to the unit owner by such security personnel. The owner shall bear the risk of collecting such rent from such security personnel, and the amount of the housing assistance payment shall not be increased because of non-payment by such security personnel. The owner shall not be entitled to receive any vacancy payment for the period following occupancy by such security personnel.

(2) In approving the amount of monthly rent payable by security personnel for occupancy of a contract unit, the contract administrator may consider whether security services to be performed are an adequate return for housing assistance payments on the unit, or whether the cost of security services should be borne by the owner from other project income.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

26. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

27. Amend § 880.104 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraph (c) to read as set forth below;

c. Amend paragraph (d) by removing the phrase ''(concerning preferences for selection of applicants)''.

§ 880.104 Applicability of part 880.

* * * * *

(c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.

* * * * *

28. Amend § 880.201 as follows:

a. Remove the introductory text;

b. Remove the definitions of the terms ''Gross rent'', ''Household type'', ''Housing type'', and ''Housing Assistance Plan'';

c. Add definitions, in alphabetical order, of the terms ''Fair Market Rent (FMR)'', ''HUD'', ''NOFA'', and ''Public Housing Agency (PHA)'';

d. Revise the definitions of ''ACC (Annual Contributions Contract)'', ''Annual income'', ''Contract rent'', ''Elderly family'', ''Family'', ''Housing Assistance Payment'', ''Low income family'', ''Tenant rent'', ''Total tenant payment'', ''Utility allowance'', ''Utility reimbursement'' and ''Very low-income family'' to read as set forth below.

§ 880.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

* * * * *

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

* * * * *

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a ''vacancy payment''. may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

* * * * *

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

* * * * *

Public Housing Agency (PHA). As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

* * * * *

Very low income family. As defined in part 5 of this title.

29. In § 880.501, revise paragraph (e) to read as follows:

§ 880.501 The contract.

* * * * *

(e) *Payment of utility reimbursement.* Where applicable, the owner will pay a utility reimbursement in accordance with § 5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

30. In § 880.601, revise paragraph (b) to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

* * * * *

§ 880.603 [Amended]

31. Amend § 880.603 as follows:

a. In the introductory text of paragraph (b), remove the phrase ''in accordance with 24 CFR part 813'' and ''and 24 CFR part 813'';

b. In paragraph (c)(1), remove the phrase ''24 CFR part 813'' and add in its place ''part 5 of this title''; and

c. In paragraph (c)(3), remove the phrase ''Gross Rent'' and add in its place ''contract rent plus any utility allowance''.

§ 880.612a [Amended]

32. In § 880.612a, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

33. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

34. Amend § 881.104 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraph (c) to read as set forth below;

c. Amend paragraph (d) by removing the phrase ''(concerning preferences for selection of applicants)''.

§ 881.104 Applicability of part 881.

* * * * *

(c) Section 881.607 (Termination of tenancy and modification of leases) applies to all families.

* * * * *

35. Amend § 881.201 as follows:

a. Remove the introductory text;

b. Remove the definitions of the terms ''Gross rent'', ''Household type'', ''Housing Assistance Plan'', and ''Housing type'';

c. Add definitions, in alphabetical order, of the terms ''Fair Market Rent (FMR)'', ''HUD'', ''NOFA'', and ''Public Housing Agency (PHA)'';

d. Revise the definitions of ''ACC (Annual Contributions Contract)'', ''Annual income'', ''Contract rent'', ''Elderly family'', ''Family'', ''Housing Assistance Payment'', ''Low income family'', ''Tenant rent'', ''Total tenant payment'', ''Utility allowance'', ''Utility reimbursement'' and ''Very low-income family'' to read as set forth below.

§ 881.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

Annual income. As defined in part 5 of this title.

* * * * *

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

* * * * *

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

* * * * *

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a ''vacancy payment''. may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

* * * * *

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

* * * * *

Public Housing Agency (PHA). As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

* * * * *

Very low income family. As defined in part 5 of this title.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

36. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

37. Amend § 884.102 as follows:

a. Remove the definition of ''Gross rent''; and

b. Revise the definitions of ''Annual income'', ''Family'', ''Tenant rent'', ''Total tenant payment'', ''Utility allowance'', ''Utility reimbursement'', and ''Very low-income family'' to read as follows:

§ 884.102 Definitions.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Family. As defined in part 5 of this title.

* * * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

§ 884.105 [Amended]

38. Amend § 884.105(a) by removing the phrase ''Gross Rents'' and adding in its place ''Contract Rents plus any utility allowances''.

§ 884.116 [Amended]

39. Amend § 884.116(b) by removing the phrase ''24 CFR part 813'' and adding in its place ''part 5 of this title''.

§ 884.118 [Amended]

40. Amend § 884.118 as follows:

a. In paragraph (a)(3), remove the phrase ''24 CFR parts 5 and 813'' and add in its place ''part 5 of this title'';

b. In paragraph (a)(7), remove the phrase ''24 CFR part 813'' and add in its place ''part 5 of this title''; and

c. In paragraph (a)(8), remove the phrase ''813 of this chapter'' and add in its place ''5 of this title''.

§ 884.214 [Amended]

41. Amend § 884.214 as follows:

a. Paragraph (b)(2) is amended by removing from the second sentence the comma before the word ''except'', adding a period in its place, and removing the remainder of the sentence starting with the word ''except'' and ending with the period.

b. Paragraph (b)(8) is amended by removing the phrase ''24 CFR 812.9, and also 24 CFR 812.10'' and add in its place ''part 5 of this title''.

§ 884.218 [Amended]

42. Amend § 884.218 as follows:

a. In paragraph (a), remove the phrase ''813 of this chapter'' and add in its place ''5 of this title''; and

b. In paragraph (c), remove the phrase ''Gross Rent'' and add in its place ''Contract Rent plus any utility allowance''.

§ 884.223a [Amended]

43. Amend § 884.223a by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

44. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

45. Amend § 886.102 as follows:

a. Remove the definition of ''Gross rent''; and

b. Revise the definitions of ''Annual income'', ''Family'', ''Low-income family'', ''Tenant rent'', ''Total tenant payment'', ''Utility allowance'', ''Utility reimbursement'', and ''Very low-income family'' to read as follows:

§ 886.102 Definitions.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Family. As defined in part 5 of this title.

* * * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

§ 886.119 [Amended]

46. Amend § 886.119 as follows:

a. In paragraph (a)(3), remove the phrases ''24 CFR parts 812 and 813'' and ''24 CFR part 5'' and add in their place ''part 5 of this title''; and remove the phrase ''provision of Federal selection preferences''; and

b. In paragraphs (a)(7) and (a)(8), remove the phrase ''813 of this chapter'' and add in its place ''5 of this title''.

§ 886.121 [Amended]

47. Amend § 886.121 as follows:

a. In paragraph (b), remove the phrase ''24 CFR part 812'' and add in its place ''part 5 of this title''; and

b. In paragraph (c), remove the phrase ''24 CFR 812.9, and also 24 CFR 812.10'' and add in its place ''part 5, subpart E, of this title''.

§ 886.124 [Amended]

48. Amend § 886.124 as follows:

a. In paragraph (a), remove the phrase ''part 813 of this chapter'' and add in its place ''part 5 of this title'';

b. In paragraphs (a) and (b), remove the phrase ''24 CFR part 812'' from the three places that it occurs, and add in its place ''part 5, subpart E, of this title''; and

c. In paragraph (c), remove the phrase ''24 CFR 812.9 and also 24 CFR 812.10'' and add in its place ''part 5, subpart E, of this title''.

§ 886.128 [Amended]

49. Amend § 886.128 as follows:

a. Remove the phrase ''24 CFR parts 247 and 812'' and add in its place ''parts 247 and 5 of this title''; and

b. Remove the phrase ''24 CFR 812.10'' and add in its place ''part 5, subpart E, of this title''.

§ 886.129 [Amended]

50. Amend § 886.129(e) by removing the phrase ''24 CFR 812.9'' from the one place it appears and by removing the phrase ''24 CFR 812.10'' from the two places it appears, and adding in each of those places ''part 5, subpart E, of this title''.

51. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Sections 5.653 through 5.661 of this title govern selection of tenants and occupancy requirements applicable under this subpart A.

§ 886.138 [Amended]

52. Amend § 886.138 by removing from paragraph (g)(1)(iii)(A)(*2*) the phrase ''24 CFR 813.107'' and by adding in its place ''part 5 of this title''.

53. Section 886.302 is amended as follows:

a. Remove the definition of ''Gross rent''; and

b. Revise the definitions of ''Annual income'', ''Family'', ''Low-income family'', ''Tenant rent'', ''Total tenant payment'', ''Utility allowance'', ''Utility reimbursement'', and ''Very low-income family'' to read as follows:

§ 886.302 Definitions.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Family. As defined in part 5 of this title.

* * * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

§ 886.318 [Amended]

54. Amend § 886.318 as follows:

a. Remove the phrase ''parts 812 and 813'' from paragraph (a)(3) and add ''part 5 of this title'' in its place;

b. Remove the phrase ''provision of Federal selection preferences in accordance with § 886.337,'' from paragraph (a)(3);

c. In paragraph (a)(6), remove the phrase ''part 813 of the chapter'' and add in its place ''part 5 of this title''; and

d. In paragraph (a)(7), remove the phrase ''part 813 of this chapter'' and add in its place ''part 5 of this title''.

55. Amend § 886.321 as follows:

a. Revise paragraph (b)(1) to read as set forth below;

b. In paragraph (b)(2), remove the phrase ''or to accept applications only from families that claim a Federal preference under § 886.337'' and remove the sentence starting with the word ''Notwithstanding''; and

c. In paragraph (b)(7), remove the phrase ''24 CFR 812.9, and 24 CFR 812.10'' and add in its place ''part 5 of this title'':

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, §§ 5.653 through 5.661.)

* * * * *

§ 886.324 [Amended]

56. Amend § 886.324 as follows:

a. In paragraph (a), remove the phrase ''part 813 of this chapter'' and add in its place ''part 5 of this title'', and remove the phrase ''of part 812'' and add in its place ''of part 5 of this title'';

b. In paragraphs (a) and (b), remove the phrase ''24 CFR part 812'' and add in its place ''part 5 of this title'';

c. In paragraph (c), remove the phrase ''Gross Rent'' and add in its place ''Contract Rent plus any applicable Utility Allowance'', and remove the phrase ''24 CFR 812.9, and also 24 CFR 812.10'' and add in its place ''part 5, subpart E, of this title''.

§ 886.328 [Amended]

57. Amend § 886.328 by removing the phrase ''24 CFR parts 247 and 812'' and by adding in its place ''parts 247 and 5 of this title'', and by removing the phrase ''24 CFR 812.10'' and by adding in its place ''part 5, subpart E, of this title''.

§ 886.329 [Amended]

58. Amend § 886.329(e) by removing the phrase ''24 CFR 812.9'' and by adding in its place ''part 5, subpart E, of this title'', and by removing the phrase ''24 CFR 812.10'' from the two places where it occurs and by adding in those places ''part 5, subpart E, of this title''.

§ 886.329a [Amended]

59. In § 886.329a, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

§ 886.334 [Amended]

60. Amend § 886.334 by removing from paragraph (b)(4) the phrase ''Gross Rents'' and adding in its place ''Contract Rents plus any applicable Utility Allowances''.

§ 886.338 [Amended]

61. Amend § 886.338 by removing from paragraph (g)(1)(iii)(A)(*2*) the phrase ''24 CFR 813.107'' and adding in its place ''part 5 of this title''.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

62. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

§ 891.410 [Amended]

63. Amend § 891.410 by removing paragraph (h).

§ 891.550 [Removed]

64. Remove § 891.550.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

65. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

66. Amend part 960 by adding a new subpart A to read as follows:

Subpart A—Applicability, definitions, equal opportunity requirements.

Sec.

Subpart A—Applicability, Definitions, Equal Opportunity Requirements

§ 960.101 Applicability.

This part is applicable to public housing.

§ 960.102 Definitions.

(a) *Definitions found elsewhere:* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *1937 Act, HUD, MSA, public housing, public housing agency* (PHA), *Section 8.*

(2) *Definitions under the 1937 Act.* The following terms are defined in part 5, subpart D of this title: *annual contributions contract* (ACC), *applicant, elderly family, elderly person, extremely low income family, family, low income family, person with disabilities.*

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in part 5, subpart F of this title: *Annual income* (see § 5.609); *economic self-sufficiency program, tenant rent, total tenant payment* (see § 5.628), *utility allowance.*

(b) *Additional definitions.* In addition to the definitions in paragraph (a), the following definitions and cross-references apply:

Ceiling rent. See § 960.253(d).

Designated housing. See part 945 of this chapter.

Disabled families. See § 5.403 of this title.

Eligible families. Low income families who are eligible for admission to the public housing program.

Flat rent. See § 960.253(b).

Income-based rent. See § 960.253(c).

Mixed population development. A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects.

Over-income family. A family that is not a low income family. See subpart E of this part.

PHA plan. See part 903 of this chapter.

Residency preference. A preference for admission of persons who reside in a specified geographic area.

Tenant-based. See § 982.1(b) of this chapter.

§ 960.103 Equal opportunity requirements.

(a) *Applicable requirements.* The PHA must administer its public housing program in accordance with all applicable equal opportunity requirements imposed by contract or federal law, including the authorities cited in § 5.105(a) of this title.

(b) *PHA duty to affirmatively further fair housing.* The PHA must affirmatively further fair housing in the administration of its public housing program.

(c) *Equal opportunity certification.* The PHA must submit signed equal opportunity certifications to HUD in accordance with § 903.7(o) of this title, including certification that the PHA will affirmatively further fair housing.

67. Revise the heading of subpart B of part 960 to read as follows:

Subpart B—Admission

68. Revise §§ 960.201 and 960.202 to read as follows:

§ 960.201 Purpose.

(a) This subpart states HUD eligibility and selection requirements for admission to public housing.

(b) See also related HUD regulations in this title concerning these subjects:

(1) 1937 Act definitions: part 5, subpart D;

(2) Restrictions on assistance to noncitizens: part 5, subpart E;

(3) Family income and family payment: part 5, subpart F;

(4) Public housing agency plans: part 903;

(5) Rent and reexamination: part 960, subpart C;

(6) Mixed population developments: part 960, subpart D;

(7) Occupancy by over-income families or police officers: part 960, subpart E.

§ 960.202 Eligibility and targeting for admission.

(a) *Who is eligible?* (1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to a PHA's public housing program.

(b) *Targeting admissions to extremely low income families.*—(1) *Targeting requirement.* (i) Not less than 40 percent of the families admitted to a PHA's public housing program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. This is called the ''basic targeting requirement''.

(ii) To the extent provided in paragraph (b)(2) of this section, admission of extremely low income families to the PHA's Section 8 voucher program during the same PHA fiscal year is credited against the basic targeting requirement.

(iii) A PHA must comply with both the targeting requirement found in this part and the deconcentration requirements found in part 903 of this chapter.

(2) *Credit for admissions to PHA voucher program.* (i) If admissions of extremely low income families to the PHA's voucher program during a PHA fiscal year exceeds the 75 percent minimum targeting requirement for the PHA's voucher program (see § 982.201(b)(2) of this chapter), such excess shall be credited (subject to the limitations in paragraph (b)(2)(ii) of this section) against the PHA's basic targeting requirement for the same fiscal year.

(ii) The fiscal year credit for voucher program admissions that exceed the minimum voucher program targeting requirement shall not exceed the lower of:

(A) Ten percent of public housing waiting list admissions during the PHA fiscal year;

(B) Ten percent of waiting list admission to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or

(C) The number of qualifying low income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low income family means a low income family other than an extremely low income family.

(c) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income eligibility under paragraph (a) and for PHA income targeting under paragraph (b) of this section.

(d) *Reporting.* The PHA must comply with HUD-prescribed reporting requirements that will permit HUD to maintain the data, as determined by HUD, necessary to monitor compliance with income eligibility and targeting requirement.

69. Amend § 960.204 as follows:

a. Revise paragraph (a)(2)(i) to read as set forth below;

b. Remove existing paragraph (a)(2)(iii) and redesignate paragraph (a)(2)(iv) as new paragraph (a)(2)(iii);

c. Amend paragraph (a)(3)(ii) by inserting a semicolon after the words ''waiting list'', by removing the phrase ''that includes the following:'', and by removing paragraphs (a)(3)(ii)(A) through (D).

§ 960.204 Tenant selection policies.

(a) * * *

(2) * * *

(i) To provide for deconcentration and income-mixing in accordance with the PHA plan (see § 903.7 of this title).

* * * * *

70. Amend § 960.205 as follows:

a. Revise paragraph (b) introductory text to read as set forth below; and

b. Revise paragraph (c) to read as set forth below

§ 960.205 Selection criteria.

* * * * *

(b) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

* * * * *

(c) The requirements with respect to deconcentrating poverty and producing a mix of incomes in the PHA's public housing developments are found in the PHA Plan rule, at part 903 of this title.

* * * * *

71. Revise § 960.206 to read as follows:

§ 960.206 Waiting list: Local preferences in admission to public housing program.

(a) *Establishment of PHA local preferences.* (1) The PHA may adopt a system of local preference for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(2) The PHA may limit the number of applicants that qualify for any local preference.

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) *Particular local preferences.*—(1) *Residency requirements or preferences.*

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area (''residency preference area''). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this chapter. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* The PHA may adopt a preference for admission of working families (families where the head, spouse, or sole member, is employed). However, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for persons with a specific disability.

(4) *Preference for victims of domestic violence.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or a person with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) *Selection for particular unit.* In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms. In selection of families to occupy units with special accessibility features for persons with disabilities, the PHA must first offer such units to families which include persons with disabilities who require such accessibility features (see §§ 8.27 and 100.202 of this title).

(d) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(e) *Selection method.* (1) The PHA must use the following to select among applicants on the waiting list with the same priority for admission:

(i) Date and time of application; or

(ii) A drawing or other random choice technique.

(2) The method for selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the PHA plan.

§ 960.208 [Removed]

72. Remove § 960.208.

§ 960.207 [Redesignated]

73. Redesignate § 960.207 as § 960.208.

§§ 960.209 and 960.210 [Removed]

74. Remove §§ 960.209 and 960.210.

75. In part 960, add new subpart C, to read as follows:

Subpart C—Rent and Reexamination

Subpart C—Rent and Reexamination

§ 960.253 Choice of rent.

(a) *Rent options.* (1) *Annual choice by family.* Once a year, the PHA must give

each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with § 5.630 of this title.

(b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see § 5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§ 5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.

(a) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(b) *Disallowance of increase in annual income.* (1) *Initial twelve month exclusion.* During the cumulative twelve

month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in § 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The PHA must advise the family that the savings account option is available;

(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

§ 960.257 Family income and composition: Regular and interim reexaminations.

(a) *When PHA is required to conduct reexamination.* (1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years.

(3) For all families who include nonexempt individuals, as defined in § 960.601, the PHA must determine compliance once each twelve months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) *Interim reexaminations.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination within a reasonable time after the family request. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(c) *PHA reexamination policies.* The PHA must adopt admission and occupancy policies concerning conduct of annual and interim reexaminations in accordance with this section, and shall conduct reexaminations in accordance with such policies. The PHA reexamination policies must be in accordance with the PHA plan.

§ 960.259 Family information and verification.

(a) *Family obligation to supply information.* (1) The family must supply any information that the PHA or HUD determines is necessary in administration of the public housing program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). ''Information'' includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(b) *Family release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the program.

(c) *PHA responsibility for reexamination and verification.* (1) The PHA must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income or income-based rent.

§ 960.261 Restriction on eviction of families based on income.

No PHA shall commence eviction proceedings based on the income of the tenant family unless:

(a) It has determined that there is decent, safe, and sanitary housing of suitable size for the family available at a rent not exceeding the tenant rent; or

(b) It is required to do so by local law.

Subpart D—Preference for Elderly Families and Disabled Families in Mixed Population Projects

§ 960.405 [Removed]

76. Remove § 960.405.

77. Revise § 960.407 to read as follows:

§ 960.407 Selection preference for mixed population developments.

(a) The PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population developments. The PHA may not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population development.

(b) In selecting elderly families and disabled families to occupy units in mixed population developments, the PHA must first offer units that have special accessibility features for persons with disabilities to families who include persons with disabilities who require the accessibility features of such units (see §§ 8.27 and 100.202 of this title).

78. Revise subpart E to read as follows:

Subpart E—Occupancy by over-income families or police officers

Sec.

Subpart E—Occupancy by over-income families or police officers

§ 960.503 Occupancy by over-income families.

A PHA that owns or operates fewer than two hundred fifty (250) public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents), if all the following conditions are satisfied:

(a) There are no eligible low income families on the PHA waiting list or applying for public housing assistance when the unit is leased to an over-income family;

(b) The PHA has publicized availability of the unit for rental to eligible low income families, including publishing public notice of such availability in a newspaper of general circulation in the jurisdiction at least thirty days before offering the unit to an over-income family;

(c) The over-income family rents the unit on a month-to-month basis for a rent that is not less than the PHA's cost to operate the unit;

(d) The lease to the over-income family provides that the family agrees to vacate the unit when needed for rental to an eligible family; and

(e) The PHA gives the over-income family at least thirty days notice to vacate the unit when the unit is needed for rental to an eligible family.

§ 960.505 Occupancy by police officers to provide security for public housing residents.

(a) *Police officer.* For purpose of this subpart E, ''police officer'' means a person determined by the PHA to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

(b) *Occupancy in public housing.* For the purpose of increasing security for residents of a public housing development, the PHA may allow police officers who would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit. The PHA must include in the PHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents.

79. Add a new subpart F, to read as follows:

Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities

Sec.

Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities

§ 960.600 Implementation.

PHAs and residents must comply with the requirements of this subpart beginning with PHA fiscal years that commence on or after October 1, 2000. Unless otherwise provided by § 903.11 of this chapter, Annual Plans submitted for those fiscal years are required to contain information regarding the PHA's compliance with the community service requirement, as described in § 903.7 of this chapter.

§ 960.601 Definitions.

(a) *Definitions found elsewhere.*

(1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *public housing, public housing agency* (PHA).

(2) *Definitions concerning income and rent.* The following terms are defined in part 5, subpart F of this title: *economic self-sufficiency program, work activities.*

(b) *Other definitions.* In addition to the definitions in paragraph (a) of this section, the following definitions apply:

Community service. The performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Exempt individual. An adult who:

(1) Is 62 years or older;

(2)(i) Is a blind or disabled individual, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who certifies that because of this disability she or he is unable to comply with the service provisions of this subpart, or

(ii) Is a primary caretaker of such individual;

(3) Is engaged in work activities;

(4) Meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program; or

(5) Is a member of a family receiving assistance, benefits or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which

the PHA is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.

Service requirement. The obligation of each adult resident, other than an exempt individual, to perform community service or participate in an economic-self sufficiency program required in accordance with § 960.603.

§ 960.603 General requirements.

(a) *Service requirement.* Except for any family member who is an exempt individual, each adult resident of public housing must:

(1) Contribute 8 hours per month of community service (not including political activities); or

(2) Participate in an economic self-sufficiency program for 8 hours per month; or

(3) Perform 8 hours per month of combined activities as described in paragraphs (a)(1) and (a)(2) of this section.

(b) *Family violation of service requirement.* The lease shall specify that it shall be renewed automatically for all purposes, unless the family fails to comply with the service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term (see § 966.4(l)(2)(i) of this chapter).

§ 960.605 How PHA administers service requirements.

(a) *PHA policy.* Each PHA must develop a local policy for administration of the community service and economic self-sufficiency requirements for public housing residents.

(b) *Administration of qualifying community service or self-sufficiency activities for residents.* The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make such activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions.

(c) *PHA responsibilities.* (1) The PHA policy must describe how the PHA determines which family members are subject to or exempt from the service requirement, and the process for determining any changes to exempt or non-exempt status of family members.

(2) The PHA must give the family a written description of the service requirement, and of the process for claiming status as an exempt person and for PHA verification of such status. The PHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt persons.

(3) The PHA must review family compliance with service requirements, and must verify such compliance annually at least thirty days before the end of the twelve month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA shall obtain verification of family compliance from such third parties.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in participant files.

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

§ 960.607 Assuring resident compliance.

(a) *Third-party certification.* If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide signed certification to the PHA by such other organization that the family member has performed such qualifying activities.

(b) *PHA notice of noncompliance.* (1) If the PHA determines that there is a family member who is required to fulfill a service requirement, but who has violated this family obligation (noncompliant resident), the PHA must notify the tenant of this determination.

(2) The PHA notice to the tenant must:

(i) Briefly describe the noncompliance;

(ii) State that the PHA will not renew the lease at the end of the twelve month lease term unless:

(A) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance, and in fact cure such noncompliance in accordance with such agreement; or

(B) The family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit.

(iii) State that the tenant may request a grievance hearing on the PHA determination, in accordance with part 966, subpart B of this chapter, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of such determination.

(c) *Tenant agreement to comply with service requirement.* If the tenant or another family member has violated the service requirement, the PHA may not renew the lease upon expiration of the term unless:

(1) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance by completing the additional hours of community service or economic self-sufficiency activity needed to make up the total number of hours required over the twelve-month term of the new lease, and

(2) All other members of the family who are subject to the service requirement are currently complying with the service requirement or are no longer residing in the unit.

§ 960.609 Prohibition against replacement of PHA employees.

In implementing the service requirement under this subpart, the PHA may not substitute community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement.

PART 966—LEASE AND GRIEVANCE PROCEDURES

80. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d note, and 3535(d).

81. Amend § 966.4 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise paragraph (b)(1) to read as set forth below;

c. Add new headings for paragraphs (b)(2) to (b)(5) as set forth below;

d. Revise paragraph (l)(1) and paragraph (l)(2)(i) to read as set forth below;

e. Add paragraphs (l)(2)(iii) and (l)(2)(iv) to read as set forth below;

f. Remove paragraph (o) and paragraph (p).

§ 966.4 Lease requirements.

* * * * *

(a) *Parties, dwelling unit and term.* (1) The lease shall state:

(i) The names of the PHA and the tenant;

(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);

(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);

(iv) A statement of what utilities, services and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;

(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in-aide). The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

(2) *Lease term and renewal.* (i) The lease shall have a twelve month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.

(ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.

(iii) At any time, the PHA may terminate the tenancy in accordance with § 966.4(l).

(3) *Execution and modification.* The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease. The lease may modified at any time by written agreement of the tenant and the PHA.

(b) *Payments due under the lease.* (1) *Tenant rent.* (i) The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

(ii) The lease shall specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA shall give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective.

(2) *PHA charges.* * * *

(3) *Late payment penalties.* * * *

(4) *When charges are due.* * * *

(5) *Security deposits.* * * *

* * * * *

(l) *Termination of tenancy and eviction.*

(1) *Procedures.* The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.

(2) *Grounds for termination of tenancy.* (i) The PHA may terminate the tenancy only for serious or repeated violation of material terms of the lease, such as failure to make payments due under the lease or to fulfill tenant obligations, as described in paragraph (f) of this section, or for other good cause (including failure to accept the PHA's offer of a lease revision in accordance with paragraph (l)(2)(iv) of this section).

* * * * *

(iii) Failure of a family member to comply with service requirement provisions of part 960, subpart F of this chapter, is grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve month lease term.

(iv) The PHA may terminate the tenancy if the family fails to accept the PHA's offer of a revision to an existing lease. Such revision must be on a form adopted by the PHA in accordance with § 966.3. The PHA must give the family written notice of the offer of a revision at least 60 calendar days before it is scheduled to take effect. The offer must specify a reasonable time limit within that period for acceptance by the family.

* * * * *

82. Revise § 966.55(e) to read as follows:

§ 966.55 Procedures to obtain a hearing.

* * * * *

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in § 966.4(b)) that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where required by § 5.630 of this title (financial hardship exemption from minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

* * * * *

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

83. The authority citation for part 984 continues to read as follows:

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

84. Throughout part 984, remove the terms ''an HA'' and ''HA'' and add in their place the terms ''a PHA'' and ''PHA''.

85. Amend § 984.101 as follows:

a. In paragraph (a)(1), remove the phrase ''and Indian''; and

b. Revise paragraphs (b)(3) and (c) to read as set forth below:

§ 984.101 Purpose, scope, and applicability.

* * * * *

(b) * * *

(3) Unless the PHA receives an exemption under § 984.105:

(i) Each PHA for which HUD reserved funding (budget authority) for additional rental certificates or rental vouchers in FY 1993 through October 20, 1998 must operate a Section 8 FSS program.

(ii) Each PHA for which HUD reserved funding (budget authority) to acquire or construct additional public housing units in FY 1993 through October 20, 1998 must operate a public housing FSS program.

(c) *Applicability.* This part applies to:

(1) The public housing program, and

(2) The Section 8 certificate and voucher programs.

§ 984.102 [Amended]

86. Amend § 984.102 by removing the phrase ''or Indian housing assistance''.

87. Amend § 984.103 as follows:

a. Revise paragraph (a) as set forth below;

b. In paragraph (b), remove the parenthetical phrase from the definition of ''Earned income'';

b. Remove the definition of ''HA'' from paragraph (b); and

c. Revise the definitions of ''Low-income family'' and ''welfare assistance'' in paragraph (b) to read as follows:

§ 984.103 Definitions.

(a) The terms *1937 Act, Fair Market Rent, HUD, Public Housing, Public Housing Agency* (PHA), *Secretary,* and *Section 8,* as used in this part, are defined in part 5 of this title.

(b) * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Welfare assistance means (for purposes of the FSS program only)

income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family's ongoing basic needs. Welfare assistance does not include:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts under TANF;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Social Security Act, to an individual who is not otherwise receiving assistance;

(8) Amounts solely directed to meeting housing expenses;

(9) Amounts for health care;

(10) Food stamps and emergency rental and utilities assistance; and

(11) SSI, SSDI, or Social Security.

88. Amend § 984.105 as follows:

a. Revise paragraphs (a) and (b) to read as set forth below;

b. Redesignate paragraph (e) as paragraph (f); and

c. Add a new paragraph (e), to read as set forth below.

§ 984.105 Minimum program size.

(a) *FSS program size.* (1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exception or reduction of minimum program size.* Paragraph (c) of this section states when HUD may grant an exception to the minimum program size requirement, and paragraph (d) states when the minimum program size may be reduced.

(3) *Option to operate larger FSS program.* A PHA may choose to operate an FSS program of a larger size than the minimum.

(b) *How to determine FSS minimum program size.* (1) *Public housing.* The minimum size of a PHA's public housing FSS program is equal to the number of public housing units specified below:

(i) The total number of public housing units reserved in FY 1993 through October 20, 1998; plus

(ii) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions; minus

(iii) The number of families that have graduated from the PHA's public housing FSS program on or after October 21, 1998, by fulfilling their FSS contract of participation obligations.

(2) *Section 8.* The minimum size of a PHA's Section 8 FSS program is equal to the number of Section 8 certificate and voucher program units as calculated below:

(i) *Units included.* (A) The number of rental certificates and rental voucher units reserved under the combined FY 1991/1992 FSS incentive award competition; plus

(B) The number of additional rental certificates and rental voucher units reserved in FY 1993 through October 20, 1998 (not including the renewal of funding for units previously reserved), minus such units that are excluded from minimum program size in accordance with paragraph (b)(2)(ii) of this section; minus

(C) The number of families who have graduated from the PHA's Section 8 FSS program on or after October 21, 1998, by fulfilling their contract of participation obligations.

(ii) *Units excluded.* When determining a PHA's minimum Section 8 FSS program size, funding reserved in FY 1993 through October 20, 1998 for the following program categories is excluded (except as provided in paragraph (b)(2)(ii)(B) of this section):

(A) Funding for families affected by termination, expiration or owner opt-out under Section 8 project-based programs;

(B) Funding for families affected by demolition or disposition of a public housing project or replacement of a public housing project;

(C) Funding for families affected by conversion of assistance from the Section 23 leased housing or housing assistance payments programs to the Section 8 program;

(D) Funding for families affected by the sale of a HUD-owned project; and

(E) Funding for families affected by the prepayment of a mortgage or voluntary termination of mortgage insurance.

(3) *Maintaining minimum program size.* The minimum program size for a PHA's public housing or Section 8 FSS program is reduced by one slot for each family that graduates from the FSS program by fulfilling its FSS contract of participation on or after October 21, 1998. If an FSS slot is vacated by a family that has not completed its FSS contract of participation obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

* * * * *

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires three years from the date of HUD approval of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and a new certification to HUD for consideration.

* * * * *

89. Revise paragraphs (a) and (c) of § 984.201 to read as follows:

§ 984.201 Action Plan.

(a) *Requirement for Action Plan.* A PHA must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA implements an FSS program, whether the FSS program is a mandatory or voluntary program.

* * * * *

(c) *Plan submission.*—(1) *Initial submission.*

(i) *Mandatory program.* Unless the dates stated in paragraph (c) of this section are extended by HUD for good cause, a PHA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days after the PHA receives notice from HUD of:

(A) Approval of the PHA's application for incentive award units; or

(B) Approval of other funding that establishes the obligation to operate an FSS program, if the PHA did not receive FSS incentive award units.

(ii) *Voluntary program.* The PHA must submit its Action Plan and obtain HUD approval of the plan before the PHA implements a voluntary FSS program, including a program that exceeds the minimum size for a mandatory program.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD

requires other changes. The PHA must submit any changes to the Action Plan to HUD for approval.

* * * * *

90. Amend § 984.301(a) as follows:

a. Redesignate paragraphs (a)(1), (a)(2), and (a)(3), as paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii);

b. Add a new paragraph (a)(1) to read as set forth below; and

c. Add a new heading for paragraph (a)(2), to read as follows:

§ 984.301 Program implementation.

(a) *Program implementation deadline.* (1) *Voluntary program.* There is no deadline for implementation of a voluntary program. A voluntary program, however, may not be implemented before the requirements of § 984.201 have been satisfied.

(2) *Mandatory program.*

* * * * *

§ 984.302 Administrative fees.

91. Amend § 984.302(a) by removing the phrase ''the minimum program size of''.

92. Revise § 984.306(b) to read as follows:

§ 984.306 Section 8 residency and portability requirements.

* * * * *

(b) *Initial occupancy.*—(1) *First 12 months.* A family participating in the Section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the PHA that selected the family for the FSS program. However, the PHA may approve a family's request to move outside the initial PHA jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period.

(2) *After the first 12 months.* After the first 12 months of the FSS contract of participation, the FSS family may move outside the initial PHA jurisdiction under portability procedures (in accordance with § 982.353 of this chapter).

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

93. The authority citation for part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

94. Revise the second sentence of paragraph (o)(2) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings. * * *

* * * * *

(o) * * *

(2) * * * This number is divided by the number of mandatory FSS slots, as determined under § 984.105 of this chapter.

* * * * *

Dated: March 14, 2000.

Andrew Cuomo,

Secretary.

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14 CFR Parts 91, 121, 135

Terrain Awareness and Warning System; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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[Docket No. 29312; Amendment No. 91–263; 121–273; 135–75]

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Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending the operating rules to require that certain airplanes be equipped with an FAA-approved terrain awareness and warning system (also referred to as an enhanced ground proximity warning system). This final rule is a general aviation regulation that affects all U.S. registered turbine-powered airplanes with six or more passenger seats (exclusive of pilot and copilot seating). This change is in response to several accident investigations and studies that have shown a need to expand the safety benefits of ground proximity warning systems to certain additional operations. These investigations and studies have also shown that there is a need to increase the warning times and situational awareness of flight crews to decrease the risk of controlled flight into terrain accidents.

EFFECTIVE DATE: March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Manuel Macedo, Aircraft Engineering Division, AIR–100, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–9566.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

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 (GPO) electronic bulletin board service (telephone: (202) 512–1661).

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

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov*

Background

Beginning in the early 1970's, a number of studies looked at the occurrence of ''controlled flight into terrain'' (CFIT) accidents, where a properly functioning airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew.

Findings from these studies indicated that many such accidents could have been avoided if a warning device called a ground proximity warning system (GPWS) had been used. As a result of these studies and recommendations from the National Transportation Safety Board (NTSB), in 1974 the FAA required all part 121 certificate holders (*i.e.*, those operating large turbine-powered airplanes) and some part 135 certificate holders (*i.e.*, those operating large turbojet airplanes) to install Technical Standard Order (TSO) approved GPWS equipment (§§ 121.360 and 135.153). (39 FR 44439, December 18, 1974).

In 1978 the FAA extended the GPWS requirement to part 135 certificate holders operating smaller airplanes: turbojet-powered airplanes with 10 or more passenger seats. These operators were required to install TSO-approved GPWS equipment or alternative ground proximity advisory systems that provide routine altitude callouts whether or not there is any imminent danger (§ 135.153). (43 FR 28176, June 29, 1978). This requirement was considered necessary because of the complexity, size, speed, and flight performance characteristics of these airplanes. The GPWS equipment was considered essential in helping the pilots of these airplanes to regain altitude quickly and avoid what could have been a CFIT accident.

Installation of GPWS's or alternative FAA-approved advisory systems was not required on turbo-propeller powered (turboprop) airplanes operated under part 135 because, at that time, the general consensus was that the performance characteristics of turboprop airplanes made them less susceptible to CFIT accidents. For example, it was thought that turboprop airplanes had a greater ability to respond quickly in situations where altitude control was inadvertently neglected, as compared to turbojet airplanes. However later studies, including investigations by the NTSB, analyzed CFIT accidents involving turboprop airplanes and found that many of these accidents could have been avoided if GPWS equipment had been used.

Some of these studies also compared the effectiveness of the alternative ground proximity advisory system to the GPWS. GPWS was found to be superior in that it would warn only when necessary, provide maximum warning time with minimal unwanted alarms, and use command-type warnings.

Based on these reports and NTSB recommendations, in 1992 the FAA amended § 135.153 to require GPWS equipment on all turbine-powered airplanes with 10 or more passenger seats. (57 FR 9944, March 20, 1992).

After the current rules were issued, advances in terrain mapping technology permitted the development of a new type of ground proximity warning system that provides greater situational awareness for flight crews. The FAA has approved certain installations of this type of equipment, known as the enhanced ground proximity warning system (EGPWS). However, in this final rule, the FAA is using the broader term ''terrain awareness and warning system'' (TAWS) because the FAA expects that a variety of systems may be developed in the near future that would meet the improved standards contained in this final rule.

The TAWS improves on existing GPWS systems by providing the flight crew much earlier aural and visual warning of impending terrain, forward looking capability, and continued operation in the landing configuration. These improvements provide more time

for the flight crew to make smoother and gradual corrective action.

In 1998, the FAA issued Notice No. 98–11, Terrain Awareness and Warning System (63 FR 45628, August 26, 1998), proposing that all turbine-powered U.S.-registered airplanes type certificated to have six or more passenger seats (exclusive of pilot and copilot seating), be equipped with an FAA-approved terrain awareness and warning system. This final rule is based on Notice No. 98–11.

NTSB Recommendations

Following the investigation of a CFIT accident south of Dulles International Airport on June 18, 1994, involving a Learjet 25D in which there were 12 fatalities, the NTSB recommended (Recommendation A–95–35) that the FAA mandate that all turbojet-powered airplanes equipped with six or more passenger seats have an operating ground proximity warning system installed. That recommendation also made reference to an earlier, similar NTSB recommendation (Recommendation A–92–55) resulting from a 1991 CFIT accident involving a Beechjet 400. Both planes were corporate jets flying under part 91 and were not required to have GPWS equipment installed.

More recently, the NTSB issued Recommendation A–96–101, based on its investigation of a CFIT accident northeast of Cali, Columbia, on December 20, 1995, involving an American Airlines Boeing 757 airplane operating under part 121, which resulted in 159 fatalities. Although the airplane involved in the accident was equipped with the mandatory GPWS, the GPWS did not provide the warning in time for the crew to avoid the mountainous terrain. The NTSB recommended that the FAA examine the effectiveness of the enhanced ground proximity warning system, and if found effective, require all transport-category airplane to be equipped with this system.

Volpe National Transportation Systems Center Studies

In recent years, the FAA commissioned two studies by the Department of Transportation's (DOT) Volpe National Transportation Systems Center (VNTSC) to examine the effectiveness of GPWS and EGPWS in preventing CFIT accidents in various airplane categories and operations. The two studies, hereafter called the Volpe part 91 study and the Volpe part 121/135 study, analyzed CFIT accidents during the period 1985–1995 and found that EGPWS could have prevented 95–100 percent of these accidents. (For more detail on these studies, see: DOT-TSC-FA6D1–96–01, and DOT-TSC-FA6D1–96–03, both entitled, ''Investigation of Controlled Flight Into Terrain'', which are included in the public docket.)

In the Volpe part 91 study VNTSC concluded that ''equipping aircraft with GPWS, or EGPWS when it becomes available, could be a particularly effective means of preventing CFIT accidents in the subject FAR Part 91 aircraft fleet.'' Likewise, in the Volpe part 121/135 study, VNTSC concluded that there was compelling evidence of the potential effectiveness of EGPWS in preventing CFIT accidents because the equipment would have provided the same or increased warning durations over GPWS. In addition, flight crews, given a continuous terrain display, could have responded to terrain threats well before an EGPWS alert.

Discussion of Comments

The FAA received over 200 comments in response to the Terrain Awareness and Warning System NPRM (63 FR 45628, August 26, 1998). After careful analysis of these comments, the FAA has made the following changes between the NPRM and the final rule:

1. The final rule is not applicable to parachute operations, aerial application operations, and firefighting operations.

2. The final rule is applicable to airplanes ''configured'' with 6 or more passenger seats, not to airplanes ''type certificated'' for 6 or more passenger seats.

3. The final rule addresses two classes of TAWS equipment, Class A and Class B. A new TSO, TSO–C151, includes the airworthiness requirements for both Class A and Class B equipment. Class A equipment will be required for airplanes operated under part 121 and part 135 of 10 or more passenger seats; this class of equipment will be the same as originally proposed. Class A equipment includes current GPWS required functions. Installers of Class A equipment required by this rule must install a terrain situational awareness display. Class B equipment will be required for airplanes operated under part 91 with 6 or more passenger seats and for airplanes operated under part 135 with 6–9 passenger seats. Class B equipment includes the basic TAWS safety features. These changes, in response to the comments, for airplanes operated under part 91 with 6 or more passenger seats and airplanes operated under part 135 with 6–9 passenger seats, will reduce the initial cost of purchasing and installing TAWS, while continuing to provide the desired level of safety.

A summary of the comments and an explanation of the changes made in the final rule in response to those comments appear below.

Approximately one-half of the comments were from individuals associated with parachute operations (skydivers and parachutists; skydiving and parachute operators; and associations). In addition, a total of 254 form letters from parachute participants and operators were submitted opposing the installation of TAWS or EGPWS in turbine-powered airplanes used in parachute activities. These commenters state that the proposed rule would be financially burdensome and would add no foreseeable safety benefit to parachute operations.

The remaining comments were from various part 91 and part 135 operators (*e.g.*, cargo, charter, and corporate operations) and their representative organizations; some part 121 operators and/or their representatives; and a comment from an EGPWS manufacturer, Allied Signal.

The following discussion summarizes these comments by the following issue areas: Applicability; Comments to NTSB recommendations; NPRM accident analysis; Comments on Cost of TAWS; GPWS/TAWS technology; TSO comments; supplemental type certificates; training; other government/industry efforts; compliance schedule; and miscellaneous comments.

Applicability

The FAA proposed adding §§ 91.223, 121.354, and 135.154 to require the installation of FAA-approved terrain awareness and warning systems (TAWS) on certain airplanes. For operations under part 121, the rule would apply to all turbine-powered airplanes. For all other operations (parts 91, 125, 129, and 135) the FAA proposed that the rule apply to all turbine-powered airplanes type certificated to have six or more passenger seats, excluding any pilot seat.

Applicability to the Parachute Industry

Parachute operators and parachutists say that they should be exempt from the proposed rule. They state that the nature of parachute operations makes GPWS and TAWS unnecessary. The U.S. Parachute Association (USPA) and the Parachute Industry Association strongly object to the mandatory installation of TAWS for airplanes used in parachute operations. The following arguments are presented by the parachute industry:

• Parachuting is primarily a visual flight rules (VFR) activity, conducted during the day, during which terrain is always visible and weather conditions

are good. Occasionally, parachute operators fly in instrument flight rules (IFR) conditions, *e.g.,* to ferry an airplane, but these operations are performed with no passengers.

• Parachuting is primarily done in the proximity of the departure airport (usually within a 10-mile radius) and the pilots are familiar with the obstacles and terrain features around their home fields.

• Parachutists are the passengers in these airplanes (not the traveling public, which the proposed rule is seeking to protect). These airplanes are used only as a means for the parachutists to get to altitude for jumping.

• Parachute operations have not been associated with CFIT accidents. Some commenters state that the NPRM cites no such accidents in parachute operations. Therefore, the commenters do not believe GPWS or TAWS would have made a difference in the outcomes of any accidents involving parachute operations.

USPA and other commenters from the parachute industry go on to say that since TAWS would provide no safety benefit to parachute operations, they should not have to bear the cost of installing TAWS on these airplanes. Some commenters add that these costs would be especially burdensome to small operators who already have a very small profit margin, which could result in their going out of business. Several commenters believe that the cost of installing TAWS on turbine-powered airplanes used in parachute operations could result in some operators switching back to using older and smaller non-turbine airplanes, which would have a negative effect on the growth and safety of the parachute industry.

The FAA agrees with the commenters. Parachute and skydiving operations are unique in that operations are conducted under VFR conditions, in close proximity to the home field, with constant reference to the ground. Furthermore, there are only a small number of airplanes involved in these types of operations. The FAA has changed § 91.223 in the final rule to exclude airplanes when used for parachute operations and operated within 50 miles of the home airport.

Applicability to Other Part 91 Operations

The National Business Aviation Association (NBAA) recommends that the FAA exempt turbine-powered airplanes operated under part 91 from the rule because part 91 allows operators the flexibility ''to equip their aircraft as necessary to accomplish the missions set forth by the company.'' The NBAA cites the safety record of corporate operations under part 91. The Aircraft Owners and Pilots Association (AOPA) recommends applying the proposed rule only to large turbojet airplanes used in commercial passenger-carrying operations. Several other part 91 operators also state that they should be exempt from the proposed rule.

The FAA disagrees with these commenters for the following reasons: (1) Two of the three NTSB recommendations discussed earlier were based on CFIT accidents involving airplanes operating under part 91. (2) The number of CFIT accidents occurring in part 91 operations is excessively high. (3) The Volpe part 91 study provides evidence that TAWS would have prevented 95 percent of the CFIT accidents studied.

Raytheon Aircraft Company (Raytheon) recommends applying the proposed rule to airplanes operated under part 135 and part 121 and exempting part 91 operations. Raytheon requests that the FAA make available the data it compiled from the Volpe part 91 study of the forty-four accidents which was stated in the NPRM, before issuing any final rule for part 91 operations.

Raytheon proposes excluding turbo-propeller airplanes operated under part 91 from the requirement of installing TAWS. As a second alternative, Raytheon proposes applying this requirement to turbine airplanes categorized at a minimum gross weight of 19,000 pounds (maximum certificated weight for a commuter category airplane), or a minimum gross weight of 12,500 pounds (FAA's defined certificated weight of a large airplane). Some commenters state that CFIT accidents have not been a problem for part 91 operations and that GPWS/TAWS is therefore unnecessary.

The FAA disagrees with Raytheon and other commenters who oppose TAWS on turboprop airplanes and has determined that turboprop airplanes should continue to be covered. A study done for the FAA as part of the 1992 rulemaking amending part 135, requiring GPWS equipment, revealed that turboprop airplanes have just as many, if not more CFIT accidents than turbojet airplanes. In fact, the Volpe part 91 study shows that 33 of 44 CFIT accidents involved turboprop airplanes.

A part 91 turboprop airplane operator states that he operates his airplanes in familiar terrain and that GPWS is unnecessary for his operations. The operator is involved in aerial applications and states that his operations are within 50 feet of the ground which would result in continuous nuisance alerting from TAWS; therefore this equipment is unnecessary. This commenter adds that the rule should make exceptions for operations such as his which operate airplanes with a payload capacity in excess of 6,000 pounds.

The FAA agrees with the commenter that operations involving aerial applications should be excluded. Therefore the final rule has been changed in § 91.223 so that it does not apply to airplanes used in aerial applications or agricultural operations.

Raytheon and others recommend rewording ''type certificated with * * * .'' to read ''configured with * * *.'' These commenters say that rewording the text will permit the type of TAWS equipment installed to be determined by the number of seats installed in the airplane, rather than the maximum number of seats permitted by the certification basis. Similarly, the Regional Airline Association (RAA) and a part 135 cargo operator, request that proposed §§ 91.223 and 135.154 be revised to replace ''certificated to have'' with ''having.''

Federal Express believes that airplanes type-certificated as cargo airplanes that do not carry passengers should not be required to install TAWS as proposed by the NPRM. Federal Express also believes that the Fokker airplanes, which were converted from a passenger to a cargo-only configuration, should not have been covered by the NPRM. Federal Express requests the FAA to amend the NPRM to expressly exclude cargo-only airplanes.

The FAA agrees with the commenters' recommendations that the equipment requirements be determined by the number of seats. The FAA has changed the final rule in §§ 91.223 and 135.154 so that the words ''type-certificated to have six or more passenger seats'' are changed to ''configured with six or more passenger seats.''

In response to Federal Express and others who state that passenger-carrying planes converted to cargo planes should not have to comply with the rule, the FAA partially agrees in that if the airplane (cargo carrying or not) is configured with fewer than 6 passenger seats and is operating under part 91, then TAWS is not required. However, for operations conducted under part 121 (cargo carrying or not), TAWS is required regardless of the number of passenger seats. Under existing rules, the FAA requires GPWS for part 121 regardless of the number of seats and is continuing to maintain the same safety standard.

In addition many airplanes operating under part 121 have older model GPWS equipment. Some of the NTSB recommendations discussed earlier include sub-recommendations that the FAA mandate replacement of the older equipment with more modern equipment. This final rule also responds to such recommendations.

The FAA disagrees with the commenter that cargo airplanes should be exempt from the rule. Specifically in § 121.360, the use of GPWS is required on turbine-powered airplanes operated under part 121. In this rule the FAA is maintaining the existing GPWS requirements (which also meets the ICAO requirements) by requiring TAWS that includes GPWS functions.

Applicability to Part 135 Operations

The National Air Transportation Association (NATA) and several part 135 operators ask why the FAA has put part 135 operators into the same category as part 91 operators. These commenters object to the FAA's use of part 91 accident statistics to justify requiring TAWS for them. The NATA states that the premise for this rulemaking is unfounded due to the FAA's failure to specifically review the part 135 on-demand community. The NATA contends that the lack of consideration of these specific types of airplanes and operations fails to provide complete data that is necessary to justify the application of a rule of this magnitude to this industry segment.

The NATA recommends that the FAA conduct a study of accidents involving airplanes operated on-demand under part 135. These commenters suggest that a new cost/benefit analysis, and a new Initial Regulatory Flexibility Determination and Analysis based on the study suggested would provide an accurate representation of the true cost to part 135 operators. The NATA's position is supported by a number of part 135 on-demand charter operators.

A charter operation states that turbine-powered airplanes with fewer than 10 seats should not be required to install GPWS/TAWS because most CFIT accidents have involved large commercial jets.

The Helicopter Association International (HAI) supports the position of the Alaska Air Carriers Association (AACA) and others who want part 135 operators exempt from the TAWS requirement. The HAI says that ''industry and government resources are finite, and that TAWS does not promise to advance the cause of aviation safety enough to justify the costs involved at this time.''

In the preliminary regulatory analysis the FAA did not specifically evaluate part 135 accidents. However, the FAA determined that the airplanes that are frequently found in part 135 on-demand operations are the same type that are typically operated in part 91. Therefore, the FAA extended the part 91 analysis to part 135 operations.

The operating rules of part 91 apply to all airplanes, including those operated under parts 121 and 135. The Volpe part 91 study supports the use of this equipment on the types of airplanes used by both parts 91 and 135.

In addition, the Volpe studies confirmed that compared to the GPWS, the TAWS equipment provides earlier audio and visual alerts. In fact, in the Volpe part 91 study the GPWS system used for comparison purposes was the most advanced GPWS system. In reality many of the GPWS systems in service are the older versions that have been plagued with nuisance and false alarms.

The HAI opposes any attempt to extend the TAWS requirement to rotorcraft and says that the decision whether to use TAWS should be left up to each rotorcraft operator ''who is best able to weigh the substantial costs involved against the safety benefit that may be obtained.''

In response to HAI's comment on requiring TAWS for rotorcraft, the FAA did not receive any comments that would justify extending this rule to rotorcraft at this time.

A commenter that operates a Pilatus/Fairchild PC–6 with a maximum of 11 seats, is against requiring TAWS for ''charter in the bush'' type operations. The commenter says that ''the PC–6 was designed to land on most of the terrain a Ground Proximity Warning System would request a pilot to avoid.''

The FAA disagrees. This type of operation is ideal for use of TAWS equipment because bush flying frequently involves operating over rugged terrain where TAWS is most valuable. However, for the landing phase of these types of operations, it is possible to customize the terrain data base during the installation approval process.

One commenter says that there are many part 135 small airplane freight operators who use airplanes that are not required to have radar equipment installed; and these airplanes often have entirely mechanical instrument panels. The commenter concludes that, these airplanes would not be equipped to provide a display.

The FAA has determined that airplanes configured for fewer than 6 seats and operated under part 91 or part 135 should continue to operate without a terrain awareness and warning system. These airplanes are not affected by this rulemaking action. In addition, the FAA has modified the requirement for airplanes configured with 10 or more seats under part 135. These airplanes must be operated with a terrain situational display to meet the requirements of this rule.

Applicability to Turbo-Propeller Airplanes

Piedmont Airlines, in conjunction with US Airways, proposes exempting turbo-propeller airplanes from the proposed rule because many of these airplanes have only recently been equipped with GPWS. This commenter questions the benefit of replacing later generation GPWS with TAWS when the effectiveness of the newly installed GPWS has yet to be tested.

Piedmont Airlines also points out that most CFIT accidents with GPWS equipped airplanes occurred in foreign territory and that due to their limited flying range, U.S. part 121 turboprop airplanes do not operate abroad. Piedmont Airlines asks the FAA to issue a supplemental notice of proposed rulemaking (SNPRM) to address turboprop airplanes separately.

The FAA agrees that the accident history data does not conclusively prove that the currently mandated GPWS is not effective in resolving the problem of CFIT accidents. However, the FAA has determined through the Volpe part 121 study that TAWS would have prevented CFIT accidents that current generation GPWS did not prevent. Due to the continued CFIT risk exposure with GPWS, the FAA is requiring TAWS.

The FAA acknowledges that the majority of CFIT accidents have occurred in foreign territory. However, a significant number of CFIT accidents still occur in the U.S. with turboprop airplanes equipped with GPWS. In regards to the commenter's assertion that U.S.-registered part 121 airplanes have a limited flying range, the FAA notes that many operators are located near and fly into foreign territory where CFIT accidents have occurred; *e.g.*, Canada, Mexico, and the Caribbean. The commenters have not provided any information to substantiate the need to further delay this action and there is no reason to believe new information would be obtained through publication of a supplemental notice.

Applicability to Reciprocating-Powered Airplanes

The FAA proposed that the rule apply only to turbine-powered airplanes. Additionally, the FAA specifically requested comments on whether it

should require the installation of TAWS on reciprocating engine-powered airplanes.

The General Aviation Manufacturers Association (GAMA) is against requiring TAWS on reciprocating-powered airplanes because the costs would be high (*e.g.*, ''TAWS equipment would cost more than the hull value of the aircraft''), and the panel space for installing TAWS with a situational display is not available in these airplanes.

The FAA did not receive any comments that would justify undertaking a new rulemaking project to mandate TAWS for reciprocating-powered airplanes.

However, regarding the issue of panel space, the FAA knows of at least one manufacturer who has developed a complete TAWS unit that was designed to replace an existing panel instrument.

Applicability to Foreign-Registered Airplanes

The Aerospace Industries Association (AIA) says that the language under proposed § 91.223 makes reference only to U.S.-registered airplanes and provides an unstated exemption for airplanes of foreign registry. The AIA says that the proposed rule does not address those cases where ''the production process requires that manufacturers operate production airplanes that have been issued a Standard Certificate of Airworthiness.'' The AIA adds that, ''while at this time the equipment is not of U.S. nor foreign registry the manufacturer would appear to be in violation of FAR Part 91 requirements during the production process if terrain awareness and warning systems have not been installed.'' The AIA says that the rule language should be changed to address this issue.

The Independent Pilots Association (IPA) recommends that TAWS be a uniform requirement for all airplanes over which the FAA has jurisdiction and not exclude foreign-registered airplanes operating in the United States.

The FAA's response to these comments is that the FAA is addressing requirements for foreign-registered airplanes through the ICAO process, which may result in all nations adopting the TAWS standard. Regarding AIA's comment about airplanes that have been operating under a standard airworthiness certificate prior to foreign registry, the FAA does not agree that there is a problem here. The majority of the manufacturers are including TAWS as standard equipment in new production models. Also, there are rules that the FAA has in place for ferrying airplanes to foreign countries that would allow for airplanes being exported that do not meet U.S. requirements.

Comments to NTSB Recommendations

The NTSB states that the NPRM is responsive to recommendations A–95–35 and A–96–101 by proposing that TAWS be installed on all turbine-powered airplanes with 6 or more passenger seats. If implemented, the NTSB contends that the rule will ''have a positive affect on aviation safety by reducing the opportunities for CFIT accidents.''

The NBAA comments on NTSB recommendations A–92–55 and A–95–35, which recommended that all turbojet powered airplanes with six or more passenger seats have an operating GPWS system installed. The NBAA states that these recommendations are flawed, because the accidents prompting these recommendations were due to many contributing factors (a high-speed unstable approach, minimally experienced crew, fuel shortage, marginal weather conditions, low visibility). The NBAA does not believe TAWS equipment could have prevented these accidents.

The FAA is confident in both the validity of the Volpe part 91 study and its conclusion that the accidents could have been avoided if the airplanes had been equipped with TAWS. As described in the NPRM, a CFIT accident occurs when a properly functioning airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew. By the nature of this definition, it is obvious that there had to be other contributing factors causing the crew to lose situational awareness, otherwise there would not have been a crash. However, the other contributing factors do not include airplane malfunctions or incapacitated crew; they generally include situations such as low visibility, inclement weather conditions, and being lost. The TAWS caution alert would have given the crew sufficient time to analyze the situation, then take corrective action. Finally, the warning alert to ''pull up'' would have allowed the crew to gain altitude and avoid hitting the terrain.

The GAMA says that NTSB recommendations A–92–55 and A–95–35 only recommended GPWS (not TAWS) on turbojet airplanes (not turboprop airplanes). The USPA points out that NTSB has never issued a recommendation to require GPWS or TAWS on part 91 turboprops. The USPA further asserts that the FAA proposal appears to use the NTSB recommendation A–95–35 as the basis for including part 91 turboprops in the NPRM. The commenter further asserts that NTSB recommendation A–96–101 would require EGPWS on transport category airplanes (not on general aviation part 91 airplanes). Similar comments were made by AOPA.

GAMA is correct in saying that the NTSB recommendations A–92–55 and A–95–35 did not refer specifically to TAWS nor to turboprop airplanes. The NTSB has recommended since then that all turbine-powered airplanes with six or more seats be equipped with an EGPWS or an TAWS (A–99–36). The FAA's decision to require TAWS instead of GPWS and to include turboprops are for the reasons already discussed in the preamble. The reasons are briefly restated here. At the time the NTSB prepared and issued its earlier recommendations, TAWS did not exist. In response to the earlier NTSB recommendations, the FAA commissioned Volpe to do a study to evaluate the effectiveness of GPWS on smaller airplanes operated strictly under part 91. After the FAA certificated TAWS, the FAA expanded the Volpe study to also evaluate TAWS and compare the effectiveness of TAWS and GPWS. This study convinced the FAA that TAWS is superior to GPWS in eliminating CFIT. In addition, a cost benefit analysis showed that TAWS did indeed provide a significant benefit to aviation safety. Furthermore, 33 of the 44 CFIT accidents analyzed in the Volpe part 91 study involved turboprop airplanes. This high rate of CFIT accidents involving turboprop airplanes confirm the results of earlier studies conducted by the FAA.

NPRM Accident Analysis

A number of part 91 and some part 135 operators say that GPWS/TAWS would do little to improve safety for their operations, and therefore is not worth the cost. Some of these commenters say that there is little factual data supporting the need for this equipment in their operations.

The RAA and USPA question the legitimacy and validity of the Volpe part 121/135 study and find the Volpe part 91 study inconclusive. These commenters say that, of the 44 accidents analyzed in the Volpe part 91 study, only 9 accidents may have been preventable using only EGPWS. The RAA believes the common causal link is the failure of the flight crews to follow procedures. The RAA believes that the accidents examined in the Volpe part 121/135 study should be more correctly categorized as ''approach and landing,''

many of them affected by weather conditions.

The USPA believes there are major flaws in the Volpe part 91 study. Among the probable causes listed for the accidents studied by NTSB are improper planning/decisionmaking, improper IFR/VFR procedures, failure to execute missed approach procedures, continuation of VFR flight into instrument meteorological conditions (IMC), poor crew coordination, and failure to establish proper climb rate. Similarly, another commenter says that the Dulles, Virginia, and Rome, Georgia, accidents cited in the Volpe part 91 study were not the result of a CFIT, rather they were due to such factors as inexperienced crew, low visibility, and an unstable approach.

The NBAA also analyzed the same accidents studied by Volpe (1985–1994) and found only six accidents involving part 91 turbine-powered airplanes (not 44 accidents, as cited in the NPRM) that could have been related to CFIT. The NBAA found that most of these accidents were due to other factors, including improper or missed approach procedures, intentional descent below minimums, continued operations in below minimum weather, and VFR flight into IMC. The AOPA adds that ''little is known about crew procedures, their mental state, and if the crew's actions would have been timely and accurate enough to avoid the accident once they responded to warnings estimated to be provided by the proposed TAWS equipment in that scenario.''

In addition, NBAA studied turbine-powered airplane CFIT accidents from 1966–1997 and found a total of 34 accidents involving part 91 airplanes. These NBAA findings are also cited by GAMA.

In response to comments made by NBAA, USPA, RAA, AOPA, and others that the accidents cited in the Volpe part 91 study were not the result of a CFIT, but were due to other factors such as poor crew coordination, the FAA disagrees. No accidents are caused by one single element. Under the FAA's definition of CFIT, these were CFIT accidents, have been designated as CFIT by the NTSB, and thus formed the basis for the NTSB's recommendations.

The RAA also comments on the Volpe part 91 study's statement regarding 6 of the 9 CFIT accidents under part 91: ''since airplane's gears and flaps were in landing condition, the Mode 4 warning of GPWS would have been desensitized.'' RAA states that ''the procedure used in regional/commuter operations is to not commit to landing flaps until the field is in sight, so we believe that the Volpe study should have completed their geometric analysis on these six accidents as well, in order to determine whether there would have been a significant difference in pilot response time'' between GPWS and TAWS.

The RAA believes that the FAA needs to determine whether the use of TAWS will lead to more approach and landing accidents that are characterized by the pilot's failure to adequately evaluate inflight weather conditions, failure to maintain sufficient altitude during the approach to land, etc.

In response to RAA's comments about the Volpe part 91 study, the FAA's position is that the Volpe part 91 study was done specifically to determine the effectiveness of TAWS, because that was the system the FAA was considering. The intent of the Volpe part 91 study was for the FAA to determine if TAWS was technically feasible. GPWS is a system using 1970's technology that has reached the limit of its usefulness. The FAA believes more modern technology is needed to gain more accident prevention potential to eliminate CFIT's. In the past the FAA has chosen not to require GPWS on airplanes operated under part 91 because of its technical limitations and costs. TAWS solves those limitations and has potential for future enhancements with lower cost for airplanes already equipped with GPWS.

In addition, the purpose of the Volpe part 91 study was to confirm that the TAWS system was superior to GPWS in eliminating CFIT. In fact, in the part 91 study the GPWS system used for comparison purposes was the most advanced GPWS system. In reality many of the GPWS systems in service are the older versions that have been plagued with nuisance and false alarms.

Similarly, GAMA references another study done outside of this rulemaking and refers to it as a second Volpe part 91 study. That study is dated July 1997, and examined all CFIT general aviation accidents (1983–1994) and concluded that CFIT is a small percentage of general aviation accidents. The GAMA says that the study showed 121 CFIT accidents in 1991, but that by 1994, such CFIT accidents had decreased to 68, which represented only 3.7% of all general aviation accidents.

In response to GAMA's comment that the second Volpe part 91 study concluded that CFIT is a small percentage of general aviation accidents, the same report also shows that the small percentage (3.7%) of accidents represents 17% of all fatalities and that accidents caused by CFIT and spins are the leading causes of general aviation fatalities. Furthermore, the FAA's cost-benefit analysis of TAWS equipment used for general aviation operations showed that TAWS did indeed provide a significant benefit to general aviation safety.

Some commenters state that the accident statistics provided in the NPRM do not justify requiring TAWS on turboprop airplanes. One-commenter points out that the NPRM says that TAWS will only avert 2.3 accidents per million flight hours in a 6–9 seat turboprop airplane. This commenter believes that this small number is justification for exempting this category of airplane from the TAWS rule. This commenter also comments that the Volpe part 91 study (table 10) said that 6 of the 33 turboprop accidents could have been prevented with TAWS. This commenter says that ''5 of the 6 accidents involved aircraft on approach to landing. These accidents resulted from pilot error in being too low on glideslope, or descending below MDA.''

As an example of the effectiveness of the current rule, Allied Signal cites differences in accident statistics between turboprops fitted with GPWS and turboprops without GPWS. After GPWS was required for part 135 turboprop operations, there was an estimated 20-to 30-times reduction in CFIT risk. Allied Signal further states that the results of the Volpe studies on the predicted effectiveness of TAWS correlate well with its own independent analysis.

In response to the comment that says that TAWS is not justified because it would avert only 2.3 accidents per million flight hours, the FAA emphasizes that its mission is to save lives. Studies show that TAWS does indeed save lives, is cost effective, and contributes significantly to general aviation safety.

The NATA and other operators comment that the nine CFIT accidents analyzed in the Volpe part 121/135 study did not include any airplanes with fewer than ten passenger seats conducted by part 135 on-demand air charter operators. The NATA says that these operations differ from scheduled operations, for example, airplanes with fewer than nine seats conduct few international operations where CFIT accidents are likely to occur. Therefore, TAWS should not be required for on-demand part 135 operations ''until such time as a convincing and thorough data-based review is conducted with associated cost/benefit analysis.''

The NATA and others are correct in their assertions that the Volpe part 121/135 study did not include airplanes with fewer than ten passenger seats in

part 135 operations. The study was conducted to determine the feasibility of retrofitting GPWS with TAWS. Currently, GPWS is not required for airplanes operated under part 135 with fewer than ten seats. The Volpe part 91 study shows compelling evidence supporting the use of TAWS, and the FAA has determined that the same types of airplanes are often operated under both parts 91 and 135. Therefore, the FAA is unable to justify setting a different standard based solely on the type of operation. The part 91 rule applies to all airplanes, including those operated under parts 121 and 135. The FAA is amending parts 121 and 135 to make it clear that airplanes operated under these parts will be required to replace current GPWS equipment with TAWS equipment. The Volpe part 91 study was conducted to consider installation of current GPWS or EGPWS on all part 91 turbine-powered airplanes of 6 or more passenger seats. The study concluded that GPWS could have avoided 33 of the 44 (75%) accidents and 96 fatalities, and EGPWS could have avoided 42 of the 44 (95%) accidents and 126 fatalities. These conclusions justify use of TAWS on all airplanes of 6 or more passenger seats.

In response to NATA's comment concerning the use of TAWS on airplanes used in part 135 on-demand operations, the FAA points out that the Volpe part 121/135 study was never intended to look at part 135 scheduled versus part 135 on-demand operations. The study was conducted to determine the effectiveness of TAWS on any airplane type, not the effectiveness in regard to the type of operation.

Comments on Costs of TAWS

Many commenters, including the Air Transport Association (ATA), RAA, USPA, Raytheon, Continental Airlines, and Aloha Airlines say that the NPRM's analysis vastly underestimates the installation, retrofit, and maintenance costs associated with GPWS and TAWS. They say that these costs would be prohibitive for part 91 and part 135 operators. Raytheon and USPA suggest that retrofit cost estimates would exceed the value of the small turbine-powered airplanes and would force unnecessary retirement of the airplanes. Some operators specifically address retrofit costs and state that their airplanes are not configured to be easily equipped with GPWS/TAWS equipment without major expense.

The RAA and USPA believe the FAA's cost estimates for complete TAWS installation are extremely low. Using GAMA avionics figures, these commenters estimate the installation of a TAWS on in-service turboprop airplanes used in parachute operations will range between $66,020 and $96,828, mostly because they lack the necessary prerequisite equipment.

The GAMA's comment included a cost analysis for part 91 newly manufactured and in-service turboprops and turbojets. The GAMA estimates the costs to install TAWS would be much higher than those estimated by the FAA. The following estimates were provided: (1) For newly manufactured turboprops, the range would be $24,600 to $108,163, depending on the additional equipage needed to meet TAWS; for existing turboprops, the range would be $34,600 to $141,163, depending on existing equipage; (2) For newly manufactured turbojets, the range would be $24,600 to $69,985, depending on equipage; for existing turbojets, the range would be $34,600 to $141,163, depending on equipage.

The NBAA and AOPA support GAMA's findings that TAWS costs would have a wide range, depending on the type of airplane operated. The NBAA also says that it was quoted, from an avionics repair station, an average cost of $105,000 for equipment, labor, installation, testing, and certification. The NBAA recommends that the FAA perform a new cost/benefit analysis which would include not only TAWS equipment, but the costs of system modifications necessary to accommodate TAWS, installation, labor, testing, and certification.

The HAI and other operators support the AACA's assertions that the FAA's cost projections for TAWS (purchase, installation, maintenance, and training) are significantly understated. The HAI says that the FAA's underestimation of costs, as well as its overestimation of safety benefits, echoes other recent rulemaking actions that affected the rotorcraft industry, including recent NPRM's on Digital Flight Data Recorders (DFDR) (61 FR 37144, July 16, 1996) and Type Certification Procedures for Changed Products (62 FR 24287, May 2, 1997).

The FAA acknowledges the cost to install TAWS and retrofit airplanes with TAWS is higher than originally estimated. The cost would be more burdensome for part 91 and some part 135 operators. The final rule provides relief to these operators. The FAA has changed TSO–C151 to include two acceptable classes of equipment. Class A equipment will be required for airplanes operated under part 121 and part 135 of 10 or more passenger seats; this class of equipment will be the same as originally proposed. Class B equipment will be required for airplanes operated under part 91 with 6 or more passenger seats and airplanes operated under part 135 with 6–9 passenger seats. Class B equipment includes basic TAWS safety features. The purchase and installation of Class B equipment reduces the costs to operators of airplanes operated under part 91 with 6 or more passenger seats and airplanes operated under part 135 with 6–9 passenger seats. In addition, the process of obtaining supplemental type certificates (STC's) will be greatly expedited. Unlike Class A equipment, Class B does not entail extensive installation procedures because it is not integrated with numerous airplane systems.

This final rule requires the use of Class A equipment on airplanes operated under part 121 and airplanes with ten or more passenger seats operated under part 135. The FAA made this decision for the following reasons. First, Class A equipment includes the functions of GPWS. The existing FAA and ICAO requirements are that these airplanes must install GPWS. The TAWS functions are in an addition to and separate from GPWS. Both TAWS and GPWS requirements are included in TSO–C151. Therefore, this rule does not eliminate the GPWS requirement. The ICAO, while also requiring TAWS, is also maintaining its GPWS requirements. The use of GPWS is a proven concept with over 20 years of preventing many CFIT accidents; however, the FAA is requiring TAWS to further reduce the number of CFIT accidents. Second, these airplanes also are required to carry windshear protection devices. Manufacturers have built the windshear protection into the GPWS equipment and are doing the same with the TAWS Class A equipment. Third, Class A equipment is packaged in a standard avionics box to fit into the avionics bay of these larger airplanes. Fourth, Class A equipment box is designed to meet the more rigorous requirements for electrical and electronic equipment such as 14 CFR sections 25.1301, 25.1309, 25.1321, 25.1351, 25.1353 and 25.1431. Fifth, Class A equipment is designed to be compatible with and to be integrated into other airplane systems typically found on large, commercial airplanes such as autopliot, flight management system, data bus, weather radar, flaps indicator, landing gear indicator, and instrument landing system glideslope.

This final rule requires, as a minimum, Class B equipment for airplanes operated under part 91 and airplanes with six to nine passenger seats operated under part 135. Class B equipment contains only TAWS functions, i.e. the comparison of the

airplane's current position information to an onboard database. It is a very basic piece of equipment, packaged in a small box that can be placed almost anywhere in a small airplane where there is available space. It is designed to provide protection from CFIT accidents for airplanes that currently do not have such protection. These airplanes never had a requirement for GPWS and in the NPRM the FAA proposed requiring GPWS and TAWS but decided in the final rule to require only TAWS. The Class B equipment is designed as a less costly, small device for airplanes that do not have much space and for airplanes that may not be compatible with Class A equipment. The operators of these airplanes may install Class A equipment if they desire. In fact, one manufacturer of TAWS equipment has informed the FAA that operators of large airplanes operating under part 91 voluntarily are installing Class A equipment because of the features and benefits of GPWS. Operators of airplanes required to install Class A equipment do not have the option of installing Class B equipment because the Class B equipment does not contain the required GPWS functions.

GAMA also comments that the FAA underestimated the production of new general aviation turbine-powered airplanes. GAMA says that ''in domestic production alone, American manufacturers of general aviation airplanes have already reported to GAMA deliveries of 282 new jets and 162 new turboprops through the third quarter of 1998.''

One commenter, a part 91 turboprop operator, says that GPWS costs would constitute about 10% of the value of his airplanes. This commenter recommends that, if mandated, the rule should be on a 5 to 10 year time line so that more GPWS systems will be produced and they will become cheaper.

A part 91 operator points out that the costs associated with installing TAWS could result in more accidents because some operators would sell their turboprops and fly piston airplanes. This commenter says that these airplanes ''are not as reliable, but can carry more passengers, are cheaper to operate, and will not be required to have TAWS.''

In response to the comment that some operators of existing turboprop airplanes would switch to piston-engine airplanes because piston-engine airplanes will not be required to have TAWS, it is not the intention of the FAA to put an undue financial burden on owners/operators of small turboprop airplanes nor to cause them to take such drastic action. Therefore, as described above, the FAA is amending proposed §§ 91.233(b) and 135.154(b) '' both having to do with existing planes '' by allowing part 91 operators of airplanes with 6 or more passenger seats and part 135 operators of airplanes with 6–9 passenger seats to meet different TAWS requirements.

The NATA contends that the FAA has failed to provide an accurate picture of the equipment and installation costs for part 135 on-demand air charter operations. The NATA points out that the discounted prices used in the NPRM (for 10 or more units) would not apply to most part 135 on-demand air charter operations since they typically operate a small number of airplanes. The NATA adds that the FAA fails to adequately cover other costs including wiring/installation kits, radar altimeters, other instruments needed to communicate with TAWS, airplane downtime during installation, and installation labor costs. The NATA says that the above factors would result in an average TAWS cost of $100,000 per airplane for part 135 on-demand charter operations.

The United States Air Tour Association (USATA) comments that, in order to comply with the existing rule, its members purchased and installed GPWS equipment in their airplane fleets at a cost of more than $41,000 per airplane. This substantial capital investment by USATA members was made in spite of the fact that most of the airplanes are used in day VFR sightseeing applications. A TAWS requirement would require USATA members to essentially scrap their recent investments. USATA does not believe the TAWS retrofit is justified, given the GPWS safety record.

In response to USATA, by the time operators have to comply with this final rule, the 10-year amortization of the cost of the GPWS system will be completed.

Some commenters state that GPWS will not have a large trade-in value once TAWS becomes a requirement for all airplane markets for which a GPWS might be used.

In response to the comment regarding trade-in values, the FAA stands by its use of trade-in value in the regulatory evaluation. The FAA was again advised by the manufacturer that it would give trade-in value against the purchase of TAWS. Other manufacturers may also offer trade-in credits.

An Alaska-based operator adds that the Unfunded Mandates Act of 1995, which requires that the FAA assess the impact of regulatory changes on state, local, and tribal governments, has not been adequately addressed. The commenter says that the requirements of the Act were not adhered to in the commuter rule when many carriers had voiced concern that they would not be able to bear the economic burden of that rule. The commenter believes that the ''requirements associated with this proposed rule will cause history to repeat itself in Alaska, thereby causing further disadvantage to the traveling public.''

The costs of the final rule does not equal $100 million in any one year due to changes that have taken place since the proposal. Some of those changes are (1) The final rule is not applicable to certain segments such as parachute, aerial and firefighting operations, (2) The allowance of lower cost TAWS equipment with equivalent safety and (3) The decision by a significant proportion of manufactures/operators to voluntarily equip airplanes with TAWS. Consequently, the Unfunded Mandates Reform Act does not apply to this rule.

GPWS/TAWS Technology

The AIA comments on the section in the NPRM under ''VNTSC Conclusion'', which states that ''The study emphasized that the CFIT accident prevention in all cases would have resulted not so much from increased warning durations following system detection of terrain threats, as from the fact that flight crews, given a continuous terrain display, would have perceived these terrain threats and responded to them well before EGPWS was required to generate warnings.'' The AIA comments that Boeing would object to a change in the GPWS intended function, and adds that the NPRM assumes that a flight crew would want to have terrain data continuously displayed.

In response to AIA's comment about a continuous terrain display, the FAA previously pointed out that the Volpe part 121/135 study stated that the continuous terrain display feature of EGPWS may be even more important than the terrain threat detection/alert/warning features in breaking the chain of decisions leading to CFIT. Flight crews lacking an outside visual perspective are given an internal continuous display of nearby terrain, greatly heightening situational awareness. Rather than a last ditch warning of imminent danger, the continuous terrain display would allow crews to maneuver to avoid terrain long before it ever becomes an obstruction to their flight path. TAWS represents a pivotal advance in providing flight crew terrain awareness. Thus, the FAA has determined that the terrain situation awareness display is a valuable function, and is requiring its use for all part 121 operations and for those part 135 operations conducted with

airplanes configured with 10 or more passenger seats. However, the FAA recognizes that in accomplishing normal piloting duties, the flight crew should not continuously stare at the terrain display. In addition, the display may be used for other information such as weather. The FAA therefore is not requiring the continuous use of the display.

The AIA also recommends that the preamble language under ''Functions of TAWS,'' ''Terrain Clearance Floor,'' should be changed to read ''The terrain clearance floor creates an increasing terrain clearance envelope around the closest (not ''intended'') airport runway related to the distance from the runway * * *'' The AIA says that the NPRM language assumes that the closest runway is the intended runway, and that ''EGPWS has no way of knowing what the ''intended'' (*i.e.* destination) airport would be unless significant design changes were made.

In response to AIA's comment about the terrain clearance floor feature, the FAA agrees that, concerning one manufacturer's TAWS, the commenter is correct; the closest runway is not always the intended runway and on a landing approach when flying by a nearby unintended runway, the TAWS may temporarily build a terrain clearance envelope around the unintended runway. However, the FAA does not see this as a problem for four reasons. First, the TAWS will, in sufficient time, switch the terrain clearance floor to the intended runway as soon as it becomes the closest. Second, if the envelope around the unintended runway gives off an alert, this is an indication that the plane is obviously too close to terrain related to the unintended runway. Three, the clearance floor is not displayed so there would be no confusing information presented to the flight crew. Finally, not all TAWS systems have this method of operation.

The NBAA and GAMA say that there could be difficulty in integrating TAWS, (which is a digitally based piece of hardware) into the many airplanes that use analog-based systems. The GAMA and AOPA say that other systems required by TAWS include the air data computer, radar altimeter, global positioning system, as well as four annunciators (alarms) and a display for the information. The NBAA says that ''it is unclear whether all of the modifications necessary to adapt such an advanced piece of hardware into a legacy avionics suite will result in a fully functional TAWS system.'' The NBAA, GAMA, and AOPA say that these integration difficulties would greatly affect the cost estimates for purchase, installation, and approval of TAWS.

Regarding comments by NBAA and GAMA about integrating TAWS into airplanes with analog based systems, the FAA is aware that manufacturers are designing digital and analog TAWS models. Thus, there should be an appropriate model for each airplane's existing configuration.

Some commenters, including a part 91 charter operation, say that current GPWS technology still presents the problem of false warnings, causing pilots to disregard these warnings (*e.g.*, when descending to an airport). One commenter says that GPWS technology should be further developed to insure that these kinds of problems are eliminated, and that the FAA should postpone this rule until the technology is improved.

In response to the commenters who says that false warnings are still a problem and the commenter who requested that the FAA postpone this rule until GPWS technology is improved, the FAA's position is that the proposed rule recognized the false warning problem in existing GPWS. As stated in the NPRM, GPWS equipment has been improved since it was first required in the 1970's. These advances include improvements in terrain detection logic that provides increased terrain warning durations in the order of 10–15 seconds on average, resulting in additional time for the pilot to maneuver that can be crucial in preventing accidents. In addition, the NTSB also recognized and addressed this issue by recommending to the FAA that early generation GPWS equipment be upgraded (NTSB recommendations A–92–39 through A–92–42). The final rule implements these NTSB recommendations to retrofit all GPWS with TAWS.

Another commenter responds to the FAA's statement in the NPRM that it ''expects that manufacturers will provide (an alert) at least 20 seconds in advance of a potential impact.'' This commenter says that TAWS should provide a first alert of not less than 30 seconds prior to potential impact.

Regarding the comment about the TAWS alert time, the FAA addresses alert times in the TSO document. However, for clarity, the FAA restates the following concerning alert times from the NPRM:

''The function of the new proposed TAWS standard is to prevent CFIT by providing alerting times earlier than those provided by existing ground proximity warning systems manufactured in accordance with Technical Standard Order (TSO)–C92c. Typically GPWS aural and visual warnings occur about 20 seconds or less before potential impact with terrain. The visual warning is usually a blinking light and the aural warning is usually a message through the airplane's audio system.

''Studies indicate that average combined pilot and aircraft reaction time to avoid a CFIT after warning is within the 12 to 15 second range. The FAA has approved for installation a TAWS (the EGPWS) that provides an initial alert approximately 60 seconds before potential impact and another alert about 30 seconds before potential impact. These alerts are both aural and visual. These alerting times were based on data from actual CFIT accidents and were chosen by the manufacturer as the best compromise to provide timely alerts while still minimizing nuisance alarms. Human factors research and FAA experience show that, if an aural cockpit alarm sounds too often as a false alarm, the flight crew will either begin to ignore it or will be tempted to disable the system. Therefore, while the forward looking capability of TAWS could provide an alert far in advance of potential impact, the alerting time must be as short as possible, while still allowing an adequate time to avoid impact. The FAA will carefully evaluate the alerting times for each proposed TAWS, but expects that manufacturers will provide at least 20 seconds in advance of a potential impact.''

The NTSB comments that standards for TAWS design should be developed to minimize the potential for misuse of the equipment. The NTSB says that the FAA alluded to this issue in the NPRM when it pointed to the possibility that pilots would be tempted to use TAWS for navigational purposes and that pilot training should be developed to prevent this occurrence. The NTSB states that pilot training should not be used to ''compensate for potential deficiencies in the TAWS design.'' The NTSB adds that the design of TAWS should ''reflect the results of a thorough human factors evaluation to obviate the need for training and other procedural requirements that compensate for design deficiencies or misuse of design principles.''

In response to the NTSB's comment, the NPRM pointed out that the Volpe part 121/135 study recognized that the terrain display may present a new set of challenges to pilots. The TAWS's topographical map display could offer a temptation for pilots to use it for navigational purposes. Therefore, the FAA stated in the NPRM that pilot training should emphasize that other

airplane systems are intended for this purpose, and any TAWS terrain display features are intended only to provide terrain awareness, not for aerial navigation. (The NPRM also cited Notice N8110.64, Enhanced Ground Proximity Warning System, which provides guidance on EGPWS and specifies that Airplane Flight Manuals should state that EGPWS shouldn't be used for navigational purposes.)

The Air Line Pilots Association (ALPA) strongly supports the NPRM's inclusion of the visual display of terrain as part of the overall TAWS system. The ALPA emphatically agrees with the Volpe part 121/135 study finding that the visual display is the most important function of the TAWS system because it provides flight crews with a picture of the surrounding terrain threat that can be responded to well before the system is required to generate warnings.

The ALPA supports the need for the TAWS system to have a backup to the synthetic terrain data, such as radar altimeter inputs for generating warnings in the event of erroneous terrain database information or erroneous navigational inputs.

The ALPA encourages the FAA to preclude delay of the final rule due to potential objections by part 91 operators. The ALPA feels the final rule should be applied to commercial operators as soon as possible in an effort to prevent future controlled-flight-into-terrain accidents.

In response to ALPA's first comment that supports mandating a terrain situational awareness display, the FAA agrees that such a display is a very valuable tool and therefore will continue to mandate such a display for part 121 operators and part 135 operators of airplanes with 10 or more passenger seating. However, the FAA is revising the final rule to make such a display optional for part 91 operators and part 135 operators of 6 to 9 passenger seating for the following reasons:

While the display adds an additional level of safety to large commercial transports (and this is in line with the FAA policy of requiring a higher level of safety for such airplanes), the display itself does not save lives. Once in a potential CFIT situation, what saves lives is the TAWS caution alerts and warning commands. Requiring a display on a smaller, older airplane in some instances will present such an oppressive financial burden that the owner/operator may either go out of business or convert to a less safe piston-engine airplane. Furthermore, there is promising new technology such as moving maps that in the near future will provide inexpensive additional terrain situational awareness to these smaller, older airplanes.

In response to ALPA's second comment to require a radar altimeter as a backup to the terrain database, the FAA is requiring TSO–C151 Class A equipment for part 121 operators and part 135 operators of 10 or more passenger seating and TSO–C151 Class B equipment for part 91 operators and part 135 operators of 6 to 9 passenger seating. Class A equipment requires a radar altimeter; Class B equipment does not. The reasons behind this decision are the same as mentioned above concerning the terrain situational awareness display.

In response to ALPA's third comment concerning not delaying the rule due to potential objections by part 91 operators by applying it to commercial operators as soon as possible, the FAA believes it is processing the rule as expeditiously as possible. The FAA further believes it can process the rule faster as currently defined and believes that redefining it at this time into two rules—one for commercial operators and one for part 91 operators—would actually delay its implementation.

The ATA recommends that the final rule clearly state that TAWS systems installed before adoption be considered compliant, including those installed under FAA-approved Supplemental or Amended Type Certificates, Service Bulletins or JAA approvals. ATA adds that the final rule should clearly state whether systems without a color terrain display, certificated and installed prior to the final rule, would be in compliance.

In response to ATA's first comment requesting that the FAA formally recognize as compliant TAWS systems installed before adoption of the final rule, the FAA recognizes and appreciates the significant voluntary action by ATA and its members as well as by other segments of the industry. It has been and still is the FAA's intention to recognize all FAA approved TAWS installations (*i.e.*, those that meet the requirements of TSO–C151) done voluntarily before issuance of the rule as being in compliance with the rule.

In response to ATA's second comment concerning a color display, the FAA believes that ATA misunderstands the display requirements. The FAA is not requiring only a color display; monochromatic displays have been allowed and will continue to be allowed. Therefore, the FAA sees no reason to reference this subject in the final rule.

TSO Comments

When the FAA published the TAWS NPRM, it also made available a draft of a proposed Technical Standard Order (TSO)–C151, entitled Terrain Awareness and Warning System. The proposed TSO was made available under a separate Notice of Availability in the **Federal Register** on November 4, 1998 (63 FR 59494), which requested public comments on the TSO. All comments related to the TSO, whether in response to the NPRM or the TSO Notice of Availability, were given to an FAA technical team to evaluate and use in developing the final TSO.

In response to the TSO notice of availability, commenters submitted a large number of suggested changes to the TSO. (The substance of these comments are discussed in the TSO disposition report.) In trying to be as flexible and as accommodating as technically feasible, the FAA accepted and included most of the suggested changes, and developed a revised version of the draft TSO. This proposed TSO was made available in a second notice of availability in the **Federal Register** on May 27, 1999 (64 FR 28770), which again requested public comments on the TSO.

Based on the above actions, the FAA issued a final version of TSO–C151 on August 16, 1999. This TSO will be the means to obtain approval of TAWS products and is described below.

TSO–C151 prescribes the minimum operational performance standards that TAWS equipment must meet to be identified with the TSO–C151 Class A or B marking. At present the TSO includes two classes of equipment: (1) Class A, intended for airplanes operated under part 121, and for airplanes of 10 or more passenger seating operated under part 135; and (2) Class B, intended for airplanes operated under part 91, and for airplanes of 6 to 9 passenger seating operated under part 135. TSO–C151 does not require the use of specific design criteria nor prescribe the use of specific components. The applicant is free to design its own system providing it meets the minimum operational performance requirements of the TSO.

Class B equipment includes basic TAWS safety features, such as: Forward looking terrain warnings; minimum ground clearance plane function; GPWS mode 1 (high descent rates), mode 3 (descents after takeoff), and mode 6 (the 500 foot voice callout). Optional TAWS features of Class B equipment include: radio altimeter; a landing gear position sensor input to TAWS; a flap position sensor input to TAWS; a glideslope

deviation input to TAWS; a flap override switch in the cockpit; a glideslope (mode 5) inhibit switch in the cockpit; a TAWS inhibit switch in the cockpit; a terrain display; and a weather/terrain switching function.

TAWS technology, as well as other avionics technology, is advancing at a very rapid pace. Because of this, the FAA expects to revise TSO–C151 periodically and amend the rule when necessary, to include other classes or subclasses as new technology is developed and proven. An example of a new class could be the addition of a Class C intended for piston-powered airplanes and turbine-powered airplanes of less than 6 passenger seating. An example of a new subclass could be a Class B, level 1 that could include geometric calculation of altitude using GPS/WAAS (Global Positioning System/Wide Area Augmentation System) when that system is operational. The FAA also realizes that technology may advance and prove itself faster than the FAA can keep TSO–C151 up to date. In these situations, the FAA will make use of the deviation process allowed under § 21.609, Approval for Deviation. The FAA intends to provide maximum flexibility for industry to continuously develop more advanced and less expensive TAWS equipment.

Supplemental Type Certificates (STC's)

The NATA says that the NPRM's estimate of 82 STC's for retrofitting the part 135 fleet with TAWS is low because in some cases, ''a single aircraft model, particularly older aircraft models, may have evolved to a point where the cockpit/avionics panel and currently installed equipment vary greatly. As a result of this variance, ''follow-ons'' may not be available for many airplanes and many more ''first of type'' installations will be required for Part 135.'' This could result in STC approval delays and could significantly impede timely equipment installations. Other commenters questioned the number of estimated STC's.

FAA Response

The FAA disagrees with NATA's statement that there would be delays in STC approvals and equipment installations. When the FAA developed the compliance schedule, the FAA took into account the potential FAA STC approval workload. In addition manufacturers have obtained additional STC's since the NPRM was published and are making them available for their customers. Taking all this into consideration, the FAA has determined that the approval process will not hinder the implementation of this rule.

Training

The FAA did not propose changes to existing training requirements. However recent new training requirements on crew resource management (CRM) for flight crewmembers should provide additional safeguards in conjunction with the use of TAWS. This requirement applies to flight crewmembers operating under parts 121 and 135 and took effect on March 19, 1998. (60 FR 65940, December 20, 1995).

The Independent Pilots Association (IPA) criticizes the FAA for not changing current training requirements to specifically require training in the use of TAWS. IPA believes that without specific training in what TAWS is designed to do and what it is not designed to do, the full safety benefits and risk reduction will not be realized.

Alternatively, a number of commenters say that increased training for situational awareness and monitoring is needed, rather than ''another expensive electronic box.''

Raytheon points out that even in some of the part 121 CFIT accidents that involved airplanes that ''were new generation and well equipped with the latest in technology'', there was a loss of situational awareness by the flightcrew. Therefore, the best way for operators to reduce CFIT accident risk is through ''improved training, emphasis on standardization of procedures, and review of human factors.''

FAA Response

The FAA agrees that training is an important element to minimizing CFIT and recommends a three-pronged approach: (1) Proper pilot training; (2) Better decision-making tools; (3) Electronic hardware to assist the pilot. TAWS addresses the electronic hardware issue. The FAA's position is that training alone has not been successful in reducing CFIT accidents; therefore the FAA believes that it is necessary to require TAWS.

The fact that the final rule does not mention training does not mean that no TAWS training is required. Under existing §§ 121.415 and 135.293 certificate holders are required to insure that each crewmember is qualified in new equipment, procedures, and techniques, including modifications to airplanes. The effect of this requirement is that whenever an operator installs new equipment, part of the approval process for that equipment includes showing that crewmembers have been adequately trained to use the new equipment.

In addition, although not directly related to training, the final rule requires that operators include in their Airplane Flight Manuals the appropriate procedures for operating and responding to the audio and visual warnings of TAWS. Existing § 91.9 requires that the pilot operate the airplane in accordance with the approved flight manual.

Other Government/Industry Efforts

The NBAA recommends that the FAA delay action on this rule until it receives a report from the Joint Safety Analysis Team (JSAT). The NBAA is participating on the workgroup teams to study several root causes of general aviation accidents, including CFIT. The NBAA says that the JSAT's recommendations may include more cost effective alternatives to TAWS. A similar comment is also made by GAMA, which is the industry co-chair of the JSAT.

Raytheon strongly recommends that the FAA further investigate the effectiveness of TAWS in general aviation operations and consider alternatives to TAWS better suited to the general aviation environment. Raytheon states that further investigations are also supported by the Joint Industry/FAA Team, Proposed Action Plan, ''Controlled Flight into Terrain (CFIT) Avoidance for General Aviation.'' The Joint Industry/FAA Team submitted five recommendations to the FAA for reducing CFIT accidents, including equipment enhancements, pilot education and improvement in decision making aids for pilots.

Similarly, AOPA recommends that the FAA implement the recommendations made by the ''Controlled Flight Into Terrain (CFIT) Avoidance for General Aviation'' report (August 1998). This report was put forth by a joint industry/FAA team which was established to respond to the ''The White House Commission on Aviation Safety and Security'' recommendation regarding EGPWS in general aviation airplanes. The team had concluded that there are a number of causes of CFIT accidents and that these factors can be addressed ''in more affordable, practical, and effective solutions.'' AOPA states that these recommendations would lead to voluntary equipage and would be more effective in reducing CFIT accidents than would a mandate for TAWS.

GAMA encourages voluntary equipage of TAWS on general aviation turbine-powered airplanes.

FAA Response

In response to NBAA and GAMA comments that the FAA delay the rule until it receives a report from the Joint

Safety Analysis Team (JSAT), the FAA does not believe such a delay is necessary, warranted or wise; the report was completed in April 1999. The NBAA and GAMA are valuable participants on the team and GAMA is a co-chair of the general aviation section of JSAT (GA–JSAT). The FAA is the other co-chair and also is a major participant, and as such, the FAA is aware of all JSAT transactions and activities. The FAA is aware that the GA–JSAT is emphasizing training. The FAA agrees that training is important, but as discussed earlier, training by itself, unfortunately will not solve the CFIT problem. The pilot needs a technical aid. The limitation of training is profoundly illustrated in the transport area. Commercial pilots have access to the best training in the world, yet CFIT accidents are the leading cause of fatalities in commercial aviation worldwide. In fact, the Transport Section of JSAT, in recognizing the limitations of training, has made TAWS its primary intervention strategy. There currently is a successful, cost effective technical aid available—TAWS—and it is incumbent upon the FAA to require this technical aid as expeditiously as possible.

Raytheon and AOPA make reference to another FAA sponsored activity and report, the joint FAA/industry team report titled ''Controlled Flight into Terrain (CFIT) Avoidance for General Aviation.'' This team was organized by the FAA to supplement the TAWS rulemaking activity, not to replace it. The TAWS rule applies to U.S.-registered, turbine-powered airplanes of 6 or more passenger seating. The team was formed to investigate how to eliminate CFIT accidents in the remaining group of general aviation airplanes not covered by the proposed TAWS rule, specifically piston-powered airplanes regardless of number of passenger seats and other airplanes of less than 6 passenger seats. In preparing the report, the team became convinced that its recommendations could be applicable to all general aviation airplanes, not just the narrow group mentioned above, and stated this in its report. The FAA co-chaired the team and participated in its deliberations. The FAA supports the recommendations of the team and, in fact, is supporting and participating in all the recommendations. The FAA sees no conflict between this report and the TAWS rule. As mentioned in the discussion in the section addressing the TSO, the FAA is building in the flexibility to incorporate the new technologies identified in the report as those new technologies come on line. Therefore, in response to Raytheon's first comment that the FAA further investigate the effectiveness of TAWS, the FAA already is participating actively in ongoing CFIT research and investigations and will continue its participation. In the mean time, as mentioned in the FAA response concerning the JSAT report, there currently is a successful, cost effective technical aid available—TAWS—and it is incumbent upon the FAA to require this technical aid as expeditiously as possible.

In response to Raytheon's second comment that the FAA consider alternatives to TAWS, the FAA believes that Raytheon misunderstands the concept of TAWS. TAWS is a technical aid to eliminate CFIT accidents and is one of several integrated approaches; the others include improved training, better decision making information and better weather information. The new technologies, discussed in the report referenced by Raytheon, when integrated properly into an airplane, would be a TAWS and would provide TAWS functions.

In response to AOPA's first statement that the recommendations in the report would lead to voluntary equipage, the FAA recognizes the voluntary effort by industry. Unfortunately, many owners/operators do not take voluntary action, so the FAA must require them to take action.

In response to AOPA's second comment that the recommendations in the report will result in a more effective means of reducing CFIT accidents than would a mandate for TAWS, the FAA believes that, like Raytheon, AOPA misunderstands TAWS. The FAA believes that the technical recommendations in the report will lead to better and less expensive TAWS equipment. Much of this equipment will be available well before the compliance due dates. But the FAA and industry cannot keep waiting for better and less expensive equipment. CFIT accidents are tied with spins as the leading cause of fatalities in general aviation in the United States. There currently is a successful, cost effective technical aid available—TAWS—and it is incumbent upon the FAA to require this technical aid as expeditiously as possible. Waiting to do more research and investigations, or not using all available means at our disposal, including the use of cost effective technical aids, while additional people die in CFIT accidents, would be a dereliction of duty.

Compliance Schedule

The FAA proposed amending §§ 121.360 and 135.153 to add an expiration date of four years after the effective date of the final rule for the use of current GPWS systems. Thereafter, compliance with those sections would not be allowed in lieu of the provisions amended herein.

The FAA proposed that, beginning one year after the effective date of the final rule, U.S.-registered airplanes manufactured after that date be equipped with TAWS. The FAA also proposed that turbine-powered airplanes manufactured on or before that date be equipped with TAWS within four years after the effective date of the final rule.

The NATA states that, since there is only one TAWS product available that would meet FAA approval, there should be a longer compliance period for non-part 121 operations. This, coupled with the likelihood of changes to the TSO (based on incoming comments) will have a direct impact on the ability of current and future TAWS manufacturers to develop and offer their products in the marketplace. For these reasons, NATA says that the FAA should provide a ten-year timetable for part 135 on-demand air charter operations.

The NATA also states that, since the most significant safety benefits will occur with TAWS installation on part 121 airplanes, and since manufacturers will have limited production capabilities, the emphasis should be on supplying equipment to part 121 operations. Also, a longer timetable will allow ''natural market development to help alleviate product supply, installation, certification, and cost dilemmas through increased manufacturer competition and the ability to absorb the substantial costs over time.''

The RAA requests the compliance period be extended to a five year period for all 30+ seat turboprop airplanes; a seven year period for all 10 to 29 passenger seat turboprop airplanes; and eight year period for all 6 to 9 passenger seat turboprop airplanes; and extended to December 20, 2010, for all non-transport category airplanes that are classified as § 121.157(f) types that will be phased out of part 121 operations on the same date.

Likewise, Northwest Airlines requests that airplanes planned for retirement prior to 2008 be exempt from the final rule. This would allow Northwest to focus more on accelerated installation on airplanes in its long-term fleet plan.

The ATA comments that a one-year effective date after publication of the

final rule is necessary to accommodate realistic lead times for the productions ramp-up for piece parts and kits. The ATA also recommends that the final rule clearly state that TAW systems installed before the adoption of the final rule will be considered compliant. A related issue is whether systems certificated and installed before the adoption of the final rule without a color terrain display would be in compliance with the rule.

Trans World Airlines, in conjunction with ATA, believes that the NPRM public comment period should be connected to the TSO public comment period for complete project public comments.

Japan Airlines comments that the effective date of the final rule should be fixed on the basis of the progress made in manufacturing and installing TAWS, with special attention given to retrofit issues, such as changing from analog to digital.

FAA Response

In response to comments from NATA, RAA, ATA, and Japan Airlines, the FAA does not believe that the rule should be delayed. Since the proposed rule was published, several other manufacturers have developed TAWS. The initial manufacturer, in response to this competition, has already lowered the selling prices of its TAWS products and has developed several smaller, less expensive systems for older planes, both analog and digital.

When the FAA initially developed the compliance schedule, it took into account the production capability of only one manufacturer and the anticipated certification workload for the FAA. Since then, additional manufacturers have been developing and making available additional products beyond what was anticipated. Furthermore, TAWS manufacturers and airframe manufacturers are obtaining STC's and making them available to customers who install TAWS, thereby reducing the anticipated FAA certification workload. When taking these two factors into consideration, the FAA is convinced that the initially proposed compliance schedule can easily be met.

In response to Northwest Airline's comment about exempting airplanes planned for retirement, the FAA does not agree. The commenter has not provided adequate justification as to why these airplanes should be exempted. Although Northwest Airlines may intend to retire certain airplanes by 2008, there is no guarantee that this will happen. Further, even if Northwest does retire the airplanes, there is no guarantee that those airplanes will go out of service permanently. They may be sold and used by others and, therefore, will need TAWS protection.

Miscellaneous Comments

A commenter recommends that each airplane be given a rating system that indicates that it has a GPWS on board. It would then be up to the passenger to decide whether or not to fly on that airplane.

FAA Response

The FAA does not think such a rating system would be practical or workable. Given the complexity of all the equipment required on the airplane, it would be difficult to convey to a boarding passenger, how each piece of equipment contributes to the overall safety of the airplane.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0631. This final rule requires a Terrain Awareness and Warning System for all U.S.-registered turbine-powered airplanes of 6 or more passenger seating. TAWS is a passive, electronic, safety device located in the avionics bay of the airplane. TAWS alerts pilots when there is terrain in the airplanes' flight path. Since there is not an actual collection of information, we cannot estimate a burden hour total and no comments were received on this information collection submission. However, for the purpose of controlling this submission, we will assign an one-hour burden to the package. There is a total cost estimate of 340 million dollars, for purchase and installation of the passive, electronic, safety device.

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 Office of Management and Budget (OMB) control number.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements. TAWS is a new system recently developed by American industry. The FAA intends to work through the ICAO process to harmonize this rule with the international community.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. And fourth, Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. In conducting these analyses, the FAA has determined that this rule is ''a significant regulatory action'' under section 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will have a significant impact on a substantial number of small entities, will not constitute a barrier to international trade, and does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Economic Evaluation

Introduction to Cost/benefit Analysis

Since the publication of the NPRM, some important developments have occurred. The FAA received extensive cost information during the comment period (detailed information regarding the type of expenditures needed for specific airplane models and updated estimates of the size of the affected fleet) and developed alternatives to reduce costs while maintaining the increased level of safety expected from TAWS.

In response to the commenters, the FAA has examined ways to reduce costs for smaller operators and still maintain the incremental level of safety provided by TAWS. The FAA has determined that a TAWS unit with significantly less complexity will meet desired safety objectives at lower cost for all part 91, and for certain operators under part 135. The savings to part 91 operators alone will be well over $200 million.

The aviation industry has already moved to retrofit a large percentage of the existing fleet, and has placed orders that extend well into the future. The Air Transport Association (ATA) member airlines in particular have announced a voluntary program where they will equip their airplanes with TAWS. For domestic United States operators, there have already been nearly 4,500 TAWS deliveries. Over 2,200 TAWS units ordered are backlogged. Nearly half of the airplanes operating under part 121 are already in compliance with this rule. Given that ATA member airlines voluntarily committed to retrofit their in-service fleet and to order new airplanes equipped with TAWS, a significant portion of incremental compliance costs (and equivalent associated benefits) for current part 121 airplanes and all future equipment delivered (*i.e.,* future transport category airplanes) will not be counted in evaluating the regulatory impacts of this rulemaking.

The incremental benefits and costs of the rule depend on several fleet related factors. To determine the affected fleet the analysis begins with the existing fleet, subtracts expected retirements, subtracts voluntary compliance, and adds future airplane deliveries that will be impacted by the rule.

Estimates of lifecycle benefits were calculated on a per-airplane basis and summed over all affected airplanes to obtain an estimate of the expected fleet benefits. The calculations took into consideration passenger capacity, average load factors, proportion of fatalities given a CFIT accident, airplane value, and number of flight hours (see following discussion on part 121 for application of methodology).

The estimate of benefits and costs for TAWS is for the overall rulemaking. However, since the benefit and cost impacts vary so widely across operators and equipment, specific equipment costs and both benefits and costs for parts 121, 135, and 91 were analyzed separately and are presented accordingly. The part 135 benefits discussion is more detailed than that of parts 91 and 121, given the re-evaluation of the part 135 accident data included in this final rule.

Part 121

The FAA's database provides the estimate for the overall part 121 fleet of 6,907 airplanes, which includes 5,362 turbojets and 1,545 turboprops. The ATA membership fleet of 4,569 airplanes accounts for slightly more than 85 percent of the part 121 jet fleet. The ATA and the Regional Airline Association (RAA) provided the in-service part 121 fleet expense by equipment type incorporated in this analysis.

The FAA obtained information on the deliveries and orders for TAWS from AlliedSignal. As of May 31, 1999, AlliedSignal had delivered 2,881 TAWS units to United States domestic operators of part 121 passenger and cargo airplanes and to original equipment manufacturers (OEMs). The FAA reduced the OEMs' deliveries by fifty percent (to account for overseas sales) as a rough estimate of U.S. new equipment deliveries with TAWS units installed. For AlliedSignal's domestic backlog, the FAA included all operators' orders and excluded all OEMs' orders (*i.e.*, to be conservative, since exact information on overseas orders is not available). In total, 3,338 in-service part 121 airplanes have already been equipped with TAWS or have already placed orders with the manufacturer (based on data in mid-1999; several hundred more airplanes probably will have been equipped by the date of publication of the rule). Of the 3,338 airplanes counted as voluntarily complying, 3,173 are turbojets and 165 are large turboprops. Voluntary purchases of TAWS equipment before the implementation of the rule are not assumed to be an expense incurred due to regulation, but rather an independent industry decision to enhance operational safety. Thus, both the expected benefits and costs of this rule are reduced by the proportion of airplanes equipped with TAWS (or on order with TAWS included).

For future airplanes, voluntary compliance has a substantial impact on the affected fleet. Excluding ATA member fleets, the remaining jets are 20 percent of the total part 121 jet fleet. The future new delivery jet forecast averages 280 per year. The estimated affected future jet fleet is then 20 percent of the anticipated deliveries. Voluntary compliance is much lower for part 121 turboprops than for jets. The proportion of total turboprop equipment not in compliance is nearly 70 percent. Nevertheless, 30 percent compliance results in a significant reduction in the incremental costs of future deliveries (*i.e.*, from the standpoint of a ''regulatory-required'' cost-impact). Future turboprop deliveries are estimated to average 100 per year with the annual affected amount equaling 69 or 70 airplanes. (This is a conservative assumption, since operators of much more than 30 percent of part 121 turboprops would probably elect to equip their new airplanes with the most current GPWS/TAWS equipment)

The part 121 affected fleet equals the remaining in-service part 121 airplanes (*i.e.*, after subtracting-out airplanes retired and airplanes under voluntary compliance) combined with newly manufactured airplanes estimated to be sold to operators who would not have voluntarily complied with this rule. The affected in-service part 121 fleet equals 2,709 airplanes (or, 6,907 existing fleet, minus 860 retirements, and minus 3,338 airplanes under voluntary compliance). The number of affected jets equals 1,644, large turboprops 710, and small turboprops 355. Over the 2001 through 2010 period, future new deliveries are 560 jet transports and 690 turboprop transports for a total of 1,250 airplanes. The total affected part 121 fleet thus equals approximately 4,000 airplanes.

There has been a reduction in the CFIT accident rate since 1974, when the FAA first required GPWS in part 121 and certain part 135 airplanes. However, some risks remain—in part due to differences in the capabilities of various generations of GPWS technologies. Risk reduction estimates for 14 CFR part 121 operations are based on the Volpe part 121/135 study and analyses of accident data by FAA and industry experts. These appraisals are true measures of risk reduction in that they fully consider the effect of TAWS on accident outcomes, rather than simply assume that all accidents will be prevented. The analysis is complicated by the fact that two vintages of GPWS technology were employed during the period being studied. Although the NPRM considered the TAWS impact in comparison to both early and current generation systems, this final rule analysis assumes that all the airplanes currently equipped with the basic system are in fact ''one level higher'' (*i.e.*, have the current GPWS), a significantly more conservative assumption resulting in lower benefits. Risk reduction estimates were calculated by dividing the number of preventable accidents for a particular airplane/GPWS combination by the corresponding number of flight hours.

From an evaluation of part 121 accidents during the 10-year period, 1986–1995, the Volpe part 121/135 study concludes that TAWS would have prevented 6 CFIT accidents involving turbojet airplanes and 2 CFIT accidents involving turboprops.

With respect to turbojets, only one accident involved an airplane equipped with current-generation GPWS. However, the Volpe part 121/135 study concludes that in three other cases (involving airplanes equipped with early-generation systems), current-generation GPWS would not have prevented the accident. TAWS would

have prevented all four accidents. Therefore, the FAA estimates the risk reduction potential of TAWS relative to current-generation GPWS is approximately 0.038 accidents per million flight hours (4 ÷ 104.7 million flight hrs.). With respect to the turboprops, both accidents would have been prevented by TAWS, but not by GPWS; the comparable risk reduction rate is 0.118 accidents per million flight hours (2 ÷ 16.972 million flight hrs.).

After estimating the expected benefits for the fleet, total estimated present value benefits depends on the expected life after installation. The total present value benefits of this rule for part 121 airplanes equal nearly $494 million.

The FAA accepts the costs provided by the ATA for jets and by the RAA for turboprops. The combination of retirements and voluntary compliance substantially changes the affected fleet, especially for the impact on ATA member fleets operating in part 121. The FAA includes as part 121 operations all RAA turbine-powered airplanes classified as large cargo and passenger airplanes with more than 30 seats, plus nearly all of the RAA classified part 121/135 passenger airplanes with 10 to 29 seats. Retirements reduce the proportion of older airplanes in the fleet; these airplanes have the highest average retrofit cost.

After retirements and voluntary compliance, the expected jet fleet to be retrofitted equals 1,644 airplanes. Over the time period 2001 to 2004, the present value expense of retrofitting this fleet equals $108,580,000. Similarly, the present value expense of retrofitting 355 10 to 29 seat airplanes is estimated to be $9,660,000. Finally, the present value expense to retrofit 30+ seat airplanes (includes large cargo) is estimated to be $25,390,000. Over the period of 2001 to 2004 total present value cost of retrofitting the affected fleet is equal to nearly $144 million.

In addition to retrofitting the existing fleet, new airplanes will also incur the cost of installing TAWS. The FAA received a wide range of estimates for the cost of installing TAWS on new airplanes. Whereas the ATA cost estimate for new production airplanes is nearly $25,000, this rule imposes only the additional cost above the current GPWS equipment. The FAA estimate of $13,000 incremental cost for jets equals an incremental price increase of $10,000 for the TAWS, plus $1,000 installation kit, plus additional labor of $2,000. Future turboprops would have had GPWS, so the incremental cost is the relevant estimate. The $3,800 turboprop incremental cost equals the incremental price increase of $2,000, plus $800 installation kit, plus additional labor of $1,000. There are no incremental costs incurred for training, maintenance, and fuel with TAWS versus GPWS.

Over a ten year horizon for new deliveries, the present value of incremental expense for jets is nearly $5 million and for turboprops nearly $2 million. If the horizon is extended an additional ten years, the present value for new deliveries increases by approximately $3.4 million. The total present value cost equals $144 million for retrofitted airplanes plus $7 million for new airplanes, or $151 million.

With estimated present value benefits of $494 million and present value costs of $151 million, the rule is clearly cost-beneficial for airplanes operated under part 121.

Part 135

Similar to the case with part 121, incremental benefits and costs depend on several fleet-related factors, *i.e.*, the existing fleet (and associated hours flown), expected retirements, voluntary compliance, and non-compliant airplane deliveries. For the purposes of this rulemaking, the cost/benefit analysis separates airplanes with 10 or more seats from those with 6 to 9 seats.

The part 135 fleet today is composed of 2,455 airplanes with 6 to 9 seats, and 334 airplanes with 10 or more seats. These airplanes are assumed to have a 4 percent retirement rate.

There have been 421 TAWS units delivered to domestic United States operators and original equipment manufacturers (OEMs) for 6 to 9 seat airplanes. Operators have purchased 118 units and have ordered an additional 5 units. Fifty percent of OEM deliveries (152 of 303 total units) are assumed to be delivered to the existing 6 to 9 seat part 135 fleet. Thus from a fleet of 2,455 airplanes, 275 are estimated to have voluntarily complied. For the part 135 airplanes with 10 or more seats (total fleet equals 334 airplanes), 25 TAWS units have been purchased by operators and an estimated 111 units by OEMs.

After subtracting airplanes that are estimated to be retired or in voluntary compliance, the affected in-service fleet is estimated to be 1,833 airplanes with 6 to 9 seats, and 171 airplanes with ten or more seats.

Future annual airplane deliveries are assumed to equal five percent of the affected in-service fleet. The affected fleet equals 3,616 airplanes through the year 2011.

One of the main criticisms of the part 135 cost/benefit analysis in the NPRM was that the FAA used parts 91 and 121 accident rates for 6 to 9 and 10 or more seat part 135 airplanes, respectively. The main reason for this was that most of the larger part 135 airplanes (those in scheduled service) involved in the CFIT accidents during the 1985 through 1996 analysis period were ''moved into'' part 121 as a result of the 1995 commuter rule; thus the FAA excluded most of these earlier ''part 135 accidents'' from the part 135 analysis. In addition, time constraints negated analysis of CFIT accidents involving both the larger and smaller part 135 airplanes. Since publication of the NPRM, the Volpe Center re-evaluated the accident data (docket contains accident analyses) involving part 135 airplanes, again with the emphasis of assessing the effectiveness of TAWS compared to current generation GPWS; the results of this analysis are incorporated in the benefits discussion that follows.

Previous data on hours flown is ''distorted'' as a result of the part 121/135 ''shifts'' described above. In addition, FAA fleet data show that there has been a significant decline in the number of 10 or more seat turboprops and turbojets; there are only 111 turbojets and 223 turboprops currently operating with 10 or more seats in part 135. Thus, historical data on hours flown had to be adjusted to reflect the definitional/regulatory change in the part 135 category. The current level of activity is the basis for evaluating future accident probabilities. The relatively few relevant part 135 accidents (*i.e.*, due to the re-classification described above) and concomitantly fewer postulated future accidents logically reflect the reduced level of activity.

As a proxy for hours flown by 6 to 9 and 10 or more seat part 135 airplanes (the data was and still is not available by these specific size categories), the FAA used recently revised data on air taxi operations from its 1997 General Aviation and Air Taxi Survey. The earliest year for which revised annual hours are available is 1991. Since 1991 is approximately the mid-point of the 1985–96 accident evaluation period, hours flown for 1991 was applied to the current number of part 135 airplanes in the two size categories to approximate total annual hours for the fleet during the particular year(s) of the accident(s).

Only one avoidable CFIT accident occurred involving a passenger-carrying turboprop with 10 or more seats (all are non-scheduled). That accident occurred in Beluga, Alaska on December 22, 1989, and involved a Piper PA–31 airplane with 10 passenger seats; only the pilot, who was killed, was on board—the airplane was destroyed. Only TAWS would have prevented this accident. Another accident involved a

cargo airplane; that accident occurred in Destin, Florida on May 16, 1991 and involved a Cessna CE–208B airplane with 2 cockpit seats; only one pilot, who was killed, was on board and the airplane was destroyed. Only TAWS would have prevented this accident. Even though most part 135 cargo airplanes are not covered by the TAWS rule, the FAA believes it is appropriate to include this accident in the analysis, since the same model airplane could just as well have been carrying passengers (circumstances involving a CFIT accident would not differ between a cargo-carrying vs. a passenger-carrying airplane).

Only one avoidable CFIT accident occurred involving part 135, 10 or more seat turbojets; the airplane involved was configured for cargo only. The accident occurred in Monroe, Louisiana on January 8, 1988, and involved a Learjet LJ–36A airplane with two cockpit crewmembers on board, both of whom were killed—the airplane was destroyed. Only TAWS would have prevented this accident. The FAA believes it is appropriate to include this accident in the analysis, since the same model airplane could just as well have been carrying passengers (see discussion above re turboprops also).

One avoidable CFIT accident occurred involving a passenger-carrying turboprop with 6 to 9 passenger seats (covered by the rule whether scheduled or non-scheduled). The accident occurred in Casper, Wyoming on December 22, 1989, and involved a Mitsubishi MU–2B–35 airplane with 6 passenger seats; 4 persons were on board and all were killed—the airplane was destroyed. TAWS (and current GPWS) would have prevented this accident.

Two avoidable CFIT accidents occurred involving passenger-carrying turbojets with 6 to 9 passenger seats (covered by the rule whether scheduled or non-scheduled). One accident occurred in Gulkana, Alaska on August 20, 1985, and involved a Learjet LJ–24D airplane with 8 passenger seats; 3 persons were on board and all were killed—the airplane was destroyed. TAWS (and current GPWS) would have prevented this accident. The second occurred in Juneau, Alaska on October 22, 1985, and also involved a Learjet LJ–24D airplane, this one with 6 passenger seats; 4 persons were on board and all were killed—the airplane was destroyed. TAWS (and current GPWS) would have prevented these accidents.

As noted earlier, lifecycle benefits per airplane equal the annualized benefit for that airplane (which is a function of seating capacity, load factor, annual flight hours, *etc.*) discounted over the number of remaining years of service life. Fleet benefits, in turn, are computed by summing per-airplane lifecycle benefits over all affected airplanes.

The results show benefits of $40.6 million for 6 to 9 seat airplanes and benefits of $47.9 million for 10 or more seat airplanes for total part 135 benefits of $88.5 million.

The cost of TAWS equipment for part 135 airplanes depends on the class of TAWS equipment required for the specific group of part 135 airplanes: Class B for airplanes with 6 to 9 seats and Class A for airplanes with ten or more seats. The Class B unit does not require an air data computer, radio altimeter, or a color display; these components (required in the units now identified as Class A) were largely responsible for the high compliance costs in the NPRM for airplanes with 6 to 9 seats. For newly produced 6 to 9 seat airplanes, the cost of TAWS equals the $7,000 unit price for TAWS plus $500 for installation. For existing 6 to 9 seat airplanes, the total retrofit cost is $12,500; this cost is comprised of a $7,000 price plus a dealer markup of $2,100, installation cost of $1,400, and an estimated STC cost of $2,000. The FAA estimates that the rule's incremental unit cost per 10 or more seat airplanes will equal the 10–29 seat part 121 turboprop unit cost of $34,400. For newly delivered airplanes with 10 or more seats, the incremental cost for TAWS is the additional cost above the GPWS that these airplanes would otherwise have been equipped with; this incremental unit cost equals $3,800, comprised of a price difference of $2,000, installation kit of $800, and installation labor of $1,000.

The total TAWS cost for part 135 operators equals the incremental unit cost multiplied by the affected fleet. The present value cost of approximately $18 million for the in-service 6 to 9 seat passenger airplanes, equals the affected fleet distributed equally over the four years multiplied by a unit cost of $12,500. Similarly, the present value cost of approximately $4.7 million for the in-service 10 or more passenger airplanes equals the affected fleet distributed equally over the four years multiplied by a unit cost of $34,400. Over the period 2000 to 2011, the incremental cost of 6 to 9 seat newly delivered airplanes equals approximately $7 million. Over the same period, the incremental cost for 10 or more seat newly delivered airplanes equals approximately $0.4 million. The total present value cost for part 135 airplanes is $30,121,000.

With present value benefits of approximately $88 million and present value costs of $30 million, the rule is clearly cost-beneficial for part 135 airplanes.

Part 91

The fleet referred to as the affected 14 CFR part 91 airplanes, for the purposes of this analysis, is an estimate of the total affected fleet of U.S.-registered turbine-powered airplanes that are not affected by 14 CFR parts 121 and 135. This fleet is estimated to be comprised of approximately 6,000 turbojets and 6,000 turboprops and includes general aviation airplanes operating under part 91 (corporate, business, personal, instruction, aerial application, and other), large airplanes (having a seating capacity of 20 or more or a maximum payload capacity of 6,000 pounds or more) operating under 14 CFR part 125, and U.S.-registered airplanes operating under 14 CFR part 129. Whereas the analysis of airplanes affected by parts 121 and 135 made use of specific airplane-category data, the analysis of the affected part 91 fleet uses aggregate-level estimates owing to the difficulty of gathering airplane or model specific data on airplanes operating under part 91.

Based on recent contacts with industry and government sources, the FAA projects that approximately 240 turboprops and 350 turbojets will be delivered each year to operators falling under the 14 CFR part 91 group. Benefit and cost estimates for newly manufactured airplanes are based on 10 years of deliveries. The conclusions of this report, with respect to the benefit/cost ratio for equipping newly manufactured airplanes, are not sensitive to these forecasts.

Some voluntary efforts to install TAWS systems in part 91 airplanes are already occurring. According to FAA certification officials and industry sources, STCs for TAWS have been approved for the Beech C90, the Canadair CL–601, the Falcon 900B, and the Gulfstream GV. Gulfstream and Bombardier will include TAWS as standard equipment on new Gulfstream V and Global Express long-range business jets. Orders for TAWS equipment for new part 91 airplanes total slightly more than 160 units, or approximately 30 percent of one year of deliveries.

Estimates of the benefits of the rule are based on a Volpe part 91 study of 44 accidents that met all of the following CFIT accident criteria: (1) Accident date between January 1, 1985 and December 31, 1994; (2) turbine-powered airplane having 6 or more

passenger seats operating under 14 CFR part 91 flight rules; (3) airplane in controlled flight at the time of accident; (4) all airplane systems operating normally at time of accident; and (5) pilot(s) not impaired.

Of the 44 accidents, 11 involved turbojets and 33 involved turboprops. Probable cause, as determined by the NTSB, was pilot error in all cases—principally through failure to maintain proper altitude, use of improper instrument flight rules or visual flight rules procedures, or poor planning/decision-making. Contributing factors included weather conditions and darkness in many cases. In two accidents, the NTSB assigned partial responsibility to FAA air traffic control problems. The 44 accidents resulted in 131 fatalities, 19 seriously injured passengers, and destruction of 37 airplanes and substantial damage to 7 airplanes.

The Volpe part 91 study determined that current-technology ground proximity warning systems could have prevented 33 of the 44 accidents (the 33 GPWS-preventable accidents accounted for 96 fatalities, 17 serious injuries, 18 minor injuries, 27 destroyed airplanes, and 6 substantially-damaged airplanes). Of the 11 accidents that were not likely to have been prevented by current-technology GPWS, the study found that 9 accidents could have been prevented by TAWS. In total, therefore, TAWS could have prevented 42 of the 44 accidents (all 33 of the accidents preventable by GPWS and the additional 9). The 42 TAWS-preventable accidents accounted for 126 fatalities, 19 serious injuries, 26 minor injuries, 35 destroyed airplanes, and 7 substantially damaged airplanes. Total part 91 present value benefits are $720.2 million. Adjusting (i.e., reducing) these estimated benefits by the 10 percent of the part 91 fleet voluntarily complying, results in benefits of approximately $648 million.

While there are some nonrecurring costs, most of the total system costs include the equipment with installation, and the operating and maintenance costs. The equipment cost is $7,000 for in-service or newly manufactured airplanes. The Class B TAWS unit (requiring significantly less interface with existing/or needed upgraded avionics) dramatically reduces the expense to part 91 operators from that reported in the NPRM. Installation cost is $3,500 for in-service airplanes and $500 for newly manufactured airplanes. The part 91 total present value cost is $164.2 million.

With estimated present value benefits of $648 million and present value costs of $164 million, the rule is clearly cost-beneficial for part 91 airplanes.

Conclusions

On the basis of the preceding analyses, the FAA concludes that, for each of the groups of affected airplanes operating under parts 121, 135, and 91, the benefits of TAWS exceed their costs. Total present value benefits of the rule are $1.23 billion, approximately 3.6 times the cost of $345 million. The benefit/cost ratios for the groups that are composed primarily of smaller airplanes (parts 91 and 135, which have a large number of 6 to 9 seat airplanes) are high in large part because of the development of the less costly Class B TAWS equipment that will be in effect under this final rule.

Final Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a ''significant economic impact on a substantial number of small entities.'' If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

Recently, the Office of the Small Business Administration (SBA) published new guidance for the use of Federal agencies in responding to the requirements of the Regulatory Flexibility Act, as amended. Application of that guidance to this rule indicates that it will have a significant impact on a substantial number of small entities. Accordingly, a full regulatory flexibility analysis was conducted.

1. A description of the reasons why action by the agency is being considered

The agency is considering this action in response to a history of controlled flight into terrain accidents, NTSB recommendations, and subsequent analysis performed at the request of the agency. This rule is an implementation of the agency's mission to improve aviation safety.

2. A succinct statement of the objectives of, and legal basis, for the rule

The objective of this rule is to improve aviation safety by requiring the installation or retrofit of terrain awareness and warning systems on turbine-powered airplanes with six or more passenger seats.

The legal basis for the rule derives from Title 49 U.S.C. 44701 which authorizes the FAA Administrator to promote the safety of flight of civil aircraft in air commerce by prescribing, in part, minimum standards governing the design and construction of aircraft, aircraft engines, and propellers, as may be required in the interest of safety.

3. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule

Recordkeeping will be minimal. Recordkeeping and other compliance requirements will be similar to those for radio-navigation equipment that is currently in use.

4. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule

The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the final rule.

5. A description and estimate of the number of small entities to which the rule will apply

Entities (both large and small) potentially affected by the rule include manufacturers of transport category airplanes (North American Industry Classification System (NAICS) code 336411 ''Aircraft Manufacturing''), manufacturers of ground proximity warning equipment (NAICS 334511 ''Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments Manufacturing''), scheduled air carriers (NAICS 48111 and 481112 ''Scheduled Passenger Air Transportation'' and ''Scheduled Freight Air Transportation''), and nonscheduled air carriers (NAICS 481212, 481211, and 48799, ''Nonscheduled Chartered Freight Air Transportation,'' ''Nonscheduled Chartered Passenger Air Transportation,'' and ''Scenic and Sightseeing Transportation, Other'').

More specifically, the rule will affect many small entities that operate turbine-powered airplanes seating six or more passengers under 14 CFR part 91 (*e.g.*, small businesses, governments, and

individuals). There are thousands of operators of such airplanes, and, therefore, potentially thousands of entities representing hundreds of industries, organizations, and institutions. Costs per entity will be dependent on the number of airplanes affected and the (comparatively modest) cost of purchasing and installing Class B TAWS equipment.

An additional group of small entities who operate under 14 CFR part 135 that is likely to be affected by this regulation consists of operators of charter/on-demand air travel services, small operators of scheduled air service, and fixed-base operators (who often provide unscheduled air taxi service). Charter/on-demand operators typically have relatively few employees and low annual revenues. For this analysis the FAA classifies entities with 1,500 or fewer employees as a ''small entity.'' There are believed to be only about 60 out of the approximately 2,800 part 135 operators that have more than 1,500 employees, so that more than 2,700 part 135 operators will be classified as ''small entities.'' Half of these entities have less than 8 or 10 employees. The actual financial impact of the rule on any one of these entities will depend on the number of affected airplanes operated and whether Class A or B TAWS equipment will be required on these airplanes.

There are estimated to be more than 100 part 121 air carriers engaged in carrying passengers. Out of this total, over half are estimated to be small entities, based on having 1,500 or fewer employees. The actual financial impact on these entities will depend on the number of affected airplanes and the cost of purchasing and installing Class A TAWS equipment. As noted in previous discussions, a significant portion of the part 121 fleet operators, primarily the members of the Air Transport Association, is expected to voluntarily install the equipment required by this rule. The entities voluntarily complying with the rule are assumed to bear no costs as a direct result of this rule.

6. Affordability Analysis

In response to public comments and small business concerns, the initial proposed rule has been modified to reduce the compliance costs for operators with airplanes operating only under part 91, and under part 135 with 6 and 9 passenger seats. Most of these operators are expected to be small entities and will benefit from a higher level of safety with the lower cost Class B TAWS equipment. In the initial NPRM regulatory evaluation, the expected compliance cost to part 91 operators was estimated to be between $27,000 and $30,000 per airplane. In the final rule, Class B TAWS compliance cost is estimated to be slightly more than $10,000 per airplane. As an estimate of affordability, for general aviation turboprops with from one to nine seats and one or two engines, average airplane values are estimated to be $679,000 and $572,000, respectively. Thus the Class B TAWS equipment for these airplanes will cost between 1.5 percent and 2.0 percent of these airplanes' values. While it is very difficult to specify how affordable this rule will be for a small entity, the requirement of Class B TAWS (rather than Class A TAWS) substantially reduces the compliance cost for many small entities. Small entities which will be required to install Class A TAWS equipment will incur significantly higher costs than those required to install Class B TAWS equipment. Lastly, those operators engaged in chemical/agricultural applications, parachuting, and firefighting are excluded from the requirements of this rule. Most of these entities have fewer than 1,500 employees and thus are classified as small entities under this analysis.

7. Competitiveness Analysis

In the aviation industry, particular commercial market segments tend to be served by airplanes with similar seat size that operate under the same part of the CFR. For those markets served only by operators who will install equipment having roughly equal cost, much of the full cost of this rule could be passed on to their customers. In this case, there will be no significant change in the competitiveness among operators. For a market where competitors operate similar size airplanes but with different avionics, the cost incurred as a result of this rule may differ significantly among operators. Operators of airplanes with older avionics who will be required to install Class A TAWS equipment are expected to incur higher costs than those operating airplanes with newer equipment. Depending upon the mix of equipment serving a market, operators with older avionics equipment may be less able to pass on most of the cost of this rule.

8. Disproportionality Analysis

It is not clear that this rule imposes systematically higher or lower proportionate cost increases on smaller, as opposed to larger entities. The compliance cost of the rule depends upon the affected airplanes and how they are operated. The net impact on profitability to an operator may be affected by the costs imposed on competitors by the rule. The cost to an operator rises as the number of airplanes increases. In terms of the number of airplanes, the rule imposes proportional costs on operators under part 91 and those operating airplanes with 6 to 9 seats under part 135. It is expected that these operators are primarily small entities. The retrofit of Class A TAWS equipment will cost more to operators of airplanes with older avionics equipment. The age of the avionics within an airplane is not necessarily related to the size of the entity that operates the airplane. Thus, the FAA can not specify whether this rule will have a disproportionate impact on small entities.

9. Description of Alternatives

The agency has considered a number of alternatives to the rule. The FAA finds that the rule chosen will achieve a level of safety that is equivalent to or greater than that of the alternatives considered, and do this at a lower cost to the affected entities.

The alternatives that have been considered can be grouped into three categories:

- Exclude small entities
- Extend compliance deadline for small entities
- Establish lesser technical requirements for small entities

The FAA concludes that the option to exempt small entities from all the requirements of the rule is not justified. In fact, as noted in the preamble and in Section II of this document, the accident history of part 91 operators (many of whom are small entities) forms the basis of the NTSB's recommendation to require ground proximity warning systems on smaller turbojet and turboprop airplanes. However, the final rule does permit the use of TAWS equipment that meets the requirements for Class B equipment in TSO–C151 in airplanes operating under part 91 and for airplanes having 6 to 9 passenger seats operating under part 135. This requirement is somewhat less stringent as well as being less costly than the Class A equipment required for part 121 operations and larger airplanes operating under part 135; both pieces of equipment provide the same level of safety for the TAWS functions.

The FAA also considered options that will lengthen the compliance period for small operators. The FAA believes that the equipment chosen requirement will place a modest burden on small entities that arises from making expenditures on equipment at an earlier date. Small entities will have four years from the effective date of the rule to complete

retrofit work. Delaying the compliance deadline beyond the current proposal would not have resulted in significantly lower downtime or certification costs. Rather, the additional cost incurred will equal the modest return on capital (that will be spent on TAWS equipment) that would have been realized during the short time that the operator might have postponed the retrofit. Lengthening the compliance period would have exposed airplane occupants to significant safety risks for a longer period of time.

Finally, the FAA is not in favor of compliance options that will permit non-TAWS technologies. For airplanes not equipped with any ground proximity warning system, TAWS units will provide up to 23% greater CFIT risk reduction over current-generation GPWS at very little additional cost. For operators of part 91 airplanes, the use of a TAWS that is made possible with the use of data provided by GPS and an encoding altimeter, as is now permitted under the revised rule, will provide the benefits of a TAWS at significantly lower cost than with alternative technologies. It is noted that, in the NPRM, the present value of total costs for the part 91 fleet was estimated to be $415 million. Under the final rule, these costs are estimated to be $164 million, less than 40 percent of the level that would have been imposed under the initially proposed rule. It is estimated that several thousand part 91 operators will be affected by this rule. Similarly, approximately 2,800 part 135 (air taxi and similar) operators will be affected, as will approximately 100 part 121 (air carrier) operators. The precise impact on a particular operator will depend on the number of turbine-powered airplanes operated and will be larger for operators with greater numbers of airplanes.

The FAA has determined that this rule will impact small entities, has analyzed the impact of this rule on small entities, and has made efforts to reduce the impact. There are literally thousands of firms with less than 1,500 employees that will be affected by this rule. More than 1,000 of these firms are expected to have fewer than 10 employees. In response to public comments and with the availability of new technology, the FAA will require a substantially less expensive and easier to install TAWS for part 91 and some part 135 operators. It is expected most of the reduced compliance cost will benefit small entities.

International Trade Impact Assessment

Recognizing that domestic regulations often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation will affect any trade-sensitive activity. It is recognized that the rule could potentially affect international trade by burdening domestic businesses or air carriers with requirements that are not applicable to their foreign competitors. In general, the FAA believes potential international trade impacts associated with the rule will be negligible. Many domestic and foreign air carriers are already voluntarily installing TAWS equipment in recognition of the substantial safety benefits. A summary of potential impacts follows.

Potential impact to domestic airplane manufacturers.

The FAA believes that the rule will have a negligible effect on the competitive position of domestic airframe manufacturers. Under the rule, domestic manufacturers could continue to offer basic GPWS units on airplanes sold to foreign customers (if the airplane is not U.S.-registered). Foreign airframe manufacturers, on the other hand, will be required to equip airplanes sold to U.S. customers (operating under 14 CFR parts 91, 121, or 135) with TAWS.

Potential impact to domestic airplane leasing firms.

Domestic firms leasing aircraft to foreign operators may be adversely affected by the part 91 provisions of the rule. Domestic leasing companies, for liability reasons or to position themselves to lease to both 14 CFR part 121 and foreign carriers, often choose to maintain U.S.-registered fleets. Thus, their lease prices may reflect TAWS retrofit costs while the prices of foreign competitors may not. (In some cases, the lessee is directly responsible for modifications required by airworthiness directive or regulations—but in either case the disincentive effect is the same).

Given the small cost of TAWS relative to average airplane values, however, the FAA believes the potential international trade impact to be small. Also, TAWS equipped airplanes will be safer and thus more attractive to potential lessees—and their passengers. Increased patronage attributable to the operation of safer airplanes will also partially offset the costs of compliance.

Potential impact to domestic air carriers.

The potential impact to air carriers is, again, a function of the aircraft registration. Foreign air carriers operating U.S.-registered airplanes will be required to install TAWS as will U.S. air carriers. To this extent, operators of U.S. registered airplanes will have costs that may not be required of non-U.S. registered competitors. Again, however, TAWS equipment costs will be a very small fraction of in-service airplane values, provide a known safety feature, and represent a negligible portion of new airplane values. Also, CFIT accidents are a leading cause of commercial aviation fatalities worldwide. It is likely that knowledgeable passengers would pay the small difference in price to travel on an airplane equipped with TAWS. Voluntary industry initiatives to install enhanced ground proximity warning systems are consistent with the view that TAWS benefits far exceed its costs, and could have beneficial effects for domestic airlines competing for international passenger traffic.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that,

among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91 and 135

Aircraft, Aviation safety.

14 CFR Part 121

Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, and 135 of Title 14 Chapter 1, of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Section 91.223 is added to read as follows:

§ 91.223 Terrain awareness and warning system.

(a) *Airplanes manufactured after March 29, 2002.* Except as provided in paragraph (d) of this section, no person may operate a turbine-powered U.S.-registered airplane configured with six or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system that as a minimum meets the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(b) *Airplanes manufactured on or before March 29, 2002.* Except as provided in paragraph (d) of this section, no person may operate a turbine-powered U.S.-registered airplane configured with six or more passenger seats, excluding any pilot seat, after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that as a minimum meets the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(Approved by the Office of Management and Budget under control number 2120–0631)

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction in response to the terrain awareness and warning system audio and visual warnings.

(d) *Exceptions.* Paragraphs (a) and (b) of this section do not apply to—

(1) Parachuting operations when conducted entirely within a 50 nautical mile radius of the airport from which such local flight operations began.

(2) Firefighting operations.

(3) Flight operations when incident to the aerial application of chemicals and other substances.

PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Section 121.354 is added to read as follows:

§ 121.354 Terrain awareness and warning system.

(a) *Airplanes manufactured after March 29, 2002.* No person may operate a turbine-powered airplane unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(b) *Airplanes manufactured on or before March 29, 2002.* No person may operate a turbine-powered airplane after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(Approved by the Office of Management and Budget under control number 2120–0631)

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction in response to the terrain awareness and warning system audio and visual warnings.

5. Section 121.360 is amended by adding paragraph (g) to read as follows:

§ 121.360 Ground proximity warning-glide slope deviation alerting system.

* * * * *

(g) This section expires on March 29, 2005.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

7. Section 135.153 is amended by adding paragraph (f) to read as follows:

§ 135.153 Ground proximity warning system.

* * * * *

(f) This section expires on March 29, 2005.

8. Section 135.154 is added to read as follows:

§ 135.154 Terrain awareness and warning system.

(a) *Airplanes manufactured after March 29, 2002:*

(1) No person may operate a turbine-powered airplane configured with 10 or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(2) No person may operate a turbine-powered airplane configured with 6 to 9 passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and

warning system that meets as a minimum the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(b) *Airplanes manufactured on or before March 29, 2002:*

(1) No person may operate a turbine-powered airplane configured with 10 or more passenger seats, excluding any pilot seat, after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(2) No person may operate a turbine-powered airplane configured with 6 to 9 passenger seats, excluding any pilot seat, after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that meets as a minimum the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(Approved by the Office of Management and Budget under control number 2120–0631)

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction in response to the terrain awareness and warning system audio and visual warnings.

Issued in Washington, DC, on March 23, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7595 Filed 3–27–00; 8:45 am]

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Federal Register

Wednesday,
March 29, 2000

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 2, 3, 4, 9, 15, and 52
Federal Acquisition Regulation; Procurement Integrity Rewrite; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 9, 15, and 52

[FAR Case 1998–024 (98–024)]

RIN 9000–AI61

Federal Acquisition Regulation; Procurement Integrity Rewrite

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to rewrite procurement integrity coverage in plain language.

DATES: Interested parties should submit comments in writing on or before May 30, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1998–024@gsa.gov.

Please submit comments only and cite FAR case 1998–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 1998–024.

SUPPLEMENTARY INFORMATION:

A. Background

Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is more commonly referred to as the Procurement Integrity Act. FAR 3.104 implements prohibitions, restrictions, and other requirements of the Procurement Integrity Act that are placed on certain agency officials that participate in Federal agency procurements.

Other statutes and regulations also govern the conduct of Government employees. In particular, the Office of Government Ethics (OGE) regulations provide interpretive guidance on the prohibitions in 18 U.S.C. 207 and 208 that also apply to Government employees that participate in procurement activities during the conduct of a Federal agency procurement. While FAR 3.104 does not implement these other statutes and regulations, it is very important for agency employees to be aware, not only of the prohibitions and restrictions in the Procurement Integrity Act, but also those contained in other statutes and regulations that deal with the same or related prohibited conduct. Criminal and administrative penalties can result if an employee violates the restrictions or otherwise engages in prohibited conduct.

It became apparent that we could improve FAR 3.104 by reorganizing and simplifying the text. Moreover, we clarify FAR 3.104 to alert agency officials that even if their participation does not meet the definition in FAR 3.104 of participating personally and substantially, they are precluded from participating in a Federal agency procurement if they engage in certain conduct otherwise prohibited by other statutes and regulations. We are adding this guidance in FAR 3.104–2(b), 3.104–3(c)(2), and 3.104–5(a) to alert these agency officials that they should seek advice from agency ethics officials before engaging in certain activities that could have serious consequences, including criminal prosecution. These revisions to FAR 3.104 do not change either the requirements of the Procurement Integrity Act or change, in any manner, who is covered by, or the activities covered in, OGE regulations interpreting conflict of interest statutes.

To avoid possible violations of 18 U.S.C. 208, agency employees need to be aware that while their participation in a Federal agency procurement may not be considered ''participating personally and substantially in a Federal agency procurement'' for purposes of certain requirements in the Procurement Integrity Act, nevertheless there will be instances where the employee will be considered to be participating personally and substantially for purposes of 18 U.S.C. 208. We are adding these revisions to FAR 3.104 to alert agency officials that, while participating in a Federal agency procurement, they must be aware of and comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606.

These revisions also may assist agency ethics officials in advising agency officials participating in a Federal agency procurement. Certain conduct by an agency official during the conduct of a Federal agency procurement requires the official's disqualification from participation irrespective of whether or not the official's participation meets the definition of participating personally and substantially for purposes of the Procurement Integrity Act.

This rule was not subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the clarification only applies to individuals that are Government officials. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–024), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 3, 4, 9, 15, and 52

Government procurement.

Dated: March 23, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 3, 4, 9, 15, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 4, 9, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition ''Source selection information'' to read as follows:

2.101 Definitions.

* * * * *

Source selection information means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as ''Source Selection Information—See FAR 2.101 and 3.104'' based on a case-by-case determination by the head of the agency or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Revise sections 3.104 through 3.104–9 and remove sections 3.104–10 and 3.104–11 to read as follows:

3.104 Procurement integrity.

3.104–1 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104–6 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

Compensation means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as ''contractor bid or proposal information'' in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215–1(e).

Decision to award a subcontract or modification of subcontract means a decision to designate award to a particular source.

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

In excess of $10,000,000 means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Official means—

(1) An officer, as defined in 5 U.S.C. 2104;

(2) An employee, as defined in 5 U.S.C. 2105;

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or

(4) A special Government employee, as defined in 18 U.S.C. 202.

Participating personally and substantially in a Federal agency procurement means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) *Participating personally* means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) *Participating substantially* means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.

(iii) Clerical functions supporting the conduct of a particular procurement.

(iv) For procurements to be conducted under the procedures of OMB Circular A–76, participation in management studies, preparation of in-house cost estimates, preparation of ''most efficient organization'' analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

3.104–2 General.

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act) (41 U.S.C. 423) (hereinafter referred to as ''the Act''). Agency supplementation of 3.104, including specific definitions to identify individuals who occupy positions specified in 3.104–3(d)(1)(ii), and any clauses required by 3.104 must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201 and 10 U.S.C. 2207. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353 and 5 CFR part 2635;

(2) Contacts with an offeror during the conduct of an acquisition may constitute ''seeking employment,'' a term defined in subpart F of 5 CFR part 2635. Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also may require an employee's disqualification from participation in the acquisition even if the employee's duties may not be considered ''participating personally and substantially,'' as this term is defined in 3.104–1;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641 that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905;

(5) Release of information both before and after award (see 3.104–4) may be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

3.104–3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104–4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of an agency official who contacts or is contacted by an offeror regarding non-Federal employment (subsection 27(c) of the Act).* (1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must—

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104–5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because—

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Conduct that complies with subsection 27(c) of the Act may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. (See 3.104–2(b)(2).)

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).* (1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(i) Served, at the time of selection of the contractor or the award of a competitive or sole source contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation

team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to—

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(C) Approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of $10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date—

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the ''source selection information'' definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend ''Source Selection Information'' See FAR 2.101 and 3.104.'' Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with 52.215–1(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor's justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404(h).

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See 3.104–2(b)(5) and subpart 24.2.)

3.104–5 Disqualification.

(a) *Contacts.* Employment contacts between an offeror (including its agent or intermediary) and an agency official (including his or her agent or intermediary) that might not require disqualification under 3.104–3(c)(1)(ii) still may require disqualification under other statutes and regulations. (See 3.104–2(b)(2).)

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104–3(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104–3(c)(1)(ii) must submit promptly to the head of the contracting activity (HCA) a written notice of disqualification from further participation in the procurement. The official must submit concurrently copies of the notice to the contracting officer, the source selection authority, if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the

procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The individual must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with 3.104–3(c)(1)(ii).

(2) The HCA, after consultation with the agency ethics official, may authorize the disqualified individual to resume participation in the procurement, after whatever disqualification period the HCA determines is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) A Government officer or employee must comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. A Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives—

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization in accordance with the requirements of subpart F of 5 CFR part 2635.

3.104–6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104–3(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official before accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under 3.104–3(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d)(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104–7 Violations or possible violations.

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see 3.104–3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual promptly must forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer promptly must forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor, or someone acting for the contractor, has been convicted for an offense where the conduct constitutes a violation of subsection

27(a) or (b) of the Act for the purpose of either—

(*1*) Exchanging the information covered by the subsections for anything of value; or

(*2*) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending or debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104–8 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct that violates the Act (see 3.104–3). See 33.102(f) for special rules regarding bid protests. See 3.104–7 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104–3 is subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of 3.104–3, knowing that the official has not complied with 3.104–3(c)(1), is subject to the criminal, civil, or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see 3.104–5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

3.104–9 Contract clauses.

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at—

(a) 52.203–8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity.

3.704 [Amended]

4. Amend section 3.704 in paragraph (c)(1) by removing ''3.104–10'' and adding ''3.104–7'' in its place.

PART 4—ADMINISTRATIVE MATTERS

5. Amend section 4.802: a. In paragraphs (a)(1), (a)(2), and (a)(3) by removing ''which shall document'' and adding ''that documents'' in their place;

b. In the introductory text of paragraph (c) and in paragraph (d) by removing ''shall'' each time it appears and adding ''must'' in their place; and

c. By revising paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 2.101 must be protected from disclosure to unauthorized persons (see 3.104–4).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.105–3 [Amended]

6. Amend section 9.105–3 in paragraph (c) by removing ''3.104–3'' and adding ''3.104–4'' in its place.

9.505 [Amended]

7. Amend section 9.505 in paragraph (b)(2) by removing ''3.104–3'' and adding ''2.101'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

8. Amend section 15.404–2 by revising paragraph (a)(5) to read as follows:

15.404–2 Information to support proposal analysis.

(a) * * *

(5) Field pricing information and other reports may include proprietary or source selection information (see 2.101). This information must be appropriately identified and protected accordingly.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–8 [Amended]

9. Amend section 52.203–8 in the introductory paragraph by removing ''in solicitations and contracts''.

[FR Doc. 00–7666 Filed 3–28–00; 8:45 am]

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Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902 and 50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 and Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan; and Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 990811218–0072–02; I.D. 050399A]

RIN 0648–AL27

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Amendment 12 to the Northeast Multispecies Fisheries Management Plan (FMP) to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout and to implement the framework measure approved in Amendment 11 to the FMP regarding essential fish habitat. Amendment 12 and these regulations establish differential whiting possession limits based on the mesh size with which a vessel chooses to fish. The intended effect of this action is to reduce fishing mortality rates on whiting and red hake to eliminate overfishing and rebuild the biomass in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective April 28, 2000.

ADDRESSES: Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA) and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for the FMP amendment, as well as all documents pertaining to Amendment 11, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

Comments regarding burden-hour estimates for collection-of-information requirements or other aspects of the collection-of-information requirements contained in this final rule should be sent to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 12 to the Northeast Multispecies FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on September 1, 1999. NMFS disapproved the limited access permit program and the associated open access permit category. All of the remaining measures contained in Amendment 12, as originally submitted, were approved. A proposed rule to implement these measures was published at 64 FR 49427, September 13, 1999. Comments were accepted through October 28, 1999.

The limited access permit program proposed in Amendment 12 was disapproved because NMFS determined that it was inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. The qualification criteria would have allowed vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries to qualify for a limited access permit under criteria different from those established for other vessels. Vessels that participated in the experiments would have qualified with 1,000 lb (453.6 kg) of landings over 3 years, rather than 50,000 lb (22,680 kg) of landings over 18 years. Vessels would have been subject to the same restrictions regardless of how the vessel qualified for the permit. This portion of the proposed limited access program is inconsistent with national standard 4 because different sectors of the industry could have qualified for the same level of fishing with different landings requirements. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions, and these restrictive controls may have discouraged vessels from participating.

The limited access program also proposed that, at the beginning of year 6 of Amendment 12, unless otherwise extended, vessels would be eligible for limited access small-mesh multispecies permits without having to meet the landings criteria, provided the vessels possessed a limited access multispecies permit that was valid on the date the final rule for Amendment 12 is published and that continues to be valid in year 6. The sunset provision could have given vessel owners who would not qualify for the limited access permit unrealistic expectations that they may be able to participate in the whiting (small-mesh multispecies) fisheries as a limited access vessel when it is unlikely to happen. Further, there was no analysis of the potential effects of such effort on the rebuilding schedule. Amendment 12 is intended to end overfishing in Year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised. This measure was, therefore, found to be inconsistent with section 304(e) of the Magnuson-Stevens Act that specifies that overfished fisheries be rebuilt within a period not to exceed 10 years.

This rule does not implement the open access permit category for small-mesh multispecies because this category serves no purpose without the limited access permit program.

Details concerning the justification for, and development of, Amendment 12 and the implementing regulations were provided in the notice of availability (NOA) of Amendment 12 at 64 FR 29257, June 1, 1999, corrected at 64 FR 34758, June 29, 1999, and in the preamble to the proposed rule and are not repeated here.

Approved Measures

Although possession limits and other measures contained in the Amendment 12 are specific to whiting and offshore hake, the measures to protect whiting will also provide similar protection for red hake because it is primarily caught as incidental catch along with whiting or in directed whiting fisheries.

The existing ''Open Access Nonregulated Multispecies Permit'' category is renamed the ''Open Access Multispecies Permit'' to avoid confusion that would result from the elimination of the definition of ''Nonregulated Multispecies.'' The term ''nonregulated'' is no longer appropriate because Amendment 12 regulates whiting, red hake, and offshore hake. Vessels currently issued ''Open Access Nonregulated Multispecies Permits'' do not have to acquire a new ''Open Access Multispecies Permit'' this fishing year, but will have to obtain one for future years.

This rule amends the regulations so that the Cultivator Shoal Whiting Exemption Area fishing season begins on June 15 and ends on September 30 of each year. Vessels fishing in this exemption area with the appropriate letter of authorization from the Regional Administrator on board are restricted to

a minimum mesh size of 3 inches (7.62 cm), subject to applicable codend restrictions. Such vessels are also subject to a possession limit of 30,000 lb (13,608 kg) of whiting and offshore hake. Vessels with a valid letter of authorization to fish in the Cultivator Shoal Whiting Exemption Area are allowed to fish in areas other than this exemption area, but they are subject to the more restrictive mesh and possession measures regardless of where they fish.

Vessels issued any category of Federal limited access multispecies permit or an ''Open Access Multispecies Permit'' are subject to a whiting and offshore hake possession limit of 3,500 lb (1,588 kg) while using a codend mesh size (defined at § 648.86(d)(1)(iv)) of less than 2.5 inches (6.35 cm) or while using any mesh size and not issued a letter of authorization as described at 648.86(d)(2). Vessels issued any category of Federal limited access multispecies permit or the ''Open Access Multispecies Permit'' are subject to the following whiting and offshore hake possession limits: 7,500 lb (3,402 kg), while using a codend mesh size of 2.5 inches (6.35 cm) or larger, provided the vessel has a letter of authorization from the Administrator, Northeast Region, NMFS (Regional Administrator) on board; and 30,000 lb (13,608 kg), while using a codend mesh size of 3 inches (7.62 cm) or larger, provided the vessel has a letter of authorization from the Regional Administrator on board. Letters of authorization for these mesh size categories are valid for a minimum of 30 days. However, vessels can withdraw from either minimum mesh size category after a minimum of 7 days, but they are subject to a possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use and may not re-enter the original authorization category for the remainder of the original 30 days.

To retain silver hake (whiting) and offshore hake while participating in the northern shrimp fishery, a vessel must have a Federal multispecies permit. Vessels issued a Federal multispecies permit and fishing in the Small-Mesh Northern Shrimp Fishery Exemption Area with an appropriate letter of authorization from the Regional Administrator on board are subject to a possession limit of silver hake and offshore hake, combined, equal to the weight of shrimp on board, but may not exceed 3,500 lb (1,588 kg).

This rule includes instructions for vessel owners to follow in order for them to receive the required letters of authorization to participate in one of the minimum mesh size and corresponding possession limit categories. To request a letter of authorization, vessel owners must call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category, and the period of time that the vessel is enrolled. Because letters of authorization are effective on the date of receipt, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals are effective upon date of request.

Vessels issued Federal multispecies permits may transfer up to 500 lb (226.8 kg) of small-mesh multispecies to another vessel at sea, provided the transferring vessel has a letter of authorization to transfer fish at sea on board the vessel. A total of 500 lb (226.8 kg) will automatically be deducted from the possession limit of the vessel the fish is transferred from, regardless of the actual amount transferred. Vessels receiving the small-mesh multispecies at sea do not have to have a multispecies permit but must have a receipt for the transferred fish.

For vessels less than or equal to 60 ft (18.29 m) in length overall, the minimum codend mesh size applies to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net. For vessels greater than 60 ft (18.29 m) in length overall, the minimum codend mesh size applies to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net. These restrictions do not apply to vessels using less than 2.5–inch (6.35–cm) mesh and subject to other Northeast Region codend specifications specified in 50 CFR part 648. Vessels using mesh less than 2.5 inches (6.35 cm) may continue to use net strengtheners as allowed in this 50 CFR part 648.

Unless a framework or amendment to address fishing mortality for whiting and red hake is implemented by May 1, 2002, the following default measures are applicable:

A regulated mesh area throughout the range of the species, with a 3–inch (7.62–cm) minimum mesh requirement for all fishing activities. Vessels participating in any fishery are required to use the minimum codend mesh or larger unless fishing in a fishery that has been determined exempt from the minimum mesh size.

A possession limit of whiting and offshore hake up to 10,000 lb (4,536 kg) for vessels possessing a Federal multispecies permit.

An allowance for vessels to fish with mesh less than 3 inches (7.62 cm), if fishing is determined to be exempted from the minimum mesh size by demonstrating a bycatch of small-mesh multispecies that is less than 10 percent of total catch.

A possession limit of 100 lb (45.36 kg) of whiting and offshore hake for vessels participating in an exempted fishery.

This rule allows the following measures to be implemented through the framework procedure in § 648.90: A total allowable landings limit of whiting (and appropriate seasonal adjustments) for vessels fishing in the northern area requiring that the fishery be closed when the limit is reached; modifications or adjustments to whiting grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to criteria defining fisheries as exempt from the minimum mesh requirements for small-mesh multispecies; adjustments to the season, declaration process, or participation requirements for the Cultivator Shoal whiting fishery; and measures to designate essential fish habitat. In addition, the following management measures can be implemented through a framework adjustment to the FMP, provided that they are accompanied by a full set of public hearings: Whiting Days at Sea (DAS) effort reduction program and a whiting total allowable catch (TAC), either by region or for the entire fishery.

This rule establishes the Whiting Monitoring Committee (WMC) to monitor the progress of the rebuilding of small-mesh multispecies stocks on an annual basis. The role, structure, and process for the WMC are identical to those of the Multispecies Monitoring Committee (MMC), with the exception that the WMC must include at least three industry representatives: One from New England, one from Southern New England, and one from the Mid-Atlantic regions. This final rule changes the proposed regulations to specify that the first meeting of the WMC will take place in 2001. Implementation of this final rule will occur only six months prior to the first scheduled meeting of the Whiting Monitoring Committee. Therefore, the Whiting Monitoring Committee would have an incomplete year under the management measures to review if they were to meet in 2000. Changing the first meeting date to 2001 will provide a full year of the initial management measures for the Whiting Monitoring Committee to consider.

Comments and Responses

Comment 1: Two commenters stated that the limited access permit program proposed in Amendment 12 represents the best compromise that could be reached to address the difficult and

complex problem of limiting access to small-mesh multispecies fisheries.

Response 1: The limited access permit program has some merits; however, the exemption from the landing criteria for vessels that participated in an experimental fishery is inequitable. Further, no analysis of the potential effects of the sunset provision on the rebuilding schedule exists. Amendment 12 proposes to end overfishing in Year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised.

Comment 2: Several comments were received in support of the limited access permit program. Commenters felt that, since equity is a concern with any limited access program, implementing Amendment 12 without limited access should be of greater concern, that a limited access permit program would protect historical participants' interests in the fishery and ensure that as many people as possible who have participated in the whiting fishery would qualify, and that the limited access permit program should be implemented immediately, while the Council continues to work toward resolving concerns.

Response 2: The limited access permit program was disapproved on the basis of its inconsistency with national standard 4 and sec. 304(c) of the Magnuson-Stevens Act. The Council should proceed with developing a new limited access program that is equitable and supports the rebuilding goals of Amendment 12.

Comment 3: The Council commented that the exception from the 50,000 lb (22,680 kg) landing requirement for vessels that participated in an experimental fishery is not intended to exclude vessels that did not participate in experimental fisheries, but rather to include vessels that have demonstrated a clear intent to fish for small-mesh multispecies and may not have had the opportunity to land 50,000 lb (22,680 kg). The Council commented that every known vessel denied access to the experiment would at least qualify for the limited access possession limit permit. The Council commented that it is likely that unknown vessels having been denied participation would also qualify for at least the possession limit permit.

Response 3: The Council's intent to allow any vessel into the fishery that showed a clear intent to participate in whiting fisheries is misrepresented by the exemption from landing requirements for a small number of vessels that had participated in experimental fishing. Instead, this exception creates an inequitable provision by eliminating any vessel whose owner may have had an intent to participate but may have been discouraged from participating or may have been denied participation in the fishery or experimental fishing. The Council's argument that most vessels that were denied access to the experiment would still qualify for the possession limit permit does not justify the exemption from the landing requirement but, rather, appears to support not having an exemption at all.

Comment 4: The Council and two individuals commented that the inclusion of the sunset provision is appropriate because it is not an automatic condition and is conditional on the determination that whiting stocks can withstand additional pressure.

Response 4: Like the default management measures, the sunset provision would have been implemented unless the Council took action to prevent its implementation. Although it may have been the intent of the Council to review the status of the stocks before the sunset provision was implemented, the measure as proposed implied that vessels would be allowed entry. It would be appropriate to consider allowing additional vessels into the fishery only when it is determined that the stocks can withstand the additional effort.

Comment 5: The Council, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), and one individual commented that open access and increasing regulations in other fisheries are reasons to expect a potential increase of effort in whiting fisheries, despite market conditions.

Response 5: NMFS agrees that increased participation over the long-term in an open access fishery is possible. However, market conditions and Amendment 12's increased restrictions on the whiting fisheries would likely discourage a large number of new vessels from entering the fishery. The measures approved by NMFS are designed to eliminate overfishing and allow the stocks to rebuild. If stocks begin to recover and market conditions improve and/or stabilize over time, vessels may find whiting fisheries more attractive. NMFS encourages the Council to develop a limited access system as soon as possible.

Comment 6: The Council commented that it is unfair to impose the default measure at the beginning of Year 4 if the tools to achieve the Year 1–3 reductions, including limited access permits, are not implemented in a timely manner. Some commenters feel that the Year 4 default measures should also be delayed.

Response 6: The default measure is necessary to reach rebuilding objectives within the time required by the Magnuson-Stevens Act as amended by the Sustainable Fisheries Act (SFA) and Amendment 12. The default measure, as demonstrated in the analyses in Amendment 12, is needed to meet rebuilding goals under either limited access or open access. The Council will have the opportunity under the annual review process to change management measures if needed.

Comment 7: The Mid-Atlantic Council commented that the conclusion that the elimination of the limited access permit program will not have an adverse effect on overfishing contradicts the reason for the disapproval of the sunset provision because both appear to allow additional vessels into the fishery and would have the same net effect on rebuilding goals. The Mid-Atlantic Council and one individual further commented that both the sunset provision and an open access fishery would compromise optimum yield (OY) and rebuilding goals.

Response 7: The assumptions are not the same when considering the sunset provision and an open access fishery. NMFS reasonably assumed that, in the short-term, participants in an open access fishery will not significantly increase due to current market conditions, status of the fishery, and restrictions of the management measures. The sunset provision, however, allows vessels into the fishery in the future without consideration of their effects on the rebuilding goals and without any compensating measures.

Comment 8: One commenter suggested that the supplemental analysis prepared to evaluate the management measures in an open access fishery is a ''case of magic numbers.''

Response 8: NMFS disagrees. However, NMFS recognizes that it is difficult to precisely predict the behavior of fisheries in an open access fishery. Nevertheless, NMFS' analysis is supported by current market conditions in the fishery and by new restrictions implemented by Amendment 12 that may dissuade vessel owners from entering the fishery. NMFS is aware that the level of uncertainty could be greatly reduced if effort is controlled over the long term with a limited access permit program. Accordingly, NMFS has encouraged the Council to develop a limited access permit program that is fair and equitable.

Comment 9: The Mid-Atlantic Council and another commenter supported using landings data dating back to 1980 to qualify for a limited access permit. The commenters feel that, because of declines in availability of fish in the Mid-Atlantic/Southern New England areas around 1988, a qualifying period beginning in 1987 would eliminate many vessels from qualification in the southern areas.

Response 9: This comment is moot because NMFS disapproved the limited access component of Amendment 12.

Comment 10: The Mid-Atlantic Council commented that the limited access qualifying criteria should be applied equally across all fisheries and the sunset provision should be disapproved. The Mid-Atlantic Council also commented that Amendment 12 should include an exemption for vessels that participated in the small-mesh shrimp fishery with separator grates that would not have qualified for limited access small-mesh multispecies permits.

Response 10: NMFS disapproved the limited access permit program in part because the qualifying criteria were not fair and equitable.

Comment 11: The Council commented that the proposed enrollment program for the mesh size/possession limit categories does not provide the industry the flexibility that was intended and that it would discourage vessels from fishing for whiting and other small-mesh species with the most appropriate gear. The Council suggested that NMFS make a technical change in the final rule to implement a call-in enrollment, which would be incorporated into the current call-in system for groundfish to provide industry the necessary flexibility.

Response 11: The rule accurately reflects the enrollment program developed by the Council in Amendment 12. While the Council may now feel that a call-in program is preferable, a technical amendment to the regulations is not the proper vehicle to make a change in the type of enrollment program. After its submission of Amendment 12 to NMFS, the Council developed Framework 32, which eliminates Amendment 12's enrollment program. The final rule for Framework 32 will be published concurrently with this rule and will override relevant portions of the Amendment 12 rule.

Comment 12: The Council recommended that NMFS implement an allowance for a net strengthener of mesh size that is twice that of the inside mesh (e.g., 5–inch (12.7 cm) for 2.5–inch (6.35–cm) inside mesh) as a technical change to the 2.5–inch (6.35–cm) minimum mesh size/possession limit category measure. The Council feels that vessels may not catch enough squid with 2.5–inch (6.35–cm) mesh to make a profitable trip and will use 1.875–inch (4.76–cm) mesh and discard whiting over 3,500 lbs (1,588 kg), creating an excessive amount of discarding that could compromise the objectives of Amendment 12 to reduce whiting mortality and discards. The Mid-Atlantic Council supported the use of net strengtheners for all mesh sizes provided they do not alter the intended selective properties of the minimum mesh specified in Amendment 12.

Response 12: A technical amendment to this rule is not an appropriate means of eliminating Amendment 12's limited prohibition on the use of net strengtheners. The Whiting Plan Development Team (PDT) expressed concern during the development of Amendment 12 that net strengtheners may have a detrimental impact on the selectivity of the net, increasing catch and discards. However, time constraints prevented a full analysis of the use of various net strengtheners prior to Amendment 12's submission for Secretarial review. As a result, it was determined that, given the uncertain impacts, allowing the use of net strengtheners may compromise the objectives of Amendment 12. The Council has since analyzed impacts of net strengtheners and submitted a framework adjustment action to implement a net strengthener allowance for vessels using 2.5–inch (6.35–cm) mesh, that will be implemented simultaneously with this amendment. Assuming that all vessels may choose to use a net strengthener whenever the best strategy is to use 2.5–inch (6.35–cm) mesh, the conservation benefits of Amendment 12 are expected to be reduced by only 3.6 percent in the northern area and 1.9 percent in the southern area. Under the alternative assumption that the net strengthener would be employed only on observed trips where squid revenues exceeded small mesh multispecies revenues, the conservation benefits are estimated to remain unchanged compared to the status quo in the northern area and are estimated to be reduced by 0.9 percent in the southern area.

Comment 13: One commenter suggested that the implementation of the proposed minimum mesh size/possession limit measures would result in increased discards. The commenter notes that the Council was considering a call-in enrollment procedure and the use of a net strengthener. Therefore, the commenter recommends that NMFS should wait to implement all Amendment 12 regulations until the Council acts on these issues.

Response 13: As noted in the response to comment 12, NMFS is publishing the Framework 32 final rule, which provides for the use of net strengtheners and new mesh possession limit measures, simultaneously with this final rule.

Comment 14: The Mid-Atlantic Council commented that Amendment 12 should require the use of square mesh, which has been demonstrated to greatly improve the escapement of small fish in a number of fisheries around the world similar to U.S. whiting fisheries.

Response 14: The Council and NMFS are not aware of any data to support the commenter's claims about the benefits of square mesh for small-mesh multispecies. The Mid-Atlantic Council may want to consider recommending this gear restriction to the Council for future consideration. The WMC would have an opportunity to review the effects of the current measures and recommend new measures as part of its first annual review.

Comment 15: Several commenters felt that, because the default measures do not currently specify a geographical extent, Amendment 12 would affect southern fisheries, such as southern shrimp trawl fishery. The commenters suggested that a southern limit at 39° or 39°30′ N. lat. be established to protect fisheries that have little interaction with whiting, red hake, and offshore hake. Further, the commenters expressed concern that the 3–inch (7.62–cm) minimum mesh size will shut down *Loligo, Illex*, herring, and Atlantic mackerel fisheries.

Response 15: In the years prior to the Year 4 default measure, the Councils and NMFS can work together to identify appropriate fisheries for exemption from the 3–inch (7.62–cm) minimum mesh size and to consider a southern limit to the measure, which was discussed by the Council in the development of Amendment 12.

Comment 16: One commenter opposes the Year 4 default measures. The commenter feels that the disapproval of the limited access permit program and the gaps in scientific information on the stocks should be addressed before implementing the Year 4 default measures.

Response 16: Sufficient scientific information exists on stock abundance of whiting and hakes to form the basis for concluding that the stocks are overfished and that the Year 4 default measures are necessary to ensure that rebuilding occurs in sufficient time to comply with the Magnuson-Stevens Act, while easing the economic burden in

Years 1–3. Meanwhile, prior to the actual implementation of the default measure in Year 4, there will be opportunities to review the scientific data and adjust management measures based on that review, if appropriate. Other management alternatives could be developed that would replace the default measures.

Comment 17: Two commenters felt that the economic impact analysis is inadequate with respect to the effects on non-whiting fisheries, such as squid, mackerel, and herring fisheries. An industry representative further stated that, because of the inadequacy, Amendment 12 does not comply with national standard 8.

Response 17: NMFS disagrees with the commenters' suggestion that regulations implementing Amendment 12 violate national standard 8 of the Magnuson-Stevens Act. National standard 8 states that ''conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the preventing of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) to the extent practicable, minimize adverse economic impacts on such communities.'' Economic impacts of the preferred management measures and alternatives on communities are described in Amendment 12 in section E.5.2, E.7.0, the RIR, and the IRFA. Section E.7.2.3, ''Analysis of Fishery Impacts,'' describes the impacts of production losses associated with fisheries for large-mesh species, offshore hake, whiting, red hake, *Loligo* and *Illex* squid, shrimp, and small-mesh species (which include mackerel and herring) and identifies such losses in tables on pages 243 and 245 of Amendment 12. Community involvement in small-mesh multispecies fisheries and community impacts are discussed throughout Amendment 12 and its FSEIS.

Amendment 12 and this rule provide for the sustained participation of communities in small-mesh multispecies fisheries and minimizes economic impacts on them to the extent practicable in several ways, including the following. First, to reach the goal of ending overfishing, the rebuilding plan phases in reductions of the fishing mortality rate over the first 3 years, rather than requiring attainment of that goal immediately. Thus, they provide for the continued harvest of small-mesh species, albeit at reduced levels. Second, Amendment 12 sets up a rebuilding plan that meets the conservation requirements of the Magnuson-Stevens Act, yet provides for rebuilding over an extended period of time—the full 10 years allowed by the Magnuson-Stevens Act. Third, while the impacts of the Year 4 default measure are likely to be more severe than those of the Year 1–3 measures, the impacts of the Year 4 measure are short-lived relative to the negative impacts associated with maintaining the status quo and allowing fishing mortality to remain too high on stocks of whiting and red hake. By delaying the default measure to Year 4, Amendment 12 and this rule provide fishermen with the opportunity and incentive to modify their strategies for small mesh fishing in Years 1–3, which could make implementation of the Year 4 default measure unnecessary. Finally, Amendment 12 and this rule accommodated non-whiting fisheries by allowing possession of silver hake and offshore hake in amounts depending on mesh size. For these reasons, NMFS finds that Amendment 12 and this rule comply with national standard 8.

Comment 18: One commenter felt that Amendment 12 is inconsistent with national standards 4, 5, and 8 because it discriminates between sectors of the industry, does not foster efficiency in utilization of the fishery, and does not consider the importance of fishery resources to communities. Specifically, the commenter expressed a concern that large vessels would be unfairly disadvantaged by the possession limit in the Cultivator Shoal whiting fishery because trips to the area involve long travel time and 30,000 lb (13,608 kg) of whiting could not cover costs of operating the vessel. The commenter finds this inequitable because smaller vessels, which generally fish closer to shore, would be able to reach their fishing grounds in less time and, thus, have lower operating costs to cover.

With respect to national standard 5, the commenter stated that the proposed possession limits are contrary to the Council's intent in Amendment 12, which the commenter stated is to increase economic efficiency and allow a wide range of trip sizes. To address inequities associated with uniform possession limits, the commenter states that Amendment 12 should have used a ''sliding scale'' for possession limits where vessels would be allowed a possession limit based on the size of their vessel.

With respect to national standard 8, the commenter states that the FSEIS does not adequately address the significant economic and social consequences of the preferred alternative on fishermen and communities as compared to other options.

Response 18: NMFS disagrees that Amendment 12 is inconsistent with national standards 4, 5, and 8. A possession limit of 30,000 lb (13,608 kg) for the Cultivator Shoal whiting fishery was chosen because it provided for the required 63–percent reduction in exploitation by eliminating extremely large whiting trips in the area, some of which have historically exceeded 100,000 lbs (45,360 kg). The 30,000 lb (13,608 kg) possession limit would still result in profitable trips. Based on 1995 through 1997 landings data from the Cultivator Shoal whiting fishery, trips averaged about 10,000 lbs (4,536 kg). Further, with a 30,000 lb (13,608 kg) possession limit, market conditions during the fishery's season should be more stable, allowing more vessels to take advantage of the market and profit from trips that may otherwise have been negatively impacted by large trips flooding the market.

Vessel size and sliding scales were considered as possible criteria for possession limits, but were rejected because they were overly complex and would not have provided any significant benefits compared to the administration and enforcement difficulties associated with them, as described in section E.5.2, ''Alternatives to the Proposed Action''. Large vessels are not restricted to fishing in the Cultivator Shoal whiting fishery area. In fact, no vessels are restricted to certain areas where they can fish. Vessels of all sizes have the flexibility to modify their trips to reduce costs, if necessary.

Finally, NMFS finds Amendment 12 complies with national standard 8, as described in Comment Response 17.

Comment 19: One commenter felt that NMFS should articulate a program within the context of Amendment 12 to ensure the necessary information will be available to conduct a benchmark assessment.

Response 19: One of the goals of Amendment 12 is to increase scientific information on whiting, red hake, and offshore hake stocks. During the first 3 years that Amendment 12 is in effect, NMFS is hopeful that new stock assessments can be conducted on each species and the results will be used to modify management measures on an annual basis, if appropriate.

Comment 20: Three commenters noted that a composite net, utilizing large-mesh panels in the front of the net, is effective in reducing bycatch of whiting and other species in mixed trawl fisheries. They feel, however, that uniform small-mesh nets have a high bycatch. The commenters feel that

NMFS should consider allowing the gear or authorizing experiments with the ''composite'' tail bag.

Response 20: NMFS will consider any request for an experimental fishery to evaluate the effectiveness of a composite net in the reduction of bycatch.

Comment 21: One commenter expressed concern regarding the inclusion of two measures on the list of measures that could be implemented by framework action: (1) The description and identification of essential fish habitat (EFH), and (2) the description and identification of habitat areas of particular concern (HAPC). The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule, without publication first as a proposed rule. The commenter states that nonfishing interests lack representation at Council meetings and, therefore, will not have the opportunity to comment upon actions regarding EFH. The commenter also asserts that the framework adjustment process for these two measures will create inconsistencies in the measures among different NMFS Regions and the New England and Mid-Atlantic Fishery Management Councils (Councils), thereby complicating the EFH consultation process. The commenter requests that the inclusion of these measures be delayed until NMFS EFH interim final regulations and guidelines are revised.

Response 21: The framework adjustment process requires the Councils, when making allowed adjustments to the FMP, to develop and analyze them over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings, the proposals, and the analysis. Publication of the meeting agenda in the **Federal Register** is required. The public is provided an opportunity to comment on the proposals in writing, and/or in person at the second Council meeting. Upon review of the analysis and written and verbal public comments, the Council may recommend to the Regional Administrator that the measures be published as a final rule, provided certain conditions are met. NMFS may publish the measures either as a final rule or as a proposed rule if either NMFS or the Council determines that additional public comment is needed.

The list of frameworkable measures included in the Amendment 12 and the final rule to implement it is inclusive to provide the Council maximum flexibility in responding quickly to fishery information as it becomes available and in adjusting the regulations accordingly. As such, modifications to EFH and HAPC can be implemented in a expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law, and a framework adjustment requires full analysis to evaluate the impact of the measures. The degree of the required analysis will differ for each framework adjustment, depending upon the scope of the action and the degree to which the impacts have been previously analyzed. This process is considered to be adequate in providing the public opportunity to comment or be involved with any measures to address EFH concerns.

Comment 22: One commenter stated that the 15–percent reduction in catch associated with a 0.5–inch (1.27 cm) increase in mesh size from 2.5–inch (6.35 cm) mesh to 3–in (7.62 cm) mesh is not accurate and reported that industry feels that the reduction is 50 percent. The commenter feels that this would result in measures being more effective in achieving Amendment 12 objectives than anticipated.

Response 22: The Amendment 12 document takes this into account in the comparison of sensitivity trials. However, the Whiting PDT established the 15–percent reduction in catch based on scientific studies conducted by state agencies. There is no current evidence to show that the reduction in catch resulting from a ½-inch (1.27–cm) increase in mesh size is higher than that recommended by the Whiting PDT. If measures are more effective than anticipated, NMFS notes that framework action or an amendment addressing the new information may preclude the need to implement default measures in Year 4.

Comment 23: One commenter noted that, because whiting stocks cross US/Canadian boundaries, Canada should also be actively involved in the management of whiting.

Response 23: Annual reviews of the status of the stocks and the effectiveness of the management measures will take into account the possibility of stocks existing and migrating into Canadian waters, allowing NMFS and the Council to develop appropriate management, including coordination with Canada, if necessary.

Comment 24: One commenter feels that Amendment 12 is inconsistent with national standards 1 and 2 because possession limits would not allow achievement of OY and the management measures are not based on the best scientific information. The commenter states that the northern stock of whiting is approaching an overfished condition, and there is no determination that it is overfished. Further, the commenter states that, because long trips with 30,000 lb (13,608 kg) possession limits would not be economical, vessels would divert effort into the southern area, possibly compromising the rebuilding goals for whiting and red hake in that area.

Response 24: NMFS disagrees and finds Amendment 12 to be consistent with national standards 1 and 2. National standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the United States fishing industry. Also, sec. 304(e)(3)(B) of the Magnuson-Stevens Act requires the Council to develop a FMP amendment to prevent overfishing in a fishery identified as approaching an overfished condition. Amendment 12 concludes that the stock of whiting in the northern area is approaching an overfished condition and sets a fishing mortality rate of 0.36 (or a 63–percent reduction in the exploitation rate) to prevent overfishing. The possession limits and the selectivity of the minimum mesh sizes in both the northern area and the Cultivator Shoal whiting fishery exemption area are intended to achieve that fishing mortality target.

Amendment 12 also complies with national standard 1 because it sufficiently specifies OY. Amendment 12 specifies OY for whiting, red hake, and offshore hake as the amount of fish that results from fishing under the set of rules designed to achieve the plan objectives. It is the amount of fish caught by the fishery when fishing at target fishing mortality rates at current biomass levels, or when fishing in a manner intended to maintain or achieve biomass levels capable of producing maximum sustainable yield on a continuing basis. Given the definition of OY is tied to the fishing mortality rate, and the possession limits are designed to achieve the fishing mortality rates, the possession limits allow for the harvest of OY.

The majority of trips that landed 30,000 lbs or greater of whiting historically occurred in either the Cultivator Shoal whiting fishery or in Southern New England waters. Therefore, it is unlikely that the 30,000 lb possession limit would cause additional effort in the southern area that is not already considered in Amendment 12. Regarding the issue of trip profitability under a 30,000–lb limit, see the response to comment 18.

Section E.6.2 of Amendment 12 describes the data the Council used to

evaluate the potential impacts of the management measures on small-mesh multispecies fisheries. In summary, the Council considered information and analyses provided by scientific and technical groups including the Overfishing Definition Review Panel and the Whiting PDT. It also considered information provided by the Whiting Industry Advisory Panel and other industry representatives when systematically collected data were unavailable. While recent information is lacking, Amendment 12 can use only what is available. NMFS found, through review of Amendment 12, that this information was the best available scientific information.

Changes From the Proposed Rule

Changes made are related to technical and administrative needs and concerns and are made to clarify the intent of the regulations. In addition, the final rule for Amendment 9 to the FMP was published on October 15, 1999. Changes are made to make the final rule for Amendment 12 to the FMP consistent with the regulations as modified by the final rule for Amendment 9 to the FMP. The most notable changes from the proposed rule to the final rule implementing Amendment 12 are listed below in the order appearing in the regulations:

In § 648.2, in the definition for Northeast (NE) multispecies or multispecies, Atlantic halibut has been added by Amendment 9 to the FMP. The scientific name for yellowtail flounder in the definition is corrected to *Pleuronectes ferruginea*. In the proposed rule it was inadvertently specified as *Limanda ferruginea*, which was the old classification.

In § 648.6, paragraph (a) is revised to delete references to effective dates that have been passed.

In § 648.14, paragraph (a)(42) is revised to better reflect the intent of the referenced paragraphs. Paragraphs (b) and (c)(7) are revised to reflect revised references.

In § 648.80, paragraphs (a)(3)(i)(A), (a)(3)(i)(B), (a)(4)(i)(B), (a)(8)(i)(A), (a)(8)(i)(B), and (a)(9)(i)(D) are revised to reference additional American lobster possession limits imposed by § 697.17 of this chapter.

In § 648.80, paragraphs (a)(8)(i)(B), (a)(9)(i)(D)(2), and (b)(3)(i)(B) are revised, and paragraph (c)(2)(iii) is added to reflect the minimum mesh size implemented by the Year 4 default measures.

In § 648.80(g) the net strengthener provisions are clarified.

In § 648.80, paragraph (g)(4) is redesignated (g)(5) because a restriction on street sweeper gear is now designated as paragraph (g)(4).

In § 648.86 the paragraphs that were to be added as paragraphs (c) and (d) are added as paragraphs (d) and (e) because the possession limit for halibut is now designated as paragraph (c).

In § 648.86, the paragraphs that were to be redesignated as paragraphs (e) and (f) are redesignated as paragraphs (f) and (g).

In § 648.86, paragraphs (d)(1)(i) through (d)(1)(iii) are revised for clarity and to specify that net stowage applies to the entire trip, and paragraph (d)(1)(iv) is added to clarify that minimum mesh size applies to the last 50 meshes (100 bars if square mesh is used) for vessels 60 ft (18.28 m) and under and to the last 100 meshes (200 bars if square mesh is used) for vessels greater than 60 ft (18.28 m), as specified in Amendment 12.

In § 648.90, paragraph (a) is revised to specify that the first annual meeting of the Whiting Monitoring Committee will occur in 2001.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0391 for §§ 648.13 and 648.86.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP, except for the disapproved measure, is necessary for the conservation and management of the northeast multispecies fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared and NMFS has adopted a FSEIS for Amendment 12; a NOA was published at 64 FR 39990, July 23, 1999. Although short-term negative impacts will result from lowered allowed catches of small-mesh multispecies, the proposed management action will have long-term positive impacts on affected physical, biological, and human environments.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Analysis

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Council prepared an IRFA, and NMFS prepared a supplement, dated July 1, 1999, that describes the economic impacts of the proposed rule, if adopted, on small entities and discusses various alternatives considered by the Council. The final regulatory flexibility analysis (FRFA) consists of the IRFA, the supplement to the IRFA, public comments received on the amendment and proposed rule related to economic impacts on small entities and responses in this final rule, and the summary that follows.

In its September 1997 Report to Congress, NMFS determined that some stocks of whiting and red hake are overfished or approaching an overfished condition. NMFS is publishing this rule to comply with the Magnuson-Stevens Act, which requires that an amendment be developed and implemented to prevent overfishing of stocks declared to be approaching an overfished condition and to end overfishing and to rebuild overfished stocks. This rule intends to prevent overfishing by implementing whiting and offshore hake possession limits; minimum mesh sizes; and a Year 4 default measure to ensure that overfishing is eliminated. To ensure effective recordkeeping and compliance with the measures exist, this rule establishes two new collection-of-information requirements and includes one existing collection-of-information requirement in the FMP that was not previously approved by OMB. The two new requirements require a vessel owner or operator to call the Regional Administrator to request a letter of authorization to fish under one of the mesh size/possession limit categories and require a vessel owner or operator to provide/obtain a receipt for fish bought through a transfer of fish at sea. The requirement not previously approved by OMB is a requirement to call in to receive a letter of authorization to transfer fish other than regulated multispecies at sea. Measures analyzed in the IRFA include the full set of management measures with particular attention to mesh size and possession limits and the Year 4 default measure and various other alternatives considered by the Council. The entities affected by these regulations are all small entities; therefore, analysis of impacts of the regulations and of the alternatives considered in Amendment 12 constitutes an analysis of the impact of the regulations on small entities as required under the RFA. The small entities considered in this analysis are

1,156 vessels that reported landing one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997.

Other measures approved in Amendment 12, including minimum mesh and possession limit enrollment programs (not including the direct reductions of catch and landings caused by minimum mesh sizes and possession limits), codend specifications, the net strengthener provision, and the transfer at sea provision have no quantifiable economic impact but are intended, in part, to help mitigate all impacts of these measures on participants in the fishery. These measures are expected to have minimal economic impact on participating vessels because they will not result in the loss of catch or landings.

All of the alternatives considered by the Council have varying degrees of impact upon different sectors of the fishery, all of whom are small entities. These alternatives, their impacts on the participants in the fishery, and reasons they were not adopted are discussed in more detail at section E.5.0 of the FSEIS and are hereby incorporated into the FRFA. A summary of alternatives considered but rejected follows:

1. The Council considered a ''no action'' alternative that would result in no changes to the current measures under the Northeast Multispecies FMP. The no action alternative was rejected because it would not fulfill the requirements of the Magnuson-Stevens Act as amended by the SFA with respect to overfished stocks and stocks approaching an overfished condition. Further, evaluations of biological, social, and economic impacts suggest that the approved management measures would result in greater, long-term benefits to the industry.

2. The Council considered various management measures specific to northern, southern, and the Cultivator Shoal whiting fishery areas, using the boundary between the Gulf of Maine/ Georges Bank and the Southern New England Regulated Mesh Areas to differentiate between the northern and southern areas. Management measures that were considered included minimum mesh sizes, eastern and western zone delineation in the southern area, and possession limits based on mesh size, areas fished, seasons, and vessel size. While the Council maintained the Cultivator Shoal Whiting Fishery Exemption Area, it rejected further area delineation because it felt uniform management measures for all areas, except the Cultivator Shoal Whiting exemption area, would be the least complex, the easiest to enforce and administer and would still provide for the necessary reductions in fishing mortality and exploitation.

3. Seasonal restrictions, including a reduction of the current season, were considered by the Council for management measures for the Cultivator Shoal whiting fishery. The Council had considered reducing the fishery season by 2 months by eliminating June and October. In addition, various possession limits and participation restrictions were considered. While Amendment 12 implements a 1-month reduction of the season that eliminates the month of October, the elimination of June from the season was rejected. Public comment during the public hearing stage suggested that landings from the fishery in June are of high value because of the lack of other available fish or whiting fisheries. The possession limits and other restrictions, other than the measures in this rule, were rejected for consideration in Amendment 12 because they were too complex or not feasible. Also, the Council felt that, while a possession limits less than 30,000 lbs in the Cultivator Shoal whiting fishery would ensure that fishing mortality goals relative to the Cultivator Shoal area would be reached quickly, it would be more likely that vessels would not be able to profit from trips to the Cultivator Shoal area with such low possession limits.

4. The Council considered three options for possible transfers of small-mesh multispecies at sea. One measure would prohibit transfers; a second would allow unlimited transfers; and a third would allow vessels to transfer limited amounts of small-mesh multispecies. The Council rejected the prohibition of transfers because it would not allow the needed flexibility in the industry. The unlimited transfer at sea option was also rejected because it would compromise the effectiveness of the possession limits it was developing.

5. The Council considered implementing minimum fish sizes for whiting, but rejected the idea due to the likelihood that measuring whiting would be impractical and difficult to enforce given the high-volume nature of the fishery. In addition, whiting is a highly perishable product. Implementing such a requirement would increase the time required to process the fish, thereby lessening the quality and value of retained fish.

6. The Council considered spawning season closures to protect spawning stocks of whiting and red hake, but rejected the measure because spawning data for whiting are incomplete. The data that are available suggest that existing large-mesh measures in the Northeast Multispecies FMP provide protection for known spawning fish.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by OMB. This rule also repeats an existing requirement that has been approved by OMB under control number 0648–0202. The OMB control numbers and public reporting burden are listed as follows:

Call-in to NMFS Region for Enrollments for Authorization Letter to Transfer at Sea, OMB No. 0648–0391 (2 minutes/response);

Written Receipt for At-Sea Transfers of Small-mesh Multispecies, OMB No. 0648–0391 (1 minute/response);

Call-in to NMFS Region for Enrollments for Mesh Size/ Possession Limit Authorization Letter, OMB No. 0648–0391 (2 minutes/response).

Call in to NMFS Region for Enrollment for the Cultivator Shoal Whiting Fishery Authorization Letter, OMB No. 0648–0202 (2 minutes/ response).

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding an entry for 648.13 in numerical order and revising the entry for 648.86 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection number is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR:	
* * * * *	
648.13	–0391
* * * * *	
648.86	–0202, –0391
* * * * *	

50 CFR Chapter VI

PART 648 - FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Nonregulated multispecies'' is removed, the definitions for ''Dealer'' and ''Northeast (NE) multispecies or multispecies'' are revised, and the definitions for ''Small-mesh multispecies'' and ''Whiting Monitoring Committee (WMC)'' are added to read as follows:

§ 648.2 Definitions.

* * * * *

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

* * * * *

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice- *Hippoglossoides platessoides*.

Atlantic cod- *Gadus morhua*.

Atlantic halibut- *Hippoglossus hippoglossus*.

Haddock- *Melanogrammus aeglefinus*.

Ocean Pout- *Macrozoarces americanus*.

Offshore Hake- *Merluccius albidus*.

Pollock- *Pollachius virens*.

Redfish- *Sebastes fasciatus*.

Red hake- *Urophycis chuss*.

Silver hake (whiting)- *Merluccius bilinearis*.

White hake- *Urophycis tenuis*.

Windowpane flounder- *Scophthalmus aquosus*.

Winter flounder- *Pleuronectes americanus*.

Witch flounder- *Glyptocephalus cynoglossus*.

Yellowtail flounder- *Pleuronectes ferruginea*.

* * * * *

Small-mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

* * * * *

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

3. In § 648.4, paragraph (a)(1)(ii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

4. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, or spiny dogfish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. As of April 28, 2000, persons aboard vessels receiving small-mesh multispecies at sea for use exclusively as bait are deemed not to be dealers for purposes of receiving such small-mesh multispecies and are not required to possess a valid dealer's permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * * *

5. In § 648.13, paragraph (b) is revised, and paragraph (e) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer only up to 500 lb (226.8 kg) of combined small-mesh multispecies per trip for use as bait from one vessel to another, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

* * * * *

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will

automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

6. In § 648.14, paragraphs (a)(42), (a)(43), (b), (c) introductory text, (c)(7) and (t) are revised, and paragraphs (x)(4)(iii) and (z) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel possesses on board a valid authorizing letter issued to the vessel under § 648.80(a)(4)(i) and the vessel complies with the requirements specified in § 648.80(a)(4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small-mesh northern shrimp fishery exemption area; (a)(4), the Cultivator Shoal whiting fishery exemption area; (a)(8), Small-mesh Area 1/Small-mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any provision of the paragraphs in § 648.80 is a separate violation.

* * * * *

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid multispecies permit, or any person issued an operator's permit or issued a letter under § 648.4(a)(1)(i)(M)(*3*), to land or possess on board a vessel more than the possession or landing limits specified in § 648.86(a),(b),(c), (d) and (e) or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access multispecies permit or a letter under § 648.4(a)(1)(i)(M)(*3*), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), and (e) and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any owner or operator of a vessel issued a valid open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

* * * * *

(x) * * *

(4) * * *

(iii) All small-mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

* * * * *

(z) *Small-mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2002, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b), and (c), nets of mesh size smaller than 3–in (7.62–cm), unless otherwise exempted pursuant to § 648.80(a)(7).

(ii) If issued a Federal multispecies permit, land or possess on board a vessel, more than 10,000 lb (4,536 kg) of combined whiting and offshore hake.

7. In § 648.80, paragraphs (a)(3)(i), (a)(4)(i)(A) through (a)(4)(i)(D), (a)(7), (a)(8)(i), (a)(9)(i)(D), (b)(3)(i), (c)(4), (g)(1), and (g)(2)(i) are revised and (a)(4)(i)(E) through (a)(4)(i)(G), (c)(2)(iii), and (g)(5) are added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2002, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2002, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a valid letter of authorization issued by the Regional Administrator on board.

(B) Through April 30, 2002, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the

restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2002, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3 in (7.62 cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in paragraph (a) of this section during the course of the trip.

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section for the entire trip.

* * * * *

(7) *Addition or deletion of exemptions*--(i)(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications are made through issuance of a rule in the **Federal Register**.

(B) *Small-mesh multispecies.* Beginning May 1, 2002, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small-mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small-mesh multispecies.

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2002, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(ii) of this section, and, 648.86(d), from July 15 through November 15 when fishing in Small-mesh Area 1 and from January 1 through June 30 when fishing in Small-mesh Area 2. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted:

Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Small-mesh Area 1

Point	N. lat.	W. long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

Small-mesh Area 2

Point	N. lat.	W. long.
SM13	43°05.6'	69°55.0'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40.0'
SM16	42°41.5'	69°40.0'
SM17	42°36.6'	69°55.0'
SM13	43°05.6'	69°55.0'

* * * * *

(9) * * *

(i) * * *

(D)(*1*) Through April 30, 2002, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2002, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(*1*) of this section.

* * * * *

(b) * * *

(3) * * *

(i) *Species exemptions.* (A) Through April 30, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

(c) * * *

(2) * * *

(iii) *Small mesh beginning May 1, 2002.* Beginning May 1, 2002, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

* * * * *

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) is not in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

* * * * *

(5) *Net strengthener restrictions when fishing for small-mesh multispecies.* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5–in (6.35–cm) may use a net strengthener provided that the net strengthener complies with § 648.23(d).

* * * * *

8. In § 648.86, paragraphs (d) and (e) are redesignated as paragraphs (f) and (g) respectively and new paragraphs (d) and (e) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies:

(i) *Vessels using mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided herein, nets of mesh size smaller than 2.5 in (6.35 cm) (as applied to the part of the net specified at (d)(1)(iv) of this section), and, vessels that have not been issued a letter of authorization pursuant to paragraph (d)(1)(ii) or (d)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 in (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.81(e), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii) and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 in (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 in (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 7,500 lb (3,402 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 in (6.35 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 in (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 in (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 in (7.62 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i),(ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length.

(2) *Letter of authorization.* To fish for, possess on board, or land silver hake and offshore hake in excess of 3,500 lb (1,588 kg), as specified in paragraphs (d)(1)(ii) or (d)(1)(iii) of this section, a vessel must be issued and carry on board a valid letter of authorization to fish in the applicable minimum mesh size/possession limit category. To request a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel is enrolled. Since letters of authorization are effective on the date of receipt, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective upon date of request. Withdrawals may occur after a minimum of 7 days of enrollment in which case vessel owners may not re-enroll the vessel in any mesh size/possession limit category until 30 days after the beginning of the original enrollment period. Until the vessel owner re-enrolls, the vessel is subject to a silver hake and offshore hake possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use. For example, if a vessel owner enrolls in the 3–in (7.62 cm) mesh/30,000 lb (13,608 kg) possession limit category which is effective October 1 and chooses November 30 as the end date but withdraws on October 7, the vessel may not be re-enrolled in the 2.5–in (6.35 cm)/ 7,500 lb (3,402 kg) or 3–in (7.62 cm) mesh/30,000 lb (13,608 kg) possession limit category until October 31.

(3) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3) with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(4) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Owners and operators of vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) *Small-mesh multispecies beginning on May 1, 2002*—(1) *Federal multispecies permit holders.* An owner or operator of a vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board or land up to 10,000 lb (4,536 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to restrictions on gear,

area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners or operators of vessels fishing in the Small-mesh Northern Shrimp Fishery Exemption Area under the exemption described in § 648.80(a)(3), with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1), may possess on board or land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.9 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

9. In § 648.90, paragraphs (a) introductory text, (a)(1) through (a)(4), and (b)(1) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the NE Multispecies FMP goals and objectives. For the year 2000 and thereafter, the MSMC, and for the year 2001 and thereafter, the Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, if applicable, closed areas or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC and WMC, as applicable, shall separately review available data pertaining to: Catch and landings, discards, DAS, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The MSMC and WMC must demonstrate through analyses and documentation that the options they develop are expected to meet the NE Multispecies FMP goals and objectives. The MSMC and WMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC or WMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species or small-mesh multispecies; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of essential fish habitat (EFH); fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the NE Multispecies FMP. In addition, for the 2002 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small-mesh multispecies management (mesh and possession limit restrictions for small-mesh multispecies beginning May 1, 2002).

(3) The NEFMC shall review the recommended target TACs recommended by the MSMC and all of the options developed by the MSMC and WMC, and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective pertaining to regulated species or small-mesh multispecies that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MSMC or WMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the NE Multispecies FMP objectives and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations (if applicable), closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. The NEFMC shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

* * * * *

(b) * * *

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for

fisheries exempted from minimum mesh requirements to fish for small-mesh multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area

(ii) *Adjustment process for Whiting TACs and DAS.* The Council may develop recommendations for a Whiting DAS effort reduction program or a Whiting TAC through the framework process outlined in paragraph (c)(1) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

* * * * *

[FR Doc. 00–7697 Filed 3–28–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000307061–0061–01; I.D. 013100D]

RIN 0648-AN46

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan (FMP) to address management measures for silver hake (whiting), red hake, and offshore hake. This final rule implementing Framework Adjustment 32 (Framework 32) establishes that a vessel's whiting and offshore hake possession limit shall be determined by the smallest codend mesh size the vessel has on board or the smallest mesh on board not incorporated into the body of a fully-constructed net, whichever is smaller. In addition, this final rule allows vessels fishing for small-mesh multispecies with 2.5–inch (6.35–cm) mesh codends to use a net strengthener. The intended effect of this action is to mitigate regulatory discards resulting from the whiting/offshore hake possession limits implemented in Amendment 12 and to reduce the administrative and compliance burdens associated with approved provisions of Amendment 12 to the FMP (Amendment 12).

DATES: This rule is effective April 28, 2000.

ADDRESSES: Copies of the Framework 32 document, its Regulatory Impact Review (RIR), the Environmental Assessment, and other supporting documents for the framework adjustment, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288.

SUPPLEMENTARY INFORMATION: Amendment 12 was partially approved on September 1, 1999, and contains a measure requiring vessels to be issued and carry on board a letter of authorization (LOA) to fish under a particular mesh size/possession limit category. Under Amendment 12, vessels issued an LOA for the 3–inch (7.62–cm) or 2.5–inch (6.35–cm) minimum mesh size categories would be allowed a possession limit of 30,000 lb (13,608 kg) or 7,500 lbs (3,402 kg), respectively, of whiting and offshore hake. Those vessels using less than 2.5–inch (6.35–cm) mesh or vessels without the appropriate LOA would be allowed a 3,500–lb (1,588–kg) possession limit of whiting and offshore hake. Vessels could elect to fish under the specified mesh/possession limit category for a minimum of 30 days and could withdraw after 7 days, but would be restricted to a 3,500–lb (1,588–kg) possession limit of whiting and offshore hake for the remainder of the original 30 days. These requirements (hereinafter referred to as ''the enrollment procedures'') were designed to encourage vessel owners and captains to make extended decisions about their fishing activity and give more force to the minimum mesh sizes and possession limits. Also, Amendment 12 allows only vessels using nets with mesh sizes less than 2.5 inches (6.35 cm) to use net strengtheners.

In a letter to NMFS dated June 3, 1999, the New England Fishery Management Council (Council) expressed concern that the Amendment 12 enrollment procedures and restriction on net strengtheners would not provide flexibility for the industry and would encourage discarding of whiting by continued fishing with smaller mesh. The Council urged NMFS to proceed with a technical change to Amendment 12 to modify the enrollment procedures and to allow the use of net strengtheners for the larger mesh size nets. NMFS determined that the changes would be substantive, could have possible impacts on conservation goals and, therefore, would require a framework adjustment or amendment action to allow the Council to consider available options and conduct proper analysis of the impacts. As a result, the Council proceeded in developing Framework 32.

Framework 32 eliminates Amendment 12's enrollment procedures and instead bases possession limits on the smallest codend mesh on board (either stowed or available for fishing), or the smallest mesh on board not incorporated into a fully-constructed net, whichever is smaller. The restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), consistent with current minimum mesh size restrictions in the FMP. Under Amendment 12, minimum mesh size is applied to the first 50 meshes or 100 bars counted from the terminus of the net for vessels 60–ft (18.29 m) or smaller and the first 100 meshes or 200 bars counted from the terminus of the net for vessels greater than 60–ft (18.29 m) in length. The elimination of the enrollment procedures will allow vessel owners improved flexibility in the size of the mesh that they can use in the nets on a trip-to-trip basis and reduces the possibility of high regulatory discards of whiting and offshore hake. The application of the possession limit based on the smallest mesh size on board eliminates the administrative burden associated with implementing the enrollment procedures and may improve enforcement of the possession limits.

This final rule implementing Framework 32 also includes a measure that allows vessels fishing with 2.5–inch (6.35–cm) mesh-sized nets to use a net strengthener (a large mesh codend positioned around a small-mesh codend), provided that the net strengthener has a minimum mesh size of 6 inches (15.24 cm), has the same circumference and configuration (square or diamond mesh) as the inside codend, and that the inside codend is no more than 2 ft (61 cm) longer than the outside codend. The allowance of net strengtheners would help alleviate discards by providing some vessels with an incentive to use trawl net codends with mesh size of at least 2.5 inches (6.35 cm). Testimony during the comment period for Amendment 12 and throughout the development of Framework 32 suggests that vessel

owners would discard whiting that would be caught over the allowed 3,500 lbs (1,588 kg) with less than 2.5–inch (6.35–cm) mesh nets because *Loligo* squid, which has a minimum mesh size requirement of 1.875 inches (4.76 cm), continue to be more valuable than whiting. Vessel owners felt that the 2.5–inch (6.35–cm) mesh would release too much squid and that there would be no incentive for these vessels to move up to a 2.5–inch (6.35–cm) mesh, which would promote conservation of whiting. Thus, some vessel owners would continue to use the smaller mesh and discard whiting. Allowing a net strengthener with 2.5–inch (6.35–cm) mesh provides an incentive for squid vessels to increase their mesh size to 2.5 inches (6.35 cm) by allowing squid catches similar to those caught with 1.875–inch (4.76–cm) mesh nets and allowing for a 7,500–lb (3,402–kg) possession limit of whiting and offshore hake. During the development of the strengthener options, industry commented that the use of a net strengthener with mesh sizes larger than 2.5 inches (6.35 cm) was not an issue because the concern was to find a solution for the small-mesh squid fishery. The provisions for the circumference, length, and composition of the net are intended to prevent vessels from using a combination of inside and outside codends that would reduce the effective inside mesh size, thereby compromising the effectiveness of whiting conservation measures.

Abbreviated Rulemaking

NMFS is making these adjustments to the regulations under the framework abbreviated rulemaking procedure codified in 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the Multispecies FMP, to develop and analyze the action over the span of at least two Council meetings where public comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analyses, and provide an opportunity to comment on them specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the Regional Administrator, Northeast Region (Regional Administrator), that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary.

The initial and final meetings for Framework 32 at which public comment was received were on September 21–23, 1999, and November 16–18, 1999, respectively. The Council's Whiting and Enforcement Committees and Whiting Industry Advisory Panel also held meetings and took public comment on the proposals for Framework 32 during meetings in October 1999. Documents summarizing the Council's proposed action and the analyses of biological, economic, and social impacts of this action and alternative actions were available for public review 1 week prior to the final meeting, as is required under the framework adjustment process. No written comments were received.

To eliminate confusion to the industry and to reduce the administrative burdens that Amendment 12's enrollment procedures would cause, Framework 32 is published just after the final rule implementing Amendment 12. This final rule modifies the final rule implementing Amendment 12. This effectively eliminates implementation of the burdensome enrollment procedures created by Amendment 12.

Classification

The Regional Administrator determined that this framework adjustment to the FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule eliminates a reporting requirement under the Paperwork Reduction Act estimated at 13.3 hours. The Call-in to NMFS Region for Enrollments for Mesh Size/Possession Limit Authorization (2 minutes/response) (part of the paperwork burden authorized by OMB No. 0648–0391) has been eliminated.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 551 *et seq.*, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared. Nevertheless, the socioeconomic impacts on affected small entities were considered in the RIR contained in the supporting analyses for Framework 32. Relative to the status quo, expected average net returns would increase by less than one percent for the net strengthener provision implemented by this final rule. The minimum mesh size/possession limit provision implemented by this final rule is the simplest alternative available and improves flexibility for the industry. Further, it reduces costs to participating fishermen and the agency and may improve enforceability of the measure. Alternatives to this measure were also considered by the Council and were discussed in the framework adjustment document.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.80, paragraph (g)(5) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(g) * * *

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies.* (i) *Nets of mesh size less than 2.5 inches (6.35 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5 inches (6.35–cm), as measured by methods specified in § 648.80(f), may use net strengtheners (covers as described at § 648.23(d)) provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.35 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets with mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm) (as measured by methods specified in § 648.80(f), and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net) provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.24 cm), diamond or square

mesh, as measured by methods specified in § 648.80(f). The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

3. In § 648.86, paragraph (d) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake if either of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv)of this section, as measured in accordance with 648.80(f); or,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). ''Integrated into a fully constructed net'' means that the mesh smaller than 2.5 inches (6.35 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm).* Owners or operators of a vessel, which is not subject to the possession limit specified in paragraph (d)(1)(i) of this section, may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62), as measured by methods specified in § 648.80(f). ''Integrated into a fully constructed net'' means that the mesh smaller than 2.5 inches (6.35 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(iii) *Vessels using nets of mesh size equal to or greater than 3 inches (7.62 cm).* Owners or operators of a vessel, which is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section, may possess and land not more than 30,000 (13,608 kg) of combined silver hake and offshore hake if both of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is equal to or greater than 3 inches (7.62), as measured by methods specified in § 648.80(f). ''Integrated into a fully constructed net'' means that the mesh smaller than 3 inches (7.62 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i),(ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3) with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Owners and operators of vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

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